LIVESTOCK OPERATIONS STUDY GROUP
Wednesday, January 18, 2017, 1:00 p.m., Courthouse, Room 207C
1313 Belknap Street, Superior, Wisconsin

Please call the County Clerk’s Office (715-395-1569) if you are unable to attend.

MEMBERS:  Mary Lou Bergman, Chair                Nick Baker
Pat Ryan                                           Terry White
Jane Anklam                                        Steve Rannenberg
Christine Ostern                                   Sue Hendrickson (Alternate)
Carolyn Pierce (Advisor)

A G E N D A
(Committee to maintain a two-hour meeting limit or take action to continue meeting beyond that time.)

1. Roll call.
2. Approval of minutes from the November 3, 2016, meeting (attached).
3. Informational items:
   a) Review of previous meeting (attached); and
   b) Bayfield County ordinance challenge update.
4. Action items:
   a) Large-scale Concentrated Animal Feeding Operations (attached);
   b) South Fish Creek Watershed Animal Waste Storage and Management (attached);
   c) Review other options for regulation (attached); and
   d) Next steps (meeting date and topics).
4. Future agenda items.
5. Adjournment.

A quorum of the Zoning Committee will be present at this meeting due to membership of this committee’s members on that committee and a quorum of the Transportation & Infrastructure Committee will be present at this meeting due to the attendance of Douglas County Board Supervisors appointed to that committee.

Cc: Shelley Nelson (Telegram) Andy Lisak Sue Hendrickson Fred Strand
    Carolyn Pierce Susan Sandvick Ben Dufford Jason Fischbach
    Douglas County Website

NOTE: Attachments to agenda are available in County Clerk’s Office for review or copying. Action may be taken on any item listed on the agenda. The County of Douglas complies with the Americans with Disabilities Act of 1990. If you are in need of an accommodation to participate in the public meeting process, please contact the Douglas County Clerk’s Office at (715) 395-1341 by 4:00 p.m. on the day prior to the scheduled meeting. Douglas County will attempt to accommodate any request, depending on the amount of notice we receive.

Posted: Courthouse, Government Center, Telegram Copied

____________________________________  1-11-17
Name                  Date
Meeting called to order by County Board Chair Mark Liebaert.

**ROLL CALL:** Present – Pat Ryan, Jane Anklam, Nick Baker, Terry White, Steve Rannenberg, Carolyn Pierce (Advisor). Absent – Mary Lou Bergman, Christine Ostern. Others present – Mark Liebaert, Shelley Nelson, Kaci Lundgren, Committee Clerk.

**ACTION:** Motion by Ryan, second Baker, to elect Terry White as temporary chair. Motion carried.

**APPROVAL OF MINUTES:** Motion by Baker, second Ryan, to approve the minutes of the September 19, 2016, meeting. Motion carried.

**INFORMATIONAL ITEMS:**

**Review of Previous Meeting:** No farms in Douglas County currently over 500 animals; should continue to pursue ordinance even if Bayfield County CAFO application is withdrawn.

**Proposal to Address Groundwater Goal from the Land and Water Resource Management Plan:** Baseline data of groundwater important to see current water state; will be beneficial if changes occur due to CAFO’s. Options include a study for the entire county or specific areas of concern.

**Douglas County Livestock Facilities Licensing Ordinance 8.10:** Separate CAFO zone district would need to be created, as licensing process does not allow restriction of placement. A majority of towns must approve ordinance change in order to pass; Liebaert to mention study to Towns Association members. Minimum acreage sizes discussed; storage issue/size a concern. DNR monitors many regulations including air quality and storm water runoff. Rannenberg to verify if ordinance amendments are allowed and to what extent.

**Application of Liquid Livestock Manure Using Spray Irrigation Systems:** Presentation given by Anklam on spray irrigation application. Areas of concern include odor, water quality, gas emissions, particulate matter and hazardous air pollutants.

**ACTION ITEM:**

**Set Meeting Schedule and Topics:** To be referred to next meeting. December 15, 2016, tentative meeting date.

**FUTURE AGENDA ITEMS:** Groundwater study grant; Towns Association information; Bayfield County case result.

**ADJOURNMENT:** Motion by Ryan, second Baker, to adjourn. Motion carried. Meeting adjourned at 2:57 p.m.

Submitted by,
Kaci Jo Lundgren, Committee Clerk
Questions from the November 3, 2016 Meeting of the Livestock Operations Study Group

1. Q: “I heard a rumor that the applicant for the proposed CAFO in Bayfield County withdrew the application?”

   A: On November 4 Rob Schierman, Bayfield County ZA, said that he is not aware of the withdrawal of the application.

2. Q: “Can we require that the applicant provide us with a groundwater study as part of the licensing process?”

   A: On November 4 Scott Godfrey, Iowa County ZA, said “No, as it is not a requirement for a complete application as defined in Wisconsin Administrative Code ATCP 51.”

3. Q: “Is the creation of a new zoning district allowed?”

   A: On November 4 Scott Godfrey said that DATCP’s position is that a CAFO is permitted in any agriculture district. Rob Schierman has had an “Ag-2” zoning district in his ordinance since 1976. Therefore, we may be prohibited, or at least challenged, from creating a new zoning district specifically for CAFOs.

4. Provide a DNR list of the Impaired Waters in Wisconsin. Note: Middle River is on the list of impaired Waters.

5. Q: “Does the St. Croix Watershed Plan contain a groundwater study.”

6. Q: “Can we adopt the Bayfield County aerial spraying ordinance as it is low-hanging fruit?”

   A: Regarding the survivability of the Bayfield County Liquid Livestock Spraying Ordinance Rob Schierman said on November 4 that we should anticipate State preemption on any effort to prohibit aerial spraying of manure.
Bayfield County
Chapter 6 Large-Scale Concentrated Animal Feeding Operations ordinance
Prepared for Livestock Operations Study Group Jan. 18, 2017 meeting

Administered by the County Board, applications taken by the Clerk’s Office
(not directly administered by any departments of sub-committees)

Only pertains to facility operations based on public health and safety, not facility siting, and so does not need agency approval

More restrictive than state, county believes this is acceptable because the ordinance only pertains to operations based on public health and safety

Modeled after frac-sand mining ordinances in other counties (again, pertaining only to operations based on public health and safety)

Contains unique clause that an operator must show experience operating similar sized facilities in similar environmental conditions for at least 10 years with no complaints or violations of any kind

Ordinance has not been tested

Procedure for a proposed CAFO in Bayfield County (if not in the S. Fish Creek Watershed):
• Apply to Land Conservation for Ch. 2 Livestock Facilities Licensing, and
• Apply to the County Board through the Clerk’s Office for Ch. 6 Large-Scale Concentrated Animal Feeding Operations
Chapter 6 Large-Scale Concentrated Animal Feeding Operations Ordinance

Sec. 5-6-1 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).

