

ORDINANCE

Ordinance No. O09-2018-99

ASHLAND COUNTY LARGE-SCALE CONCENTRATED ANIMAL FEEDING OPERATIONS ORDINANCE

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

Section 1.0 Authority

This ordinance is adopted pursuant to the powers granted under the Wisconsin Constitution and the Wisconsin Statutes, including but not limited to Wis. Stats. §§ 59.03(2), 59.70(1), 254.51(5) & 254.59(7).

Section 2.0 Title and Purpose

The title of this ordinance is the Ashland County Large-Scale Concentrated Animal Feeding Operations Ordinance.

The purpose of this ordinance is to effectively, efficiently, and comprehensively regulate the operations of Ashland County Large-Scale Concentrated Animal Feeding Operations (CAFOs) of **2,000 animal units or greater**, without respect to siting, to protect public health (including human and animal health), safety, and general welfare, to prevent pollution and the creation of private nuisances and public nuisances, and to preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of Ashland County ("the County"). Although the State of Wisconsin defines Large-Scale CAFOs as 1,000 animal units or more, the purpose of this County Ordinance is to manage the operations of CAFOs only when they reach 2,000 animal units or more. CAFOs of 1,000 animal units or more will continue to be regulated by the State of Wisconsin, but the operations of CAFOs of 2,000 animal units or more will also be regulated by Ashland County.

Section 3.0 Definitions

- (a) **"Ashland County Large-Scale Concentrated Animal Feeding Operation"** or **"Ashland County CAFO"** means a lot or facility, other than a pasture or grazing area, where 2000 or more animal units have been, are or will be stabled or concentrated, and will be fed or maintained by the same owner(s), manager(s) or operator(s) for a total of 45 days or more in any 12-month period. Two or more smaller lots or facilities under common ownership or common management or operation are a single Large-Scale Concentrated Animal Feeding Operation or CAFO if the total number of animals stabled or concentrated at the lots or facilities equal 2000 or more animal units and at least one of the following is true: (1) NR 243.03(4)(a) The operations are adjacent; (2) NR 243.03(4)(b) The operations utilize common systems for the land spreading of manure or other wastes; (3) Animals are transferred between the lots or facilities; (4) The lots or facilities share staff, vehicles, or equipment; or (5) NR 243.03(4)(c) Manure, barnyard runoff or other wastes are commingled in a common storage facility at any time.
- (b) **"Operations"** means a course of procedure or productive activity for purposes of conducting and carrying on the business of a "Large-Scale Concentrated Animal Feeding Operation" or "CAFO," including populating animal housing facilities, storing and managing animal and other waste materials, and conducting any other business activities.

- (c) **"Pollution"** means degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, and criminal action or other legal or administrative action, investigation or proceeding, including but not limited to a determination of a violation of a livestock or cropland performance standard under Wis. Admin. Code. §§ NR 151 & 243.23, a determination that any type of unacceptable practice has occurred under Wis. Admin. Code § NR 243.24, a determination that malodorous emissions have been caused or allowed in violation Wis. Admin. Code § NR 429.03. For the purpose of this paragraph, issuance of an order or other communication addressing corrective action or a stipulated agreement, fine, forfeiture or other penalty, is considered a determination of a violation, regardless of whether there is a finding or admission of liability.
- (d) **"Private nuisance"** means a non-trespassory invasion of another's interest in the private use and enjoyment of land, and the invasion is either: (1) Intentional and unreasonable, or (2) Unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.
- (e) **"Public nuisance"** means a thing, act, occupation, condition or use of property which shall continue for such length of time as to: (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; (2) In any way render the public insecure in life, health or in the use of property; or (3) Unreasonably and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage or public use any street, alley, highway, navigable body of water or other public way or the use of public property or other public rights.
- (f) **"Siting"** means determination of the place where the structures and other physical facilities associated with development of a "Large-Scale Concentrated Animal Feeding Operation" or "CAFO" may be located.

