

07-02-2018 Draft \_\_\_\_\_ 2  
Chapter 10 - Public Nuisances-Health Hazards draft 8.18 \_\_\_\_\_ 4  
CHAPTER 51 DRAFT \_\_\_\_\_ 29  
Ordinance chapter 51 (create) Repeal sections of 10 \_\_\_\_\_ 45

**WAUPACA COUNTY LAND & WATER CONSERVATION COMMITTEE**  
**Meeting Minutes — July 2nd, 2018**

Chair Federwitz called the meeting to order at 8:30 a.m. and gave the open meeting statement.

**Roll Call:** Chair DuWayne Federwitz, Vice-Chair Bob Ellis, Supervisors David Johnson, Jim Nygaard (FSA Rep.), & Bernie Ritchie. Others present: Brian Haase, Lisa Neuenfeldt, Amy Frye.

**Review and Approve Agenda:** Motion by Johnson, seconded by Nygaard to approve the agenda. Motion carried without a negative vote.

**Minutes of the Previous Meeting, June 4th, 2018:** Motion by Nygaard, seconded by Johnson to approve the June 4th, 2018 minutes. Motion carried without a negative vote.

**Public Comment:** None

**Agency Reports:**

**NRCS Report —Lisa Neuenfeldt:**

Amy Frye, our intern, started June 25<sup>th</sup>. Amy will also be available to work with the LWCD staff.

Summary of Funding of the May 18<sup>th</sup> sign-up:

- Soil Health (cover crops & no-till): 8 applications – still waiting for funding
- Bear Lake National Water Quality Initiative: 6 applications – 2 funded so far
- Great Lake Restoration Initiative – Invasive Species: 1 – funded
- Great Lakes Restoration Initiative – Wildlife habitat: 1 – still waiting

Funding decisions should be made by the state office this week. Staff is trying to keep up with requests from new landowners for conservation assistance and making site visits. There is a large interest in rotational grazing. Staff is inspecting/certifying/cost-sharing completed practices. Some projects finished in June include: Brush management to control invasive species, one water and sediment control basin, three new pasture seedings for grazing and a large lighting improvement project and several Monarch butterfly seedings.

On June 26<sup>th</sup>, we attended a meeting about the expansion of the Great Lakes Restoration Initiative project area – see map. This would make all of Waupaca County eligible for additional funding for conservation practices that address phosphorus and sediment pollution. The state office would like to start the process by establishing Demonstration Farm(s). Two other events of interest were attended where Derrick presented the Rainfall Simulator demonstration: Farmers for Tomorrow and a Pasture Walk/Demo at Justin Seeger's farm. Farmers for Tomorrow can incorporate involvement by Waupaca County operators in the Tomorrow/Waupaca River watershed and have a DATCP grant to offer incentives. The Waupaca/Winnebago Local Work Group meeting is August 16 from 10 am - noon at the Fremont Town Hall.

**FSA Report — Nygaard-** Nygaard stated there have been some improvements to the MILC program. There is also interest in the Livestock Indemnity Program since the April snowstorm. Crop reporting is due July 15<sup>th</sup>.

**Meeting Reports:**

**Lower Fox Demo Farms.** – Haase toured 2 of the Demo farms in June. One CAFO has converted to 100% no-till and 100% cover crops. Manure is spread by dribble bar onto living crops all the time. Another farm had USGS monitoring stations comparing field practices.

**NRCS Great Lakes Restoration Initiative Funding (GLRI)** – Waupaca hosted an area wide meeting to discuss NRCS moving GLRI funds into the Upper Fox-Wolf Basin by 2019. Included in that will be a desire to create a UF-W Demo Farm Network.

**Farmington Farmland Preservation** - Haase and P/Z Director Ryan Brown attended Farmington Town Board. Farmland Preservation was passed at the town level.

**Central Sands Water Action Coalition (CSWAC) – Phil Peterson-** Peterson, who is a member of the Chain Association BOD, is on a steering committee for CSWAC that is tasked with a new project that will look at the state of Conservation in the central sands. They are interested in 3 things: Issues of stakeholders in each county, activities that stakeholders are involved in and sharing information among the stakeholders. They will be looking at the whole picture of conservation and not just focusing on groundwater issues. CSWAC would like to move away from an adversarial perception and create positive relationships with partners and farmers. They will be including counties in those relationships.

