

## 8.15 DOUGLAS COUNTY ANIMAL MANURE STORAGE ORDINANCE

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF DOUGLAS DOES HEREBY ORDAIN AS FOLLOWS:

### SECTION I. AUTHORITY AND APPLICABILITY

This Ordinance is adopted under authority granted by §92.16, Wisconsin Statutes and applies to the entire geographical areas of Douglas County and to all animal manure storage facilities constructed therein. The provisions of this Ordinance shall be held to be minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

### SECTION II. PURPOSE AND FINDINGS AND DECLARATION OF POLICY

#### 2.1 Purpose

The purpose of this Ordinance is to regulate the location, design, construction, installation, operation, alteration and use of animal manure storage facilities, as well as abandonment and the application of manure from these facilities in order to prevent water pollution and thereby protect the health of Douglas County residents and transients; prevent the spread of disease; and promote the prosperity and general welfare of the citizens of Douglas County. It is also intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

#### 2.2 Findings and Declaration of Policy

The Douglas County Board of Supervisors finds that storage of animal manure in storage facilities not meeting the technical design and construction standards may cause pollution of the surface and ground waters of Douglas County, and may result in actual or potential harm to the health of County residents and transients; to livestock, aquatic life and other animals and plants; and to the property tax base of Douglas County. The Douglas County Board of Supervisors also finds that improper management of animal manure storage facilities, and utilization, including land application of stored animal manure, may cause pollution of the ground and surface waters of Douglas County.

The Douglas County Board of Supervisors further finds that the technical standards issued by the U.S.D.A. Natural Resources Conservation Service and developed with the assistance of the Interagency Standards Oversight Committee provide effective, practical, and environmentally safe methods of storing and utilizing animal manure.

### SECTION III. DEFINITIONS

3.1 For the purpose of this ordinance, certain terms or words herein shall be interpreted or defined as follows:

- (1) Abandonment. A livestock waste storage facility that is no longer being used for its intended purpose and has not received any animal wastes for a period of two consecutive years.
- (2) Animal Manure. Excretion from livestock, poultry and other materials, such as bedding, rain or other water, soil, hair, feathers, and other debris normally included in animal manure handling operations.
- (3) Animal Manure Storage Facility. Both fabricated and earthen facilities as herein defined.
- (4) Animal Unit. A unit of measure to determine the total number of single animal types or combination of animal types, as specified in NR243, which are fed, confined, maintained, or stabled in an animal feeding operation.
- (5) Applicant. Any person who applies for a permit under this Ordinance.
- (6) Discontinuance of Use. A farming operation that has removed the livestock units that were principally using the animal manure storage facility must empty that animal manure storage facility within one hundred twenty (120) days or when land becomes fit based on weather conditions and at such time as the animal manure may be utilized following the nutrient management plan for that farm.
- (7) Earthen Animal Manure Storage Facility. A structure above or below grade, excavated or constructed of earth beams or dikes, or utilizing pits, depressions or ponds, which may be lined with earth, nonstructural concrete, or a flexible membrane material, to contain animal manure and associated liquids for storage for a period of thirty (30) or more days or that has the capacity to store 5,000 cubic feet or more of animal manure.
- (8) Fabricated Animal Manure Storage Facility. A concrete, steel, or otherwise fabricated storage of animal manure with one or more walls to contain manure and associated liquids for a period of thirty (30) or more days or that has the capacity to store 5,000 cubic feet or more of animal manure.
- (9) High Ground Water Level. The higher of either the elevation to which the soil is saturated as observed as a free water surface in an unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil redoximorphic features throughout the soil profile.

- (10) LWCD: Land and Water Conservation Department of Douglas County.
- (11) Nutrient Management Plan. Written plan detailing the amount, form, placement, and timing of application of plant nutrients, including animal manure.
- (12) Permit. The signed, written statement issued by the Douglas County Land and Water Conservation Department under this Ordinance authorizing the applicant to construct, abandon, install, enlarge, or substantially alter an animal manure storage facility and to use or dispose of manure from the facility.
- (13) Permittee. Any person to whom a permit is issued under this Ordinance.
- (14) Person. Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or State agency within Wisconsin, the Federal government, or any combination thereof.
- (15) Substantially altered. A change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, depth, or configuration of a structure or facility including:
  - (a) Replacement of a liner in a manure storage structure.
  - (b) An increase in the volumetric capacity or area of a structure or facility by greater than 20%.
  - (c) A change in a structure or facility related to a change in livestock management from one species of livestock to another such as cattle to poultry. NR 151.015(20) Wisc. Admin. Code.
- (16) Technical Guide. The United States Department of Agriculture (U.S.D.A.) Natural Resources Conservation Service Technical Guide, as adopted by the Douglas County Land and Water Conservation Committee and the Department of Land and Water Conservation, which provides standards incorporated in this Ordinance.
- (17) Technical Standard 312. "Waste Management System" A planned system in which all necessary components are installed for managing liquid and solid waste, including runoff from concentrated waste areas, in a manner that does not degrade air, soil, or water resources.
- (18) Technical Standard 313. "Waste Storage Facility" is a practice standard within the Technical Guide that covers the proper location, design, construction, installation, alteration, operation and maintenance of a manure storage facility.