Section 4.0 Large-Scale Concentrated Animal Feeding Operations or CAFOs

- (a) Regardless of siting, a Large-Scale Concentrated Animal Feeding Operation or CAFO of 2000 animal units or more shall be allowed to conduct operations within Ashland County only as provided for under this ordinance.
- (b) The applicant shall apply for a "CAFO Operations Permit" prior to conducting any operations associated with a Large-Scale Concentrated Animal Feeding Operation or CAFO of 2000 animal units or more within Ashland County. The application shall be submitted on a form provided to the applicant by the County Clerk, a copy of which is attached hereto as Appendix A.
- (c) The Ashland County Board of Supervisors ("County Board") shall decide whether or not to approve and issue a CAFO Operations Permit to an applicant that has submitted a complete application and paid the required application fee, after holding a public hearing on the application and considering any evidence concerning the application and the proposed CAFO presented by the applicant and any other interested persons or parties, including members of the public and other governmental agencies or entities, and special legal counsel and expert consultants who may be hired by the County to review the application and advise the County Board.
- (d) The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it determines by a majority vote of all members of the County Board, supported by clear and convincing evidence presented by the applicant, that the operations of the proposed CAFO, with or without conditions, will protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County, and that the application meets all other requirement of this Ordinance.

- (e) The County Board shall issue a CAFO Operations Permit, with or without conditions, to an applicant that has met all other requirements of this Ordinance provided it determines, based on information provided by the applicant and verified by the County, that a CAFO having substantially similar operational characteristics, housing the same species of animals, and utilizing similar operations, has been continuously operated in the United States for at least ten (10) years without causing pollution of groundwater or surface water, and without causing either a private nuisance or a public nuisance, as determined by an administrative proceeding, civil action, criminal action or other legal or administrative action, investigation or proceeding. However, this requirement may be waived by the County Board at the specific request of the applicant for a CAFO Operations Permit if the County Board determines after a hearing and based on clear and convincing information provided by the applicant and verified by the County, that the proposed CAFO will otherwise meet the requirements set forth in Section 4 (d), above.
- (f) A CAFO Operations Permit approved by the County Board can be voided at any time if the permittee violates any conditions of the permit or any conditions of any other required Federal, State or County permits or licenses, at any time. The County Board shall hold a hearing in advance of the voiding of any permit and provide the permittee an opportunity to prove, by clear and convincing evidence, that there have been no violation of conditions of the permit or condition of any other required Federal, State or County permits or licenses.

Section 5.0 Procedures

- (a) An applicant for a CAFO Operations Permit shall complete an Ashland County CAFO Operations Permit Application (Appendix A) and pay the required application fee of one dollar (\$1.00) per proposed animal unit to Ashland County, at the time the application is submitted to the County Clerk.
- (b) Upon signing and submitting a CAFO Operations Permit Application to the County Clerk, the applicant shall agree to fully compensate the County for all legal services, expert consulting services, and other expenses which may be reasonably incurred by the County in reviewing and considering the application, regardless of whether or not the application for a permit is subsequently approved, with or without conditions, or denied by the County Board. Within thirty (30) days of a request by the County Administrator, the applicant shall provide an administrative fee deposit with the County Clerk in an account such that funds are available to be withdrawn by the County and used to pay for or reimburse the County for the costs and expenses the County incurs in connection with processing the permit application. The County Administrator, in consultation with other County employees, independent consultants and/or legal counsel, shall determine the initial administrative fee deposit based upon the anticipated costs necessary to process the application. After the initial administrative fee deposit, should the County Board at any time determine that additional fees related to the processing of the application will be necessary, the applicant will make an additional fee deposit into the related administrative fee account within fifteen (15) days of receipt of a request for additional funds by the County Board. Any funds remaining in the administrative fee account once the permit application process is complete shall be returned to the applicant. If the administrative fee account is insufficient to cover all remaining costs related to the CAFO Operations Permit Application, the County shall issue a bill for the remaining costs to the applicant, who shall pay said bill within thirty (30) days.
- (c) After receiving the application and the application fee, the County Clerk shall mail a notice that a CAFO Operations Permit Application has been received to all landowners within 3 miles of the proposed CAFO with the date and time of the County Board meeting at which the application will be first considered. The notice shall provide information on how interested persons and parties may inspect and obtain a copy of the application.