**Waupaca County Well Testing Project-** 58 wells were tested in the first round of 2018 in Helvetia, Harrison and Wyoming. Round two is scheduled for July 23rd. Results are still pending.

**County Manure Storage & Agricultural Performance Standards Ordinance –** Haase passed out the latest updated copies. Haase and Counsel Meulemans continue to make minor changes. We anticipate being finished next month and will hold a public hearing at our next meeting. DATCP has also reviewed it and made some comments for consideration.

Discussion continued about additional notification to farmers above and beyond the public notice process which is often unseen. The committee requested that Haase do a targeted mailing, within financial reason, to the largest segment of farmers and landowners that may be impacted by the new ordinance. Haase said staff can create a mailing list to address that request.

**Land & Water Resource Management (LWRM) / Targeted Runoff Management (TRM) Cost Share Agreements Approval –** None

**County Conservationist Report –** Haase reported submitting an NOD grant to DNR/DATCP for the violations at the Mike Wegener Farm. This application will use the economic hardship clause at the operator's request. Haase had a site visit with the Gasper farm and continues to work on that issue with DNR. No new complaints were made on runoff issues this month. No-till seeder use has been extremely high this season due to a high number of NRCS program participants. Haase presented the LWCD Capital Improvement Plan portion of the 2019 budget. There are no changes to the form. LWCD trucks, survey equipment and plotters remain on the schedule.

**Upcoming Meetings-** LWCC August 13th at 8:30 am. County Conservationist meeting July 19<sup>th</sup> & 20<sup>th</sup> in WI Rapids. NRCS Local Work Group meets in Fremont on August 16<sup>th</sup> at 9:00am.

**Adjourn:** Motion by Johnson, seconded by Ellis to adjourn. Meeting adjourned at 10:05 AM.

Submitted by,

Brian Haase  
Recording Secretary

These minutes will be posted to the website prior to approval from the Committee and are considered to be in draft form until approved at the next scheduled meeting.

**WAUPACA COUNTY CODE OF ORDINANCES**  
**Chapter 10**  
**Public Nuisances/Health Hazards**

|       |   |   |
|-------|---|---|
| 10.01 | Public Nuisances Prohibited   | Educational Camps, Campgrounds,                             |
| 10.02 | Public Nuisance Defined   | Tattoo and Body Piercing                                    |
| 10.03 | Public Nuisances Affecting Health   | Establishments, Retail Food                                 |
| 10.04 | Public Nuisances Offending Morals and Decency   | Establishments, and Manufactured Home Communities           |
| 10.05 | Public Nuisances Affecting Peace and Safety   | 10.09 Specific Incorporation of Codes                       |
| 10.06 | Abatement of Public Nuisances   | <del>10.50 Manure Management</del>                          |
| 10.07 | Cost of Abatement   | <del>10.51 Activities Subject to Regulation</del>           |
| 10.08 | Regulating Restaurants, Hotels, Motels and Tourist Rooming Houses, Bed and Breakfast Establishments, Vending of Food Facilities, Public Pools & Water Attractions, Recreational and | <del>10.52 Standards for Manure Storage Facilities</del>    |
|       |   | <del>10.53 Application for and Issuance of Permits</del>    |
|       |   | <del>10.54 Administration, Inspection and Enforcement</del> |
|       |   | 10.55 Interpretation  |
|       |   | 10.56 Effective Date  |

**10.01 PUBLIC NUISANCES PROHIBITED**

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the County.

**10.02 PUBLIC NUISANCE DEFINED**

A public nuisance is a thing, act, occupation, condition or use of property, which continues for such length of time as to:

- A. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- B. In any way render the public insecure in life or in the use of property.
- C. Greatly offend the public morals or decency.
- D. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way or the use of public property.