Sec. 5-6-2 Title and Purpose.
The title of this ordinance is the Large-Scale Concentrated Animal Feeding Operations Ordinance.

The purpose of this ordinance is to effectively, efficiently, and comprehensively regulate the operations of Large-Scale Concentrated Animal Feeding Operations of 1,000 animal units or greater (“CAFOs”), 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 Bayfield County (“the County”).

Sec. 5-6-3 Definitions.

(a) All definitions located in Section 5-2-3 of the Bayfield County Code of Ordinances are hereby adopted and incorporated by reference as if set forth herein.

(b) “Large-Scale Concentrated Animal Feeding Operation” or “CAFO” means a lot or facility, other than a pasture or grazing area, where 1,000 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 1,000 or more animal units and at least one of the following is true: (1) The operations are adjacent; (2) 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) Manure, barnyard runoff or other wastes are commingled in a common storage facility at any time.

(c) “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.
(d) “Pollution” means degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, 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.

(e) “Private nuisance” means a nontrespassory 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.

(f) “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.

(g) “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, pursuant to Chapter 2 “Livestock Facilities Licensing Ordinance” of Title 5 [Public Safety] of the Code of Ordinances, Bayfield County, Wisconsin, Wis. Stat. §93.90, and Wis. Admin. Code Ch. ATCP 51.

Sec. 5-6-4 Large-Scale Concentrated Animal Feeding Operations or CAFOs

(a) Regardless of siting, a Large-Scale Concentrated Animal Feeding Operation or CAFO shall be allowed to conduct operations within the 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 within the 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 Bayfield 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 requirements 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 Sec. 5-6-4 (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.
Sec. 5-6-5 Procedures

(a) An applicant for a CAFO Operations Permit shall complete a Bayfield County CAFO Operations Permit Application (Appendix A) and pay the required application fee of one dollar ($1.00) per proposed animal unit to Bayfield 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 requirement 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 Secs. 5-6-4 (d) and 5-6-5 (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 “Bayfield 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 Bayfield 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) or the provisions of Chapter 2 “Livestock Facilities Licensing Ordinance” of Title 5 [Public Safety] of the Code of Ordinances, Bayfield County, Wisconsin, 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.

Sec. 5-6-6 Permit Term & Extensions

(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 Sec. 5-6-5(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.

Sec. 5-6-7 Penalties

(a) 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.

(b) 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.
APPENDIX “A”

BAYFIELD COUNTY CAFO OPERATIONS PERMIT APPLICATION

Application Filing Fee: $ _________ (# of Animal Units) \* $1.00 per AU = $ _________

Date of Application: _____________________________________________________________

Name of Individual or Organization Operating CAFO): ________________________________
____________________________________________________________________________

Name of Individual Completing Application: _________________________________________

Federal Employer ID# ____________________ State Employer ID# __________________

Contact Person:
____________________________________________________________________________

Address:
____________________________________________________________________________

City ____________________________State _______________________Zip_____________

Phone: (_____ )___________ Fax: (_____ )___________ Cell Phone: (_____ )___________

Email: _______________________________________________________________________

Provide the Legal Description and owner name and contact information for each parcel of the
land at which the livestock facilities will be located. If any of the land is rented include a copy
of the lease agreement or other document demonstrating permission to use the land and/or
facilities as proposed. Provide the following information for each parcel.

____ ¼ of ____ ¼, Section____Township ____N. Range____W. Town of____________________

Tax Parcel ID Number: ____________________________Acreage____________________

Name and Address of Land Owner:
Name:
____________________________________________________________________________

Address:
____________________________________________________________________________

City ____________________________State ________________Zip____________________
Provide the Legal Description and owner name and contact information for each parcel of **Owned or Rented** land proposed to be used in conjunction with CAFO Operations (e.g., manure spreading). For each parcel of **Rented** land include a copy of a cropland lease agreement or other document demonstrating permission to use the land as proposed. The term of the lease agreement must be clearly indicated in the lease agreement. Provide the following information for each parcel.

___ ¼ of ____ ¼, Section____Township ____N. Range____W. Town of ______________________

Tax Parcel ID Number: ____________________________Acreage____________________

Name and Address of Land Owner:
Name: 

Address: 

City ____________________________State ______________________Zip______________

(1) Describe current land uses within and immediately adjacent to the proposed CAFO site, including aerial photographs. For lands being used for crop production, include a description of crops currently being grown with an estimate of acreage of each crop.

(2) Permits:
   a. Does this CAFO have a Bayfield County Siting License? Yes No
   b. Does this CAFO have a Wisconsin Pollutant Discharge Elimination Systems Permit? Yes No
   c. Does this CAFO have Bayfield County Land Use Permit(s)? Yes No
      If so, identify the permits held.

   d. If this CAFO lacks any of the above permits, please set forth all plans to obtain any of the above permits, including when applications have been or will be filed, and the expected date for approval or denial of the permit.