- (d) The County Clerk shall then place the application on the agenda for the next regular County Board meeting for which required notice can be provided, at which time the County Board shall conduct an initial review of the application and schedule further proceedings for review and consideration of the application by the County Board. Such proceedings shall include: (a) Considering the need to hire special legal counsel and expert consultants to review the application and advise the County Board; (b) Developing a plan to make a determination of the completeness of the application within a reasonable amount of time; (c) Developing a plan to schedule further proceedings, including scheduling a formal public hearing before the County Board on the application at least sixty (60) days after the application has been determined to be complete by the County Board, and scheduling a subsequent special meeting of the County Board to decide whether or not to grant the requested permit and what, if any, conditions shall be required if the requested permit is granted, within a reasonable amount of time.
- (e) At the formal public hearing held by the County Board on the application at least sixty (60) days after it has been determined to be complete, the County Board shall consider any evidence concerning the application and the proposed CAFO presented by the applicant and any other interested persons or parties, including members of the public and other governmental agencies or entities, and special legal counsel and expert consultants who may be hired by the County to review the application and advise the County Board.
- (f) In its review and consideration of a CAFO Operations Permit Application, the County Board shall act in a quasi-judicial capacity, and its final decision on whether or not to approve and issue a CAFO Operations Permit, either with or without conditions, shall be based on written findings of fact and conclusions of law consistent with the provisions of this ordinance, which shall be filed with the County Clerk and served on the applicant by regular U.S. Mail.
- (g) The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it determines by a majority vote of all members of the County Board, supported by clear and convincing evidence presented by the applicant, that the operations of the proposed CAFO, with or without conditions, will protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County and that the application meets all other requirements of this Ordinance.
- (h) The County Board shall issue a CAFO Operations Permit, with or without conditions, to an applicant that has met all other requirements of this Ordinance if it determines, based on information provided by the applicant and verified by the County, that a CAFO having substantially similar operational characteristics, housing the same species of animals, and utilizing similar operations, has been continuously operated in the United States for at least ten (10) years without causing pollution of groundwater or surface water, and without causing either a private nuisance or a public nuisance. However, this requirement may be waived by the County Board at the specific request of the applicant for a CAFO Operations Permit if the County Board determines, upon a hearing and based on clear and convincing information provided by the applicant and verified by the County, that the proposed CAFO will otherwise meet the requirements set forth in Sections 4 (d) and 5 (g), above.
- (i) The County Board shall, in granting any CAFO Operations Permit, require the applicant to ensure that sufficient funds will be available for pollution clean-up, nuisance abatement, and proper closure of the CAFO if it is abandoned or otherwise ceases to operate as planned and permitted, based on the following provisions:

1. **Notification.** The County Board shall determine the required financial assurance level of the CAFO and shall notify the applicant. As a condition of a permit, the County Board shall require financial assurance to be filed with the County Board in an amount sufficient to clean-up environmental contamination if the same were to occur, to abate public nuisances caused by CAFO operations, including but not limited to the testing and replacement of any potentially contaminated private and public wells and water supplies within the areas subject to CAFO operations, and to ensure proper closure of the CAFO, should the applicant elect to close or should the closure occur for some other reason. Upon notification of the required financial assurance levels by the County Board, but prior to commencing operations of the CAFO, the applicant shall file with the County Board said financial assurance conditioned on faithful performance of all requirements of this chapter and the permit. Upon notification by the County Board of financial assurance or deposit approval and conformance with permit conditions, the applicant may commence CAFO operations.
2. **Bond Requirements.**
 - (a) Bonds shall be issued by a surety company licensed to do business in this state. At the option of the applicant or permit holder a performance bond or a forfeiture bond may be filed. Surety companies may have the opportunity to complete the clean-up of environmental contamination or complete proper closure of the CAFO in lieu of cash payment to the County.
 - (b) Each bond shall provide that the bond shall not be canceled by the surety, except after not less than 90 days' notice to the County Board, in writing, by registered or certified mail. Not less than 30 days prior to the expiration of the 90-day notice of cancellation, the applicant or permit holder under this chapter must deliver to the County Board a replacement bond or approved alternate financial assurance in absence of which all CAFO operations shall cease.
 - (c) The bond shall be payable to "Ashland County, Wisconsin."
3. **Alternate Financial Assurance.** An applicant or permit holder may deposit cash, irrevocable letters of credit, irrevocable trusts, established escrow accounts, negotiable certificates of deposit or negotiable government securities with the County in lieu of a bond. Certificates of Deposit shall be automatically renewed or replaced with an alternate security before the maturity date. Any interest earned by the financial assurance will be paid to the applicant at the time such financial assurance is cancelled or withdrawn.
4. **Financial Assurance Reevaluation.**
 - (a) The County Board may reevaluate and adjust accordingly the amount of the financial assurance required for the CAFO, including reevaluating said financial assurance when requested to do so by the applicant or permit holder, provided that the applicant or permit holder may only request a reevaluation once per year.
 - (b) The applicant or permit holder shall notify the County Board in writing if there is a ten percent (10%) change in the average daily number of animal units housed at the CAFO in any 365-day period. This notification shall be provided at any time such a change occurs, and not just for financial assurance reevaluation.
 - (c) The County Board shall notify the applicant in writing within 60 days of a decision to adjust the amount of the financial assurance for the CAFO, whether the adjustment results in a greater or lesser financial assurance requirement.

5. **Financial Assurance on Multiple Projects.** Any applicant or permit holder that receives a permit from the County Board for two or more CAFOs may elect, at the time the second or subsequent CAFO is approved, to post a single financial assurance in lieu of separate financial assurance on each CAFO. Any financial assurance so posted shall be in an amount equal to the estimated cost to the County to clean-up environmental contamination if the same were to occur at all such CAFOs, to abate public nuisances caused by CAFO operations, including but not limited to the testing and replacement of any potentially contaminated private and public wells and water supplies within the areas subject to CAFO operations, and to ensure proper closure of all such CAFOs, should the applicant elect to close or should the closure occur for some other reason. When an applicant elects to post a single financial assurance in lieu of separate financial assurance previously posted on an individual CAFO the separate financial assurance shall not be released until the new financial assurance has been accepted by the County Board.
 6. **Financial Assurance Release.** The County Board shall release the applicant's or permit holder's financial assurance after providing notice to all property owners within 3 miles of the CAFO of the intent to release financial insurance and allowing such owners 90 days to object, if it finds, after inspection of the CAFO and documentation provided by the permit holder, that the permit holder has completed or ceased CAFO operations at the permitted location and all associated parcels, and that there is no environmental contamination or public nuisance remaining at any locations used for any part of the CAFO operations, after operations have ceased.
 7. **Cancellation.** The financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a 90 days' notice to the County Board in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90 days' notice of cancellation, the applicant or permit holder shall deliver to the County Board a replacement financial assurance. In the absence of this replacement financial assurance, all CAFO operations shall cease until the time the required financial assurance is delivered and in effect.
 8. **Changing Methods of Financial Assurance.** The operator of a CAFO may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to this chapter. The permit holder shall give the County Board at least 60 days' notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the County Board.
 9. **Bankruptcy Notification.** The applicant or permit holder under this chapter shall notify the County Board by certified or registered mail of the commencement of voluntary or involuntary proceedings under the United States Bankruptcy Code, U.S. Code Title 11--Bankruptcy, naming the applicant or permit holder as a debtor, within 10 days of commencement of the bankruptcy proceeding.
- (j) The County Board may approve a CAFO Operations Permit and attach conditions to protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County. To the extent not expressly or otherwise preempted by Wis. Stat. §93.90, and Wis. Admin. Code Ch. ATCP 51 or any other provision of state or federal law, such conditions may include, but are not limited to:
1. Conditions relating to the operational characteristics of the proposed CAFO, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;