**10.03 PUBLIC NUISANCES AFFECTING HEALTH**

The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances; but such enumeration shall not be construed to exclude other health nuisances coming within the definition of 10.02:

- A. Adulterated Food:** All decayed, adulterated or unwholesome food or drink sold or offered for sale to the public.
- B. Unburied Carcasses:** Carcasses of animals, birds or fowl not intended for human consumption or food which are not buried or otherwise disposed of in a sanitary manner within 24 hours after death.
- C. Breeding Places for Vermin, Etc.:** Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin can breed.
- D. Stagnant Water:** All stagnant water in which mosquitoes, flies or other insects can multiply.
- E. Privy Vaults and Garbage Cans:** Privy vaults and garbage cans which are not fly-tight.
- F. Noxious Weeds:** All noxious weeds and other rank growth of vegetation. All weeds and grass shall be kept cut to a height of not to exceed one foot. The County may cause all weeds and grass to be cut and removed and brush to be removed and the cost thereof charged to the property under Sec. 66.60(16), Wisconsin Statutes.
- G. Water Pollution:** The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, creamery or industrial wastes or other substances.
- H. Noxious Odors, Etc.:** Any use of property, substances or things within the County emitting or causing any foul, offensive, noisome, noxious or disagreeable odors, gases, effluvia or stench extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the County.
- I. Street Pollution:** Any use of property which causes any noxious or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the County.
- J. Air Pollution:** The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash, industrial dust or other atmospheric pollutants within the County in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property in the County.

#### **10.04 PUBLIC NUISANCES OFFENDING MORALS AND DECENCY:**

The following acts, omissions, places, conditions and things are specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency with the definition of Sec. 10.02:

- A. Disorderly Houses:** All disorderly houses, bawdy houses, houses of ill-fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling.
- B. Gambling Devices:** All gambling devices and slot machines.
- C. Unlicensed Sale of Liquor and Beer:** All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license therefore as required by County Ordinance or State Statutes.
- D. Continuous Violation of County Ordinances:** Any place or premises within the County where County Ordinances or State laws relating to public health, safety, peace, morals or welfare are openly, continuously, repeatedly and intentionally violated.
- E. Illegal Drinking:** Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of State laws.

#### **10.05 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY:**

The following acts, omissions, places, conditions and things are declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the definition of Sec. 10.02.

- A. Signs, Billboards, Etc.:** All signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.
- B. Illegal Buildings:** All buildings erected repaired or altered in violation of the provisions of the ordinances of the County relating to materials and manner of construction of buildings and structures within the County.
- C. Unauthorized Traffic Signs:** All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as official traffic

Chapter 10.08 amended 3/18/14, 4/21/15,

Chapters 10.08, 10.09 & 10.10 amended 8/18/15

Chapter 10.50 through 10.54 removed and Chapter 51 created 8/21/18

control devices, railroad signs or signals or which because other color, location, brilliance or manner of operation interfere with the effectiveness of any such device, sign or signal.

- D. Obstruction of Intersections:** All trees, hedges, billboards or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- E. Tree Limbs:** All limbs of trees which project over and less than 10 feet above any public sidewalk, street or other public place.
- F. Dangerous Trees:** All trees that are a menace to public safety or are the cause of substantial annoyance to the general public.
- G. Fireworks:** All use or display of fireworks except as provided by State laws and County ordinances.
- H. Dilapidated Buildings:** All buildings or structures so old dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- I. Wires and Cables Over Streets:** All wires and cables over streets, alleys or public grounds which are strung less than 15 feet above the surface thereof.
- J. Noisy Animals or Fowl:** The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises greatly annoys or disturbs a neighborhood or any considerable number of persons within the County.
- K. Obstructions of Streets; Excavations:** All obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same except as permitted by the ordinances of the County or which, although made in accordance with such ordinances, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished or do not conform to the permit.
- L. Unlawful Assemblies:** Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

**M. Shining Artificial Lights on Wild Animals:**

1. No person shall shine artificial lights from a motor vehicle with the intent of observing, pursuing or disturbing any deer or other wild animals, other than when authorized by the State hunting regulations, outside the incorporated limits of any village or city within Waupaca County, between 10:00 p.m. and sunrise.
2. This prohibition shall not preclude owners or tenants of farmland from using motor vehicle lights while tilling the soil or harvesting crops, or in the inspection or herding of domestic animals on their own premises when in fact such domestic animals are in the area.
3. This prohibition shall not apply to law enforcement officials in the performance of their duties.
4. Any person convicted of violating this subsection shall be assessed a forfeiture of not less than \$25 nor more than \$500 plus the costs of prosecution.
5. This subsection shall not be substituted or used in place of Sec. 29.99, Wis. Stats, which prohibits the hunting or shooting of deer with the aid of artificial lights, with the aid of an airplane, or the illegal snaring of deer, or for violation of Sec. 29.13(5), 29.48 and 29.49, Wis. Stats.