- (19) Technical Standard 360. "Waste Facility Closure" is a practice standard within the Technical Guide that covers decommissioning of facilities, and/or the rehabilitation of contaminated soil, in an environmentally safe manner, where agricultural waste has been handled, treated, and/or stored and is no longer used for the intended purpose.
- (20) Technical Standard 590. "Nutrient Management" is a practice standard within the Technical Guide that covers managing the amount, form, placement and timing of plant nutrients associated with organic wastes (manure and organic by-products), commercial fertilizers, legume crops and crop residues.
- (21) Technical Standard 634. "Manure Transfer" is a practice standard within the Technical Guide that covers the design, material types and quality, and installation of components such as conduits, pumps, valves and other structures or devices to transfer manure and waste from buildings and yards and other sources to storage, loading areas, crop fields and other destinations. The standard establishes the minimum acceptable requirements for design, construction, and operation of waste transfer system components.
- (22) Temporary Manure Stack. An uncontained deposit of animal waste, placed on an earthen, concrete, or other surface necessary to facility daily or periodic land spreading.
- (23) Water Pollution. Contaminating or rendering unclean or impure the ground or surface waters of the State, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

## SECTION IV. ACTIVITIES SUBJECT TO REGULATION

### 4.1 General Requirement

Any person who designs, constructs, installs, reconstructs, abandons or makes changes to an animal manure storage facility resulting in its being substantially altered; or who employs another person to do the same, on land subject to this Ordinance, shall be subject to the provisions of this Ordinance.

### 4.2 Compliance with Permit Requirements

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

## SECTION V. STANDARDS

### 5.1 Standards for Animal Manure Waste Storage Facilities.

The standards for design and construction of animal waste storage facilities are those in Standards 312 (Waste Management System) 313 (Waste Storage Facility) 360 (Closure of Waste Impoundments) and 634 (Manure Transfer) of the USDA-NRCS Technical Guide.

### 5.2 Standards for Nutrient Management Plan

The standards for a nutrient management plan shall be as provided in Section IV of the Technical Guide, Standard 590, including any and all existing and future standards amended thereto.

### 5.3 Subsequent Modification of Standards.

The standards of the Technical Guide are adopted and by reference made a part of this Ordinance as if fully set forth. Any future amendment, revision or modification of the standards incorporated herein are made a part of this Ordinance.

### 5.4 Human Household Wastewater Prohibited.

Human household wastewater shall not be discharged into animal manure storage facilities unless provided for through other permitting process outside of this Ordinance.

## SECTION VI. APPLICATION FOR ISSUANCE OF PERMITS

### 6.1 Permit Required

Except as provided below, no person may undertake an activity subject to this Ordinance without obtaining a permit from the LWCD prior to beginning the proposed activity.

Note: DNR and other permits may be needed for construction site erosion control and stormwater management, floodplain and shoreland construction, and livestock facilities with 1,000 or more animal units.

### 6.2 Exception to Permit Requirements

Emergency repairs such as repairing a broken pipe or equipment, leaking dikes, or the removal of stoppages may be performed without a permit. If repairs will significantly alter the original design and construction of the facility, a report shall be made to the LWCD within two (2) work days of the emergency for a determination by the LWCD on whether a permit will be required for any

additional alteration or repair to the facility. Pre-existing waste storage facilities, except where the facility is substantially altered, do not require a permit.

### 6.3 Abandoning an Existing Livestock Waste Storage Facility

A permit, a fee, and a nutrient management plan are not required to abandon an existing livestock waste storage facility. However, a waste storage facility must be closed in compliance with Standards 313 and 360 of the USDA Technical Guide, including any and all existing and future standard amendments thereto, if the facility is inactive for 2 years or more.

### 6.4 Exception to Avoid Closure

The owner or operator may avoid closure of a facility as required under paragraph (c) by demonstrating to the county that all of the following conditions are met:

- (1) The facility is designed, constructed and maintained in accordance with Technical Standard 313.
- (2) The facility is designed to store manure for a period of time longer than 24 months.
- (3) Retention of the facility is warranted based on anticipated future use.