2. Conditions relating to the management of animal and other waste that may be generated as part of a CAFO's ongoing operations, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;
 3. Conditions relating to the population and depopulation of individual animal housing facilities, to protect public health and prevent the spread of animal-borne and vector-borne disease, to assure a safe level of sanitation, and to assure human health hazard control or health protection for the community;
 4. Conditions relating to biosecurity and the maintenance of animal health and welfare, to prevent the spread of animal-borne and vector-borne disease, to protect public health, and provide for animal safety and welfare;
 5. Conditions relating to transportation of animals as part of a CAFO's ongoing operations, to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
 6. Conditions relating to protection of private and public drinking and agricultural wells, and other public water supplies, as part of a CAFO's ongoing operations to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
 7. Conditions relating to air emissions and dust control as part of a CAFO's ongoing operations, to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
 8. Conditions relating to protection of the private and public property rights and property values of affected property owners, as part of a CAFO's ongoing operations, to protect the general welfare of the County's residents and property owners, and to prevent private nuisances and public nuisances;
 9. Conditions relating to permit compliance, enforcement, and monitoring, including establishment of fees that may be assessed against the permittee to cover the costs of hiring, training, and maintaining County personnel, or for contracting with private consultants, to conduct permit compliance, enforcement and monitoring activities for the County;
 10. Any other conditions deemed reasonably necessary or appropriate by the County Board to effectively, efficiently, and comprehensively regulate the operations of a CAFO, to protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County.
- (k) An applicant or any other person or party who is aggrieved by a final decision of the County Board on whether or not to approve and issue a CAFO Operations Permit, either with or without conditions, or a taxpayer, or any officer, department, board or bureau of the County, may, within thirty (30) days after the filing of the decision with the County Clerk, commence an action seeking the remedy available by certiorari in the Ashland County Circuit Court. The court shall not stay the decision appealed from, but may, with notice to the County Board, grant a restraining order. The County Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

- (l) In any certiorari proceeding brought under the preceding paragraph, attorney fees and costs shall not be allowed against the County Board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- (m) A final decision of the County Board under this ordinance is not subject to appeal under Wis. Stat. 93.90(5), Wis. Stat. § 93.90, and Wis. Admin. Code Ch. ATCP 51, which apply only to siting decisions.
- (n) The County Board, or its designee, shall work to ensure on an ongoing basis that all requirements and conditions of any permit issued under this ordinance are followed by the permittee. To assist in accomplishing this task, any permit issued pursuant to this ordinance shall be subject to an annual renewal fee in the amount of One Dollar (\$1.00) per animal unit.

Section 6.0 Permit Term & Extensions

- (a) (a) A permit issued by the County Board under this ordinance shall be for an initial term of five (5) years, so long as the permittee remits the annual renewal fee set forth in Section 5(n), above. Thereafter, if no substantial changes or modifications are proposed to the CAFO operations and there have been no permit violations or compliance problems a permittee may apply for extension of the same permit for additional five (5) year periods. The County Board may request any information it finds reasonably necessary to evaluate whether no substantial changes or modification are proposed or have taken place, and the permittee shall provide such information. If substantial changes or modifications are determined to have taken place, or if there have been violations of the permit conditions or requirements under this ordinance, or under any state or federal requirements, the permittee shall have to reapply for an Operations Permit and follow all steps required under this ordinance.

Section 7.0 Penalties

- (b) Any violation of this ordinance shall be punishable by a forfeiture of not less than \$100.00 or more than \$5,000.00 per day for every day of violation of this ordinance, plus the costs of prosecution, including the County's reasonable attorney fees and costs, for each and every violation.
- (c) Each day of violation shall constitute a separate offense. In addition, the County Board may: (1) issue a notice of violation and order that specifies required remedial action, which may include a stop operations and work order; (2) suspend or revoke the permit; or (3) impose any other available enforcement remedy.

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

Signed:

Pat Ryan
Paul Kubby
DP Williamson
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