**10.06 ABATEMENT OF PUBLIC NUISANCES:**

- A. Enforcement:** The County Officials shall enforce those provisions of this chapter that come within the jurisdiction of their offices, and they shall make periodic inspections and inspections upon complaint to insure that such provisions are not violated. No action shall be taken under this section to abate a public nuisance unless the officer has inspected or caused to be inspected the premises where the nuisance is alleged to exist and has satisfied himself that a nuisance does in fact exist.
- B. Summary Abatement:** If the inspecting officer determines that a public nuisance exists within the County and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Chairman of the County Board may direct the proper officer to cause the same to be abated and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be.
- C. Abatement After Notice:** If the inspecting officer determines that a public nuisance exists on private premises but that the nature of such nuisance

Chapter 10.08 amended 3/18/14, 4/21/15,

Chapters 10.08, 10.09 & 10.10 amended 8/18/15

Chapter 10.50 through 10.54 removed and Chapter 51 created 8/21/18

does not threaten great and immediate danger to the public health, safety, peace, morals or decency, he shall serve notice on the person causing or maintaining the nuisance to remove the same within 10 days, the proper officer shall cause the nuisance to be removed as provided in Sub. (B).

- D. Other Methods Not Excluded:** The County or its officials shall construe nothing in this chapter as prohibiting the abatement of public nuisances in accordance with State laws.
- E. Court Order:** Except when necessary under Sub. (B), an officer hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

#### **10.07 COST OF ABATEMENT:**

In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the County shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

#### **10.08 REGULATING RESTAURANTS, HOTELS, MOTELS AND TOURIST ROOMING HOUSES, BED AND BREAKFAST ESTABLISHMENTS, VENDING OF FOOD FACILITIES, PUBLIC POOLS & WATER ATTRACTIONS, RECREATIONAL AND EDUCATIONAL CAMPS, CAMPGROUNDS, TATTOO AND BODY PIERCING ESTABLISHMENTS, RETAIL FOOD ESTABLISHMENTS, AND MANUFACTURED HOME COMMUNITIES (Amended 3/18/14, Amended 4/21/15, Amended 8/18/15))**

##### **A. Administration**

This ordinance shall be administered by the Waupaca County Department of Health and Human Services.

##### **B. Authority**

1. The County Sanitarian or his/her duly authorized representative shall enforce the regulations of this chapter, and may issue orders to effect correction of violations and may issue citations pursuant to Ordinance No. 25 of Waupaca County. All enforcement actions shall minimally be analogous to Sec. 254.85, 254.86, 254.87, 254.88, and 97.12 Wis. Stats.

Chapter 10.08 amended 3/18/14, 4/21/15,

Chapters 10.08, 10.09 & 10.10 amended 8/18/15

Chapter 10.50 through 10.54 removed and Chapter 51 created 8/21/18

2. Waupaca County Corporation Counsel/District Attorney may in his/her discretion, commence legal action and may proceed pursuant to the provisions outlined in Sec. 66.0113 or 66.0114, Wis. Stats., or pursuant to the issuance of a summons and complaint.
3. The Waupaca County Department of Health and Human Services is an agent for the Wisconsin Department of Health Services, Wisconsin Department of Agriculture Trade & Consumer Protection and for the Wisconsin Department of Safety and Professional Service under the provisions as set forth in Chapter 254, subchapter VII, Sec. 254.47, Sec 97.41, and Sec. 101.935, Wis. Stats., respectively, with the powers as described in Sec. 254.74, Wis. Stats. The duties under the state statute are described in the WI Administrative Code Chapter DHS 192 and the written Terms of Agreement Contract.
4. Waupaca County adopts by reference the following chapters of the WI Administrative Codes: DHS 192, DHS 196, DHS 195, DHS 197, DHS 198, DHS 172, SPS 390, DHS 175, DHS 178, DHS 173, ATCP 75 and SPS 326 and all other state and federally referenced rules and Memorandums of Understanding.
5. Waupaca County recognizes and adopts the same exemptions for inspections and licensure as contained in the aforementioned state statutes, administrative codes and the State of Wisconsin Department of Health Services and Wisconsin Department of Agriculture & Consumer Protection policies.

**C. Severability**

Each section, paragraph, sentence, clause, word or provision of this ordinance is severable, and if any provisions shall be held unconstitutional or invalid for any reason, such decision shall not affect the remainder of the ordinance nor any part thereof other than that affected by such a decision. Any subsequent change to Wis. Stats. or Administrative Codes are incorporated by reference hereto.