(3) Location/Crops/Phosphorus:
   a. Identify each structure or facility intended to be used in conjunction with the proposed CAFO, setting forth the location, physical dimensions, and intended use for each structure, as well as how many animal units, if any, will be housed in each structure. At a minimum, include all information and drawings required by Wisconsin Administrative Rules, Chapter NR 243.12(1)(a) 1 through 5.
b. List each crop that will be grown on land managed by the CAFO. Provide an annual yield estimate for each crop and an explanation of how that estimate was determined.

c. Provide aerial photos that identify all perennial streams, intermittent streams, navigable waters, and direct conduits to navigable waters on or within 1,000 feet of any parcel of land intended to be used in conjunction with the proposed CAFO.

d. Provide a soil map using SSURGO data for all parcels of land intended to be used in conjunction with the proposed CAFO. Include a soil map unit description for each predominant and critical soil type shown on the maps and include an estimate of soil depth to bedrock or gravel or sand deposits. Include soil test data for phosphorus with one sample per five acres. The soil test data must have been collected no more than 12 months prior to submission of this application.

e. Using the P-Trade report in SNAP-PLUS or other viable means, provide an estimate of total annual field edge phosphorus losses for all fields to be used in conjunction with the proposed CAFO for each of the two full calendar years prior to the date submitting this application.

f. Provide an estimate of total annual phosphorus losses for each of the two full calendar years prior to the date submitting this application for all existing agricultural facilities (buildings, animal lots, animal feeding areas, feed storage etc.) on all lands to be used in conjunction with the CAFO.

g. Provide an estimate of total annual phosphorus losses for each of the full five calendar years of the proposed operations for all existing agricultural facilities (buildings, animal lots, animal feeding areas, feed storage, etc.) on all lands to be used in conjunction with the CAFO.

(4) CAFO operations:

a. Describe the method or methods the CAFO will employ to store any and all animal waste products, including describing the exact location where such products will be stored at any time during operation of the CAFO. You may refer to information and drawings submitted in response to paragraph (3) a. above, as appropriate.

b. Describe the method or methods the CAFO will employ to handle and process any and all animal waste products, including the specific machinery and methods that will be employed, the location where the processing of waste will take place, and any materials or chemicals that will be used. Describe any technology or processes that will be used...
(such as anaerobic digestion) that will alter pathogen loads, nutrient content, or moisture levels of the manure prior to land-spreading.

c. Provide a complete nutrient management plan that meets the requirements of Wisconsin Administrative Code NR 243.14. The plan shall be based on the volume of manure that will be generated by the operation in each of the five calendar years covered by this Permit. Include all lands being used in conjunction with the operations of the CAFO, including but not limited to: spreading manure, growing and harvesting crops, applying commercial fertilizer, shall be included in the nutrient management plan. Provide a copy of a cropland lease agreement or other document for all rented lands included in the nutrient management plan. The lease agreements must clearly allow the land use as proposed in the nutrient management plan.

d. Provide an estimate of how many livestock mortalities are expected for the operation in a given year and a description of how that estimate was determined. Describe the method or methods the CAFO will use to store dead animals (carcasses), including describing the exact location where such carcasses will be stored and for how long.

e. Describe the method or methods the CAFO will use to handle, process, and dispose of any and all dead animals, including the specific technology, machinery, and methods that will be employed, the location where the processing/disposal of carcasses will take place, and any materials or chemicals that will be used. If licenses or approvals are necessary from the Wisconsin Department of Natural Resources or other state, town, or federal agency, provide copies of those licenses, permits, and/or approvals. If this CAFO lacks any of the required licenses, permits, and/or approvals, describe all plans and expected dates for receiving them.

f. Describe the technologies or method(s) the CAFO will employ to reduce, eliminate, or treat methane, nitrous oxide, ammonia, hydrogen sulfide, and particulate emissions from the proposed CAFO, including the specific technology, machinery, and methods that will be employed, and any materials or chemicals that will be used.

f. Describe how animals will be transported to, from, and within the CAFO, including a description of the type, size and weight (loaded gross vehicle and each axle) of the transportation vehicles, all highways or roads within the County that will be used, the proposed hours of operation for said transportation, and the specific path of travel for all such transportation.

g. Describe how all animal waste will be transported to, from and within the CAFO, including a description of the type, width, length, and weight
(loaded gross vehicle and each axle) of the transportation vehicles, all highways or roads within the County that will be used, the proposed hours of operation for said transportation, and the specific path of travel for all such transportation.

h. Describe how all other products or materials (apart from animals or manure) will be transported to, from and within the CAFO, including a description of the type, width, length, and weight (loaded gross vehicle and each axle) of the transportation vehicles, all highways or roads within the County that will be used, the proposed hours of operation for said transportation, and the specific path of travel for all such transportation.

i. Describe the type, width, length, and weight (loaded gross vehicle and each axle) of each implement of husbandry (excluding manure and animal hauling equipment) that will be used on highways or roads within the County. Provide an aerial photos showing the specific path of travel for the implements of husbandry and the estimated hours of operation of the equipment on the highways or roads in Bayfield County.

j. If manure is transported by pipeline (permanent or temporary) to fields for land-spreading provide a map showing the intended route and the location and photo of every culvert used along the route. Show all perennial streams, intermittent streams, and direct conduits to navigable waters on the map(s). If required, provide a copy of the permit(s) allowing use of the right-of-way or culvert. If crossing driveways or land not under the control of the CAFO, provide a letter from the landowner clearly granting permission to cross the driveway or land with the permanent or temporary pipeline.

k. Identify all residential and business structures within 500 feet of a gravel road in Bayfield County used at any time of the year by implements of husbandry, agricultural CMVs, tractor-trailers, or semi-trailers. Describe how road dust generated by use of the gravel roads by the CAFO will be controlled.

l. Identify the source of all water to be used at the proposed CAFO facility and the anticipated quantity of water that will be necessary for all CAFO related operations, and also set forth the location of any private or public well located within 1000 feet of any parcel of real estate to be used in conjunction with the proposed CAFO facility. Provide well-drilling records, if available, for all private or public wells within 1000 feet of any parcel of real estate to be used in conjunction with the proposed CAFO facility.

m. Identify a CAFO having substantially similar operational characteristics, housing the same species of animals, and utilizing similar operations, that
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. Set forth in what ways said existing CAFO has similar operational characteristics of the CAFO proposed in this application. In the alternative, state whether the applicant is requesting a waiver of this requirement and, if so, provide information that may be verified by the County, to show that the proposed CAFO will otherwise meet the requirements set forth in Secs. 5-6-4 (d) and 5-6-5 (g), of the Ordinance.