### 6.5 On-Site Investigation Required

Each application for a permit under this Section shall require an on-site inspection prior to issuance and include a summary report of on-site conditions. The site inspection shall be conducted by the LWCD staff.

### 6.6 Fee

There is no fee for new storage facilities or substantially altering manure storage facilities, however a permit is required.

### 6.7 Animal Manure Storage Facility Plan and Nutrient Management Plan Required

Each application for a permit under this Section shall include an animal manure storage facility plan and nutrient management plan. The plan shall specify:

- (1) The number, kinds, and weights of animals for which storage is provided and the duration for which storage is to be provided. Storage volume computations and the storage facility volume shall be provided.
- (2) A plan view of the facility and its location in relation to buildings within five hundred feet (500') and homes within one thousand feet (1,000') of the

proposed facility. The plan view shall be drawn to scale, with a scale no smaller than one inch equals one hundred feet (1"=100'), the North arrow, scale of drawing, township, range, and quarter-quarter section of the proposed facility, and location, description and elevation of temporary bench mark.

- (3) The structural details, load assumptions, design computations, dimensions, cross sections, concrete thickness, reinforcing steel to be used, and facility elevations. The construction and material specifications set forth in Section IV of the Technical Guide including any and all existing and future amendments including, but not limited to, applicable specification for earthen fill quantities and soil types, excavation quantities and soil types, timber and pipes.
- (4) The location of any existing or proposed well within one thousand feet (1,000') of the facility.
- (5) The soil test pit locations and soil descriptions to a depth of at least three feet (3') below the planned bottom of the facility. Surface elevation of soil test pits shall be provided. Soil tests shall be done by a certified soil tester and evaluated by the LWCD or the Douglas County Zoning Department.
- (6) The elevation of high ground water level or bedrock if encountered in the soil profile and the date of any such determinations.
- (7) Provisions for adequate drainage and control of runoff to prevent pollution of surface water and ground water. If a navigable body of water lies within five hundred feet (500') of the facility, the location and distance to the body of water shall be shown.
- (8) A time schedule for construction of the facility.
- (9) A description of the method and materials proposed in transferring animal manure into and from the facility.
- (10) Plans for utilization of the animal waste will follow Standard 590 Nutrient Management of the Technical Guide. Preliminary plans will include the amount of land available for the application of waste, identification of the areas where the waste will be used, soil types and any limitations on waste application due to soil limitations, type and proximity of bedrock, or water table, slope of land, and proximity to surface water.
- (11) An operation and maintenance plan, operating safety provisions, and details of the manure transfer system, including, but not limited to, materials quality, shall be provided.

## 6.8 Review of Application

The LWCD shall receive and review all permit applications and shall determine if the proposed facility meets required standards set forth in Section V of this Ordinance. Within thirty (30) business days after receiving the completed application, the LWCD shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the LWCD shall notify the permit applicant. The LWCD shall have thirty (30) business days from the receipt of the additional information in which to approve or disapprove the application. No construction may commence without the final approval by the LWCD. If after thirty (30) business days the LWCD has not responded, the application is considered approved, and the applicant may go ahead with the project. If the LWCD determines additional review of the plan is necessary by the Natural Resources Conservation Service, Department of Natural Resources, or Department of Agriculture, Trade and Consumer Protection and notifies the applicant of such determination within the 30 business day time period, the time period shall be extended for an additional thirty (30) business days.

#### 6.9 Permit Conditions

All permits issued under this Ordinance shall be issued subject to the following conditions and requirements:

- (1) Animal manure storage facility design and construction, management, and utilization activities shall be carried out in accordance with the animal manure facility plan and applicable standards specified in Section V of this Ordinance.
- (2) The permittee shall give at least two (2) business days' notice to the LWCD before starting any construction activity authorized by the permit.
- (3) Approval in writing must be obtained from the LWCD prior to any modifications to the approved animal manure facility plan.
- (4) The permittee and, if applicable, the contractor, shall certify in writing that the facility was installed as planned.
- (5) The LWCD staff may conduct on-site inspections before, during and after construction.

Activities authorized by permit must be completed within two (2) years from the date of issuance after which such permit shall be void. (Permit for construction may also be subject to County Zoning Ordinance time limitations.)

#### 6.10 Permit Revocation

The LWCD may revoke any permit issued under this Ordinance if the holder of



the permit misrepresents any of the materials to be used for constructing and /or reconstructing the animal manure facility, misrepresents the plans of the animal manure facility, makes statements within the permit application which misrepresent the facts, or if the holder of the permit violates any of the conditions of the permit. The permittee shall be immediately notified of the revocation in writing giving reason(s) for the revocation.