**D. Definitions**

1. "County" means Waupaca County, Wisconsin.
2. "Conditional License" means granting the temporary operation of an establishment. It requires a signed agreement of compliance within

a specific period of time to be determined by the county sanitarian and by policy.

3. “Department” means the Waupaca County Department of Health and Human Services.
4. “Director” means the Director of the Waupaca County Department of Health and Human Services.
5. “Health Officer” means the Health Services Coordinator of his/her authorized agent.
6. “License” means the granting of permission in a written/certificate form from the appropriate authority to carry on an activity. In this chapter, it is synonymous with permit.
7. “Person” means an individual, partnership, association, firm, company, corporation, organization, municipality, county, town or state agency, whether tenant, owner, lessee or licensee, or the agent, heir, or assignee of any of these.
8. “Sanitarian” means the Waupaca County Wisconsin Registered Sanitarian and/or National Environmental Health Association Registered Environmental Health Specialist or his/her representative.
9. “Second and subsequent follow-up inspection” means any reinspection that becomes necessary because critical or multiple violation(s) governing that establishment continue to exist, after notification of same violation (s) and of appropriate time to correct them has been issued.

## **E. Issuance of a License**

1. License Application

License application shall be made to the Waupaca County Department of Health and Human Services using forms approved and supplied by the Department and accompanied with the appropriate license fee and pre-inspection fee. Licenses hereunder shall not be granted or issued by the Department unless and until the sanitarian determines and certifies the premises to be licensed is in compliance with all the applicable terms and conditions of all WI Administrative Codes under contract. Conditional licenses may be issued per policy.

Applications for licenses required in this chapter shall contain, but not be limited to, the following information:

- a. The name, home address and date of birth of the entity requesting the privilege of operating the said business/conducting the activity.
- b. The trade name and address of the establishment.
- c. Whether the applicant is a person, corporation, or partnership:
  1. If the applicant is a corporation, the application shall contain the registered agent's name, home address and date of birth.
  2. If the applicant is a partnership, the applicant shall include the names, home addresses and date of births of the partners.
  3. The mailing address of the legal licensee.
- d. The signature of all applicants and their agents to confirm that all information on the application is correct, and to acknowledge that any change in the information on the application shall be reported to the sanitarian within 30 days of the change.

## 2. License Issuance

The sanitarian shall issue a license to the applicant only after compliance with the requirements of this chapter and upon payment to the department of all required fees. The Department's decision to grant or withhold a license shall not exceed 30 calendar days, unless application is for a retail food establishment, in which case a decision shall not exceed 15 calendar days. The decision of withhold shall accompany written inspection or documentation of justification or cause. (See Section 7C on Denial of Permit).

- a. No license may be issued until all applicable fees have been paid.

## 3. License Period

The license period for licenses issued per the DHS contract shall be from July 1 through June 30, except for a conditional license.

Chapter 10.08 amended 3/18/14, 4/21/15,

Chapters 10.08, 10.09 & 10.10 amended 8/18/15

Chapter 10.50 through 10.54 removed and Chapter 51 created 8/21/18

Those licenses initially issued during the period beginning on April 1 and ending on June 30, expire on June 30 of the following year.

4. Display of License

All licensees shall post their license in plain public view on the premise for which the license is issued and shall be so posted for the duration that the license is in effect.

**F. Fees**

License fees will be adjusted annually by the Health and Human Services Board, through adoption of the county budget, to reflect any cost increase in issuing licenses and conducting inspections.

1. Non-Proration of Fees. Permit fees and other applicable fees are not prorated for the fiscal year and must be paid in full at any time.
2. Pre-Inspections and their associated fees. Pre-inspections are required to be conducted for establishments within the scope of Sec. 254 Subchapter VII, Wis. Stats and WI Admin Code ATCP 75.03.
3. Late Fees. Assessed to all Sec. 254.69, Wis. Stats. establishment licensees for payment after July 1.

**G. Enforcement of Statutes and Rules**

1. Inspection by Health Department

The sanitarian, upon presenting proper identification, shall have the authority and duty to enter any licensed premises during regular business hours to inspect the same for compliance with incorporated codes, with respect to a business open at least forty (40) hours per week. In the absence of regular business hours, inspections shall be made at any reasonable hour. In the event of an emergency, an inspection may be made at any time.