(5) **Animal Welfare:**

a. Describe how all animals will be housed in the proposed CAFO, including a description of the size of each pen or stall any animal will be kept in, the number of animals that will be kept within each pen, and the location and type of any outdoor area allotted for animals.

b. In the event of power outages or equipment failure, describe how the welfare of animals housed by the CAFO will be maintained including, but not limited to: providing water, venting hazardous air emissions, cooling, and feeding.

c. Describe how all animal units will be fed, including the type of feed, the amount of feed per animal, the method of feeding each animal, etc.

d. Apart from the feed identified above, identify all products (including chemicals or medicines) that will be injected in, fed to, or otherwise administered to animals in the CAFO on an ongoing basis (i.e. at least once per month):

e. Identify any and all measures that will be taken to prevent the spread of disease between animals and between animals and humans at the proposed CAFO.

f. Identify all veterinary care that will be routinely administered to or available to the animals of the proposed CAFO, and identify all medicines or treatments that are anticipated to be administered to animals of the proposed CAFO. Identify steps that will be taken by the CAFO to limit development of resistance to antibiotics.

(6) **Employee Welfare:**

a. Identify the number of anticipated employees at the proposed CAFO.

b. What type of education will employees receive regarding operating safe CAFOs and maintaining safe and healthful conditions for animals and employees at said facility?
c. What type of healthcare will be made available to employees of the proposed CAFO, or what type of routine medical examinations will be performed?

d. What are the hours and days of anticipated operation of the proposed CAFO specifically identifying days and times where machinery or other equipment that may make noise detectable to neighboring properties will be in use?

(7) **Emergency management:**

a. Set forth in detail an emergency plan of action in the event of soil, water or air contamination emanating from the proposed CAFO, or in the event of a spill of animal waste products, whether on or off the proposed CAFO site, including the name and contact information for emergency management response team members, the equipment and location of equipment available to respond to such an emergency situation, the anticipated timeline for response to an emergency event, and the anticipated testing measures to be used to ensure the emergency response was effective. At a minimum, include all information and drawings required by Wisconsin Administrative Rules, Chapter NR 243.12(13)6.

b. Set forth in detail an emergency plan of action in the event of a mass animal mortality event (death of more than 5% of the animals within a 72 hour period) caused by natural disaster, disease, equipment failure, or other cause. Include the name and contact information for the emergency management response team members, the equipment and location of equipment available to respond to such an emergency situation, the anticipated timeline for response to an emergency event, and the anticipated testing measures to be used to ensure the emergency response was effective.

c. Identify all residences and businesses within 1000’ of the proposed CAFO site and provide names and contact information for all the owners of those residences and businesses. Indicate how each of those owners will be contacted within 30 minutes of a failure of air filtration or other equipment intended to limit emission of hazardous gasses or particulates.

d. Set forth in detail all regular testing or monitoring that will take place to ensure that no contamination or environmental degradation is occurring as a result of CAFO related activities. Provide a description of the testing or monitoring protocols and schedule as well as how the data will be communicated to the County.
(8) Environmental impact:
   a. List resources that may be impacted by the proposed CAFO such as timber, agriculture, surface water, ground water, air quality, noise pollution and plant, wildlife or fish habitat. Describe measures that will be taken to mitigate those impacts.
   
b. Are there any known endangered species on or near the proposed CAFO site?
      Yes / No. If yes – describe the species and whether an environmental impact statement will need to be prepared?
   
c. Will groundwater monitoring wells be installed? If not, describe why not. If so, provide information on each monitoring well including anticipated well depth, well location, chemicals and/or substances that will be monitored, and the schedule and protocol for testing the water from each well. How will this information be shared with Bayfield County and the public?
   
d. Describe erosion control practices that will be used during the CAFO operations. If no measures will be used, explain why none are needed.
   
e. Describe how concentrated flow areas and direct conduits to surface waters will be maintained in perennial vegetation. If concentrated flow areas and/or direct conduits to groundwater are rutted during field operations, describe how the concentrated flow areas and/or direct conduits to surface water will be repaired. Provide an estimate of how often the concentrated flow areas and/or direct conduits to surface water will need to be repaired.

(9) Public and private nuisances:
   a. Describe measures that will be taken to screen the CAFO operation from view of surrounding land uses or explain why such measures are not needed (include photos of the area to show affected areas or why no areas will be affected).
   
b. Describe how odor from the livestock facilities and land-spreading activities will be controlled. If no such measures are necessary, explain why. Also explain the schedule and method for air quality testing, if any, within a quarter mile of the proposed CAFO’s boundaries before, during and after the CAFO is opened, worked and closed.

(10) Financial Security:
   a. Set forth all bonds already in place in relation to CAFO operations and in support of this permit or, if no such bonds exist, set forth the amount the operation anticipates obtaining in a bond amount. Explain why this
amount is sufficient pursuant to the terms of the Bayfield County Livestock Operations Ordinance.

(11) **Example CAFO Operations:**

a. Set forth all bonds already in place in relation to CAFO operations and in support of this permit or, if no such bonds exist, set forth the amount the operation anticipates obtaining in a bond amount. Explain why this amount is sufficient pursuant to the terms of the Bayfield County Livestock Operations Ordinance.

Print or Type the Livestock Operator’s Name:

________________________________________

Legal Name of Livestock Company:

_______________________________________________________________

Legal address of Livestock Company:

City___________________________ State  _________________   Zip ______________

Signature: ___________________________________   _____________________

Authorized Operating Company Representative’s Signature   Date

**Note:** Signature of this application by the applicant or applicant’s representative authorizes the County and its designees to enter upon the property to perform needed inspections at any time and on as many occasions as the County or its designee deems necessary without prior notice to applicant(s).

**Note:** Applicant(s) are required to provide **twenty-five (25) copies** of their completed application to the County Clerk upon submission, along with the application filing fee. The additional copies are for the County Board, adjoining landowners, and the general public at the public hearing.

**Note:** If the answers to any of the above questions can be found in an approved Bayfield County Siting Permit or WPDES permit, applicant may refer to the appropriate sections of said permit and attach a copy thereof to this application.
Chapter 7  South Fish Creek Watershed Animal Waste Storage and Management

FINDINGS:
The Bayfield County Board of Supervisors makes the following findings:

1. The predominant farmed soils in Bayfield County are clay-looms originating from glacial till. With high bulk density and slow infiltration, runoff during the spring snowmelt and after heavy rains is common.