## SECTION VII. ADMINISTRATION

### 7.1 Delegation of Authority

Douglas County Board of Supervisors hereby designates the Douglas County LWCD to administer and enforce this Ordinance.

### 7.2 Administrative Duties

In the administration of this Ordinance, the LWCD shall:

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

### 7.3 Design and Construction Plan Approval

Storage facility design and construction plans may be provided through the LWCD, cooperating members or County, State, or Federal government agencies, and private consultants. Private consultants shall be registered professional engineers, licensed in the State of Wisconsin. Storage facility designs, construction plans, and specifications utilizing preapproved or prequalified Natural Resources Conservation Service plans must be prepared by a registered professional engineer, licensed in the State of Wisconsin. The approval of preapproved or prequalified plans must state that plan meets the requirements of this Ordinance. Construction plans utilizing a preapproval or prequalified plan must be adapted to fit site conditions making it comply with Standard 313.

### 7.4 Inspection Authority

The LWCD is authorized to enter upon any lands affected by this Ordinance to

inspect the land prior to or after permit issuance to determine compliance with this Ordinance. If permission cannot be received from the applicant or permittee, the permit may be denied or entry by the LWCD shall be in accordance with §92.07(14), Wis. Stats.

- 7.5 Enforcement Authority. The LWCD is authorized to post an order stopping work upon land which has had a permit revoked or on land in violation of this Ordinance. Notice is given by both posting upon the land where the violation occurs, one or more copies of a poster stating the violation, and by mailing a copy of the order by certified mail, return receipt requested, to the person whose activity is in violation of this Ordinance. The order shall specify that the activity must cease immediately and be brought into compliance within five (5) working days. Any permit revocation or order stopping work shall remain in effect unless retracted by the LWCD, or until the activity is brought into compliance with this Ordinance. The LWCD is authorized to refer any violation of this Ordinance or of any order stopping work issued pursuant to this Ordinance to the Corporation Counsel for commencement of further legal proceedings.

#### SECTION VIII. VIOLATIONS

- 8.1 Any person who violates, neglects, refuses to comply with or resists the enforcement of any of the provisions of this Ordinance shall be subject to a forfeiture of not less than \$100.00 not more than \$1,000.00 for each violation. A violation includes failure to comply with any standard of this Ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense. The County Conservationist may refer violations of this Ordinance to Corporation Counsel for enforcement.
- 8.2 Enforcement of Injunctions: As a substitute for or as an addition to forfeiture actions, Douglas County may seek enforcement by injunction order at the suit of the County or the owner or owners of the land within the district affected by the regulations of this Ordinance.

#### SECTION IX. APPEALS FROM ADMINISTRATIVE DECISIONS

##### 9.1 Authority

The Douglas County Land and Water Conservation Committee shall hear and decide appeals where it is alleged that there is error in an order, requirements, decision or determination by the Land and Water Conservation Department staff in administering this Ordinance.

##### 9.2 Procedure

Any appeal shall be made by written request, mailed or delivered to the Douglas County Land and Water Conservation Committee, c/o Land and Water

Conservation Department, Douglas County Courthouse Room 206, 1313 Belknap Street, Superior, WI 54880. The request shall state the ground or grounds upon which it is contended that the decision should be modified or reversed. The appeal shall be heard within sixty (60) days of the date the appeal is filed with the LWCD. A copy of the meeting notice shall be sent to the applicant and the appropriate Town Board. The LWCD shall transmit to the Committee all documents constituting the record from which the appeal was taken. The Committee shall issue a written decision regarding the appeal within sixty (60) days after the appeal hearing.

### 9.3 Statutory Administrative Review and Certiorari

The decision of the Douglas County Land and Water Conservation Committee shall be subject to judicial review if, within 30 days after the decision of the Douglas County Land and Water Conservation Committee, an action seeking the remedy available by certiorari is commenced, as authorized by §59.694, Wis. Stats.

## SECTION X. FORCE AND EFFECT

Except as specifically modified and amended by this ordinance, the Douglas County Code of Ordinance shall remain in force and effect exactly as originally adopted and previously amended. All ordinances or parts of ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

## SECTION XI. SEVERABILITY

If a court of competent jurisdiction adjudges any section, clause, provision, or portion of this Ordinance unconstitutional or invalid, the remainder of this Ordinance shall not be affected thereby.

## SECTION XII. EFFECTIVE DATE

This Ordinance shall become effective upon its adoption by the Douglas County Board of Supervisors, and publication.

Dated this 15th day of June, 2017.