2. Temporary Orders

Whenever, as a result of an inspection conducted pursuant to this chapter, the sanitarian has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation or method of operation of the premises or equipment used on the premises creates an immediate danger to health of the public, the sanitarian may proceed as stated in Sec. 66.0417, Wis. Stats. or Chapter 254.85 or

Chapter 97.12 to issue a temporary order to prohibit the sale or movement of food for any purpose, prohibit the continued operation or method of operation of equipment, require the premises to cease any other operation or method of operation which creates an immediate danger to public health. Sec. 66.0417, Wis. Stats. is incorporated herein by reference and made a part of this ordinance as if fully set forth herein.

### 3. Denial, Suspension or Revocation of License

The Health Officer or designee may deny any license application or suspend or revoke any license issued under this chapter for non-compliance with this code or any other state or county law. The following procedure shall be followed in the denial, suspension or revocation of any license issued under this chapter:

- a. A decision to deny, suspend or revoke a license shall be in writing and shall state, with specificity, the reasons for the decision and shall state any and all applicable statutes, ordinances, rules, regulation or orders which may have been violated. The Health Officer or designee shall send to the licensee a copy of the written decision by mail or by personal service. Said notice shall inform the licensee or applicant of the right to have this decision reviewed and the procedure for such review.
- b. A licensee or applicant aggrieved by a decision to deny, suspend or revoke a license must send a written Request and Reconsideration to the Health Officer and/or designee within 10 working days of receipt of the notice of the decision. The Request for Review and Reconsideration shall state the grounds upon which the person aggrieved contends that the decision should be reversed or modified.
- c. Within 15 working days of receipt of the Request for Review and Reconsideration, the Health Officer and/or designee shall review its initial determination. The Health Officer and/or designee may affirm, reverse or modify the initial determination. The Health Officer or designee shall mail or deliver to the licensee or applicant a copy of the decision on review which shall state the reasons for such a decision. The decision shall advise the licensee or applicant of the right to appeal the decision, the time within which appeal shall be taken and the office or person with whom Notice of Appeal shall be filed.

- d. A licensee or applicant who wishes to appeal a decision on review must file a notice of appeal within 10 working days of receipt of the Health Officer's and/or designee decision on review. The Notice of Appeal shall be filed or mailed to the Health Officer and/or designee. The Health Officer and/or designee shall immediately file said Notice with the Waupaca County Health and Human Services Board.
- e. A licensee or applicant shall be provided a hearing on appeal within 45 days of receipt of the Notice of Appeal. The Health Officer and/or designee shall serve the licensee or applicant with notice of hearing by mail or personal service at least 5 days before the hearing.
- f. The hearing shall be conducted before the Waupaca County Health and Human Services Board and shall be conducted in accordance with the procedures outlined in Sec. 68.11 (2) and (3), Wis. Stats.
- g. Within 15 days of the hearing, the Waupaca County Health and Human Services Board shall mail or deliver to the applicant, its written determination stating the reasons therefore. This is the final county determination.

## **H. Penalty**

Any person who violates this ordinance may be fined not less than \$100.00, nor more than \$1,000.00. Any person who fails to comply with an order of the Department under this ordinance, shall forfeit \$50.00 for each day of non-compliance after the order is served upon or directed to him/her per Sec. 254.69 and 97.41, Wis. Stats. and in case of action under Sec. 254.87, Wis. Stats., Court review, after reasonable time after final determination.

Pursuant to Sec. 252.25, Sec 254.88, Sec 97.72, Sec. 97.73 Wis. Stats., WI Administrative Codes incorporated by reference, and Waupaca County Code of Ordinance # 25 the Department is authorized to enforce this ordinance through the use of County citations and/or petitions for injunctive relief.

## **10.09 SPECIFIC INCORPORATION OF CODES**

### **A. Hotels, Motels and Tourist Rooming House Requirements**

No person, party, firm, or corporation shall operate a Hotel, Motel or Tourist Rooming House, as defined in WI Administrative Code DHS 195, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 195 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

### **B. Restaurants/Meal Food Service Requirements**

Except as provided in Sec. 254.61(5), Wis. Stats., no person, party, firm or corporation shall operate a Restaurant, Temporary Restaurant or Mobile Restaurant, as defined in WI Administrative Code DHS 196, without first obtaining a license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 196 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. provisions, which