2. To farm the clay soils of Bayfield County, agricultural producers maintain extensive surface drainage networks to rapidly remove excess water.

3. Drainage practices that increase runoff rates from agricultural lands lead to higher peak flows in streams, resulting in increased streambank erosion and consequent loading of particulate phosphorus and sediment into downstream surface waters.

4. As such, the primary threat from agriculture to surface water in Bayfield County is from surface run-off carrying sediment, nutrients, and manure.

5. Phosphorus loading in surface waters and consequent algal blooms constitute a threat to human health due to toxins produced by the algae.

6. Microbiological pathogens from manure in runoff and surface waters constitute a threat to human health.

7. Most erosion, sedimentation, and nutrient loss from agricultural lands occur during spring snowmelt and during large storm events.

8. Historical precipitation data and future climate modeling indicate the Chequamegon Bay region is and will continue to receive more precipitation in larger storm events.

9. Increasing manure and fertilizer applications within a watershed is likely to increase nutrient loading into surface waters within that watershed.

10. The required manure storage capacity for Concentrated Animal Feeding Operations under NR 243 Wis. Adm. Code, given the climate and soils of Bayfield County, is likely inadequate to ensure no winter manure applications.

11. The short growing season for grain crops such as corn, soybeans, and sunflowers, and the likelihood of saturated or frozen ground conditions after harvest increases the likelihood that manure cannot be applied after harvest, and consequently, livestock operations covered by NR 243 relying on application of manure in the fall after harvest of grain crops are likely to utilize emergency spreading allowances for winter applications of manure.

12. Manitowoc County in Wisconsin, with soils similar to those found in Bayfield County, has implemented additional limits on mechanical application of manure in order to achieve water quality standards in surface waters.
13. The phosphorus levels in South Fish Creek in northeast Bayfield County have exceeded the maximum thresholds permitted under NR 102.06 Wis. Adm. Code in 2014 and 2015. (Lehr, 2015)

14. The phosphorus levels in nearshore areas of Chequamegon Bay have exceeded the maximum thresholds permitted under NR 102.06 Wis. Adm. Code in 2014 and 2015. (Lehr, 2015)

15. The Wisconsin Department of Natural Resources, Bureau of Drinking Water and Groundwater, “Source Water Assessment For Ashland Water Utility, Ashland, Wisconsin, March 27, 2003” has determined:

a. The City of Ashland, Wisconsin, located on the south shore of Lake Superior’s Chequamegon Bay, relies solely on source water from the bay to provide drinking water to its residents. (p.2)

b. The area providing Ashland’s source water includes the watersheds of Bono Creek, Boyd Creek, Whittlesey Creek, and the north and south branches of Fish Creek, located in Bayfield County. These streams drain an area of relatively flat, impermeable red clay soils, resulting in heavy sedimentation. (p.5)

c. The source area contains a mixture of agricultural activities identified by the Department as having negative impacts on the south branch of Fish Creek (South Fish Creek). (p.6)

d. The shallow nature of Chequamegon Bay has multiple negative impacts on source water quality, including warmer summer and autumn temperatures, more easily suspended lake bottom sediments and less dilution of contaminants entering the bay. (p.7)

e. The normal counterclockwise circulation pattern in the bay negatively impacts source water by drawing the discharge of the Fish Creek and Bay City Creek east along the shoreline towards the drinking water intake. (p.8)

f. Ashland’s municipal water supply has one surface water intake located in southeastern Chequamegon Bay. The calculated sensitivity of the intake—defined as the likelihood that source water will be impacted by contaminants due to the intrinsic physical attributes of the source water area—is very high. (p.9)

g. Concentrated animal feeding operations (over 1000 animal units) have the potential to contribute pollutants such as inorganic, synthetic organic, microbial contaminants as well as hormones and antibiotics to the source water. (p.10)

h. Ashland’s source water quality is significantly impacted by local factors and highly susceptible to contamination. (p.14)

i. Manure management is a recommended means of dealing with negative impacts on Ashland’s source water. (p.15)
Based on the foregoing findings, the Board further finds that the following regulations pertaining to the operations of Concentrated Animal Feeding Operations within the South Fish Creek watershed are necessary to achieve water quality standards under section 281.15 of the Wisconsin Statutes and to protect public health and safety.

**Sec 5-7-1 Authority.** This chapter is adopted under authority granted under Section 59.02, 59.03, 59.70, 92.15, and 92.16 of the Wisconsin State Statutes.

**Sec. 5-7-2 Applicability.** All Concentrated Animal Feeding Operations, as defined in Sec. 5-6-3(b) of the Bayfield County Code of Ordinances, located or utilizing owned or rented land within the South Fish Creek watershed in Bayfield County for the housing of livestock, production of crops, spreading of manure, or any other agricultural activity shall comply with the regulations in this chapter.

**Sec. 5-7-3 Interpretation.** In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of Bayfield County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin State Statutes.

**Sec. 5-7-4 Severability Clause.** If any provision or portion of this chapter is ruled invalid by a court, the remainder of the chapter shall not for that reason be rendered ineffective.

**Sec. 5-7-5 Effective Date.** This chapter shall become effective upon its adoption and publication by the Bayfield County Board of Supervisors and approval by the Wisconsin Department of Natural Resources under s. 92.15 of the Wisconsin Statutes and NR 151.096 of the Wisconsin Administrative Code.

**Sec. 5-7-6 Definitions.** Definitions herein are to conform to the provisions set forth in the Wisconsin Administrative Code and Bayfield County Code.

(a) **Compliance Order.** A document or notification from the Land Conservation Committee, or their designee, outlining the nature of the violation(s) of the provisions of this chapter and corrective measures.

(b) **Conduit to a Navigable Water.** A natural or man-made area or structure that discharges to a navigable water via channelized flow. This includes open tile line intake structures, open vent pipes, sinkholes, agricultural well heads, drainage ditches that discharge to navigable waters and grassed waterways that drain directly to a navigable water.

(c) **Intermittent Stream.** A watercourse with a bed and bank where water does not flow continuously and that is identified as an intermittent stream on a United States Geological Survey 1:24,000 quadrangle map.
(d) **Manure.** Excreta from livestock, poultry, or other animals. Manure includes the following when intermingled with excreta in normal farming operations: debris including bedding, water, soil, hair, and feathers; processing derivatives including separated sand, separated manure solids, precipitated manure sludges, supernatants, digested liquids, composted biosolids, and process water; and runoff collected from barnyards, animal lots, and feed storage areas.

(e) **Manure Storage Facility.** An impoundment made by constructing an embankment or excavating a pit or dugout or by fabricating a structure to contain manure and other animal or agricultural wastes that has a volume of 500 cubic feet or more and a depth of 2 feet or more.

(f) **Nutrient Management Plan.** A plan that outlines the management and crediting of nutrients from all nutrient sources including soil reserves, commercial fertilizer, manure, organic byproducts, legume crops, and crop residues. All nutrient sources shall be accounted for and properly utilized. This plan must meet the current NRCS 590 standard, and NR 243 where applicable, and applies to all fields where plant nutrient sources and soil amendments are applied during the course of a rotation. Management includes the rate, method, and timing of the application of all sources of nutrients to minimize the amount of nutrients entering surface water and groundwater. The plan includes manure nutrient testing and routine soil testing and is developed according to USDA –NRCS Technical Standard 590.

(g) **Operator.** A person responsible for the oversight or management of equipment, facilities or livestock at a livestock operation, or is responsible for land management in the production of crops.

(h) **Perennial stream.** A channel where water flows continuously and that is identified as a perennial stream on a United States Geological Survey 1:24,000 quadrangle map.

(i) **One hundred (100)-year, twenty-four (24)-hour rainfall event.** A rainfall event measured in terms of the depth of rainfall occurring within a twenty-four(24)-hour period and having an expected recurrent interval of once in one hundred (100) years.

**Sec. 5-7-7 Manure storage capacity.** Animal manure storage facilities shall be properly designed to provide a minimum of 540 days of manure storage. In addition, liquid manure storage and containment facilities shall also have markers near the bottom of the facility indicating the levels at which the facility provides 180 and 270 days of storage, respectively. Such capacity shall include storage at all times for direct precipitation and runoff from a 100 yr, 24 hr storm event. Liquid storage facilities shall be emptied so that the 270-day level indicator is visible on at least one day between July 15 and September 1. In addition, the storage facility shall be emptied so that the 180-level indicator is visible on at least one day between October 15 and November 30. The operator shall record the days on which the 270-day and
180-day level indicators were visible and send a photo of the indicator to the Bayfield County Land Conservation Department. In the event the facility is not emptied to show the 270-day level indicator for any reason AND the facility is not emptied to show the 180-day level indicator by November 30 of the same calendar year for any reason, the operator shall transfer the manure to another manure storage facility or waste treatment plant in such quantity as to empty the facility to show the 180-day level indicator by December 10 of that calendar year.

If the facility was emptied to show the 270-day level indicator in the required time period, but was not emptied to show the 180-day level indicator during the required time period for any reason, the operator shall submit a written plan to the Land Conservation Department for approval by December 5 showing how the storage facility shall be emptied to show the 180-day level indicator by December 15 of that calendar year. Such a plan may include land-spreading the manure subject to any applicable local, state, or federal restrictions and upon approval by the Land Conservation Department. Approval of any proposed land-spreading by the Department shall depend on the ground conditions of the fields proposed for spreading, the method and rate of spreading, the forecasted weather during that time, and the Land Conservation Department’s determination of the risk of runoff from such land-spreading. Land-spreading shall not be an option unless the operator can demonstrate that weather conditions or other factors beyond the operator’s control prevented the spreading that otherwise would have resulted in emptying the pit to the required level by the required time.

Sec. 5-7-8 Spreading windows. The annually updated nutrient management plan required under NR 243.14 Wis. Adm. Code shall include for each cropping year at least three distinct manure spreading windows in which at least 1/3 of the total manure produced and stored annually by the animal feeding operation is capable of being mechanically applied according to the spreading rates allowed by the nutrient management plan. Spreading windows include, but are not limited to: prior to planting in the spring, after each harvest of hay or perennial forage in the summer and fall, after harvest of small grains in the summer and fall, after harvest of corn or soybeans in the fall, or at any other time when the ground is not frozen or snow-covered and the application is allowable under the NR 243.14 Wis. Adm. Code.

Sec. 5-7-9 Phosphorus. For fields within the South Fish Creek watershed, the operator may not increase soil test phosphorus levels over a 4-year crop rotation unless the operator can demonstrate that deliverability of phosphorus to the impaired waterbody will not increase as a result of increases in soil test phosphorus in the field. The operator may not raise soil test phosphorus levels over a 4-year crop rotation above the optimum level for the highest phosphorus demanding crop in the rotation for a field with soil test phosphorus levels below optimum levels. In addition, for fields within the South Fish Creek watershed, the Phosphorus Index shall not be higher than 2 for any single cropping year in the rotation. The application of this provision shall be suspended if and when it is satisfactorily demonstrated to the County Board that the phosphorus levels in the South Fish Creek watershed have not exceeded the maximum permitted levels of phosphorus under NR 102.06 for at least two consecutive years immediately preceding such determination, but any such suspension shall terminate upon a subsequent satisfactory demonstration to the County Board that such levels
have again been in excess of the maximum permitted levels for at least two consecutive years.

Sec 5-7-10 Further limits on mechanical application of manure. Mechanical application of manure is only permitted to meet crop needs and is subject to the following limitations:

(a) Manure or process wastewater may not be applied by any means when precipitation capable of producing runoff is forecast by the National Weather Service within 48 hours of the time of planned application. In addition, manure or process wastewater may not be applied by any means on days with a high or medium risk of runoff as indicated in the Runoff Risk Advisory Forecast by the Wisconsin Manure Management Advisory System.

(b) No manure at any time of the year may be mechanically applied to any channel or concentrated flow area that flows to an intermittent stream, lake, perennial stream, pond, or sinkhole. This includes all conduits to intermittent stream or navigable waters.

(c) No manure at any time of the year may be mechanically applied to land within 100 feet of an active or inactive well unless that well has been abandoned per USDA-NRCS Technical Standard 351. Manure that is mechanically applied to land that is more than 100, but less than 300 feet, and is upslope of an active or inactive well and that drains to a well must be incorporated into the soil within 48 hours of application.

(d) No manure at any time of the year may be mechanically applied to land that is within 300 feet of and that drains to a drainage tile surface inlet, intermittent stream, or perennial stream, unless the manure is incorporated into the soil within 48 hours of application.

(e) No manure at any time of the year may be mechanically applied to land that is within 1,000 feet of a lake or pond and that drains to the lake or pond unless it is incorporated into the soil within 48 hours of application.

(f) Spreading restrictions listed in this article shall be in addition to any other rules or provisions regulating the mechanical application of animal manure including, but not limited to, WPDES permits issued under NR 243 or Operations Permits issued by Bayfield County. In the case of conflict, the most stringent provisions shall apply.

Sec. 5-7-11 Inspection Authority. Bayfield County, or its designee, is authorized to enter upon any lands affected by this chapter to inspect the land or manure storage facility to determine compliance with this chapter.

Sec. 5-7-12 Penalties and Enforcement.

(a) Any violation of this chapter shall be punishable by a forfeiture of not less than $100 or more than $5000 per day for each violation of this chapter, plus the costs of prosecution, including the County’s reasonable attorney fees and costs. Each day of violation shall constitute a separate offense.
(b) In addition, the County Board, or its designee, may issue a notice of violation and order that specifies required remedial action, which may include a stop operations and work order, or the Board may impose or seek any other available enforcement remedy, including injunctive relief.
Counties Have Options to Manage Farms

—Donna Gilson, Communication Specialist, Wisconsin Department of Agriculture, Trade and Consumer Protection

Agriculture is vital to Wisconsin’s economy, and to most of our counties. Conflicting interests can sometimes put county officials in the middle of farm-nonfarm issues, but county officials can use ordinances to manage agriculture within counties’ boundaries.

While farmland preservation and land and water conservation planning are required, counties can choose what ordinances they want to adopt—subject to some state restrictions.

As a starting point, counties can do nothing; counties are not required to zone for agriculture or to regulate farm operations. If they choose to zone, counties usually focus on livestock operations, but they can also manage land use on crop farms via the conservation compliance requirements of farmland preservation zoning.

Counties can add requirements to existing ordinances, and use referendums to adopt ordinances with more stringent provisions. Counties can regulate construction site erosion and storm water management. Counties can also restrict highway access points and impose road weight limits, seasonally or year-round, on roads that counties maintain.

Here is a rundown of what counties can and cannot do to manage agricultural activities.

**Manure and Runoff Management**

**Counties can:**

- Adopt or update manure storage ordinances that require permits for new or modified facilities, using USDA design and construction standards.
- Include nutrient management requirements in manure storage ordinances.
- Expand manure storage ordinances to require proper closure of unused facilities.
- Add provisions to control runoff from barnyards and feed storage.
- Require permits for manure irrigation based on recent recommendations.

**Counties cannot:**

- Require existing farms to comply with state standards and conservation practices, unless they provide cost-sharing. They can, however, require farmers to complete nutrient management plans as part of manure storage permitting.
- Adopt livestock siting standards that exceed state water quality standards, without Wisconsin Department of Natural Resources (DNR) or Department of Agriculture, Trade and Consumer Protection (DATCP) approval.

**Zoning and Livestock Facility Siting**

**Counties can:**

- Adopt agricultural zoning ordinances that establish one or more agricultural zoning districts. These may be farmland preservation zones that make landowners eligible to claim tax credits (see below).
- Prohibit new or expanding livestock facilities within a particular agriculture zone. However, within agricultural zones, they can prohibit or limit these operations only for scientifically justifiable health and safety reasons. The county must offer at least one other zone that allows operations of any size.
Rezone agricultural districts to non-agricultural use, making existing farms non-conforming uses, and allowing the county to restrict their future expansion.

Impose a temporary moratorium on new livestock operations to study and adopt new ordinances.

Adopt a zoning or licensing ordinance to require local approval for new or expanding livestock operations with 500 or more animal units, and charge a fee up to $1,000 to offset costs of reviewing and processing applications.

Use siting permits or licenses to enforce state water quality standards for manure storage, runoff and nutrient management, and enforce an odor management standard.

Use siting permits or licenses to enforce local standards based on public health and safety.

Include an ordinance provision to inspect livestock premises, with written notice and owner's consent to enter, and charge an inspection fee.

Address violations of livestock facility permits or licenses, including failure to add animals or begin building within two years of receiving local approval.

Establish property line and road setbacks for farm structures, subject to limits in the state livestock siting law.

Monitor and regulate air quality, although the livestock siting law requires farms to comply with an odor standard.

Adopt livestock siting standards that exceed state water quality standards without approval of DNR or DATCP.

Adopt new siting ordinances to require permits for livestock facilities under 500 animal units.

**Farmland Preservation**

**Counties can:**

Adopt farmland preservation zoning ordinances consistent with their farmland preservation plan to promote agricultural growth, restrict non-agricultural uses, and limit land-use conflicts. To make landowners eligible to claim farmland preservation tax credits, these ordinances must be certified by DATCP. Counties must also monitor participating farmers' conservation compliance.

Issue a notice of non-compliance for farmers who fail to meet conservation requirements, and secure compliance without offering cost-sharing.

Add provisions to manage land use, including restrictions on residential development.

**Counties cannot:**

Implement farmland preservation zoning without a DATCP-approved farmland preservation plan.

Require compliance with conservation requirements other than those adopted by the state.

For more information, visit these DATCP web pages: https://datcp.wi.gov/Pages/Programs_Services/ManureStorageOrdinances.aspx; http://livestoresiting.wi.gov; https://datcp.wi.gov/Pages/Programs_Services/PPZoning.aspx. If you have questions, contact Richard Castelnovo, Richard.Castelnovo@wi.gov, 608-224-4606.
Options for Modifying Existing Regulations
Prepared for Livestock Operations Study Group Jan. 18, 2017 meeting

1. Adopt and enforce additional regulations to complement current livestock facility siting ordinance:
   
a) Adopt a manure storage ordinance to ensure that all new and altered manure storage structures are built according to technical standards and emptied in accordance with a nutrient management plan.

   While this overlaps with the requirement in our siting ordinance, it does extend coverage to farms not regulated under livestock siting. For example, it regulates livestock operations under 500 animal units.

b) Include NR 151 performance standards in an ordinance including prohibitions against significant discharges from feedlots and feed storage facilities.

   Must be prepared to adopt targeted performance standards after DNR revises NR 151.

c) Use local authority to protect roads with vehicle weight limits and impose clean-up requirements to protect public safety and prevent road damage under Wis. Stat. ch. 349.

   DOT and local governments can restrict highway access points to ensure safety. These must be generally applied, and not in conflict with other state regulations.

2. Add details to livestock ordinances to address their limitations:

   a) Strengthen ordinance requirements related to compliance monitoring, document production, and inspection. Manitowoc County’s ordinance added enforcement options and penalties in administration and enforcement sections. Could be further improved, for example, could include stop work authority and right to request documentation as part of a facility inspection.
   - Develop a checklist for monitoring compliance and establish a system for effective monitoring that may include self-reporting combined with site inspections. Marathon County developed a compliance checklist and has also charged an inspection fee.

   b) Require contracts or other proof that permitted operations have adequate land to spread manure.
   - Refer to Trempealeau County’s Livestock Facilities Performance Standards which provides: new or expanding livestock facilities need an approved 590 Nutrient Management Plan. If the livestock facility owner does not own land sufficient to implement a 590 Nutrient Management Plan, the applicant must provide signed land spreading contracts providing for spreading rights consistent with the 590 Nutrient Management Plan. Permits shall automatically terminate upon the expiration of such contract(s) unless extensions or alternative contracts consistent with the 590 Nutrient Management Plan has been secured.
   - Refer to Green County Zoning Ordinance, permitting procedure and permit criteria which provides: At all times during the exercise of the permit, the applicant shall have ownership of acreage, or shall provide to the County Conservationist copies of contracts for the
spreading of manure on acreage, sufficient to comply with the NRCS Nutrient Management Plan. If rental agreements do not include full cropping rights to the land, said contracts shall require a minimum of a four year limited term easement allowing the applicant access to said acreage for the purposes of spreading manure and shall be recorded in the Register of Deeds office.

c) While ATCP 51.30 specifically precludes a local government requiring “an applicant to pay any fee, or post any bond or security”, use other mechanisms to address abandoned or unsafe facilities, seeking redress under Wis. State. §66.0627 or §254.59 and other law as appropriate.

- Refer to Trempealeau County Livestock Facilities Performance Standards intervention to prevent or limit pollution from a leaking lagoon or manure storage system, which provides: If a livestock facility, whether operated pursuant to a permit issued under this ordinance or not, contains a lagoon or other storage system for the retention of animal manure, which lagoon or other storage system is in a state of disrepair or is otherwise neglected or has been abandoned by its owner or operator and if upon inspection by the county it is determined that manure is leaking into the groundwater or onto the surface of the ground or into adjacent surface waters, the county may, with or without notice to the owner or operator, take such steps as are necessary to drain or contain said manure so as to prevent or limit pollution resulting from such a release. If the county, through its own resources and employees or through a contractor, is forced to take such steps, it shall collect the costs thereof against the owner and/or operator of the leaking lagoon or manure storage system.

d) Adopt a reciprocal setback or conditional use permit in the county’s zoning code to prevent residences from building too close to livestock operations.

- Refer to Trempealeau County Livestock Facilities Performance Standards which provides: A single family dwelling, other than that of the owner of the livestock facility or a family member, which is proposed to be located within twice the required setback area of a permitted livestock facility, shall require a conditional use permit. Conditional use permits granted for a single family dwelling to be located within the required setback area of a permitted livestock facility shall not preclude the permitted livestock facility from future expansion provided that all of the requirements of this ordinance are satisfied. If granted, a conditional use permit for a single family dwelling in the setback area shall include as one condition that the applicant and his/her successors in interest shall be limited by Sec. 823.08, Wis. Stats., in their pursuit of nuisance actions against the owner or operator of the livestock facility.

3. Modify livestock ordinances to incorporate more stringent standards that are consistent with recognized standards used by state and federal programs (for example, newly adopted NRCS standards or existing CAFO standards).

Adopt newest NRCS standards for:

- Nutrient Management, NRCS 590 (2015)
- Vegetated Treatment Areas, NRCS 635 (expected 2016)
- Odor control practices such as composting facilities and reference to NRCS composting facility standards 317 (January 2012) and anaerobic digesters, and reference to NRCS anaerobic digester standards 366 (August 2011)
- Adopt CAFO standards such as 180 day manure storage requirement or a ban on winter spreading. Follow correct procedures for adoption of these standards:
  - Include a justification for more stringent requirements in the ordinance based on findings of fact and supported by science
o Secure DATCP or DNR approval since the regulation exceeds state standards: this should be relatively easy given that the agencies have or will have rules and policies based on the NRCS standards

4. Modify a siting ordinance to include more stringent standards based on best available science

- Must follow correct procedures for adoption, but may not need state approval if the regulation does not involve water quality. For example, increasing setback requirements for manure storage does not involve water quality and may be incorporated into a siting ordinance based on findings of fact without any state approval.
- Avoid adopting manure spreading restrictions that are unclear, based on inadequate science or not supported by findings of fact. Adopting manure spreading restrictions is the most common approach to more stringent regulation. Ordinances from several towns (Oakfield, Eden, Lamartine) in Fond du Lac have fallen into the trap of adopting more stringent standards that are unclear and unsupported. For example, Town of Oakfield’s ordinance prohibits spreading of liquid manure in areas of known Karst formations, prohibits spreading of liquid manure within one-half mile of known municipal wells operated by the Village of Oakfield, and imposes case-by-case restriction on the spreading of liquid manure within 75 feet of a shallow water table (many depths range from 0 to 11 inches), or locations within proximity of a number of wetlands or DNR and U.S. Fish and Wildlife lands that need to be protected from erosion and surface water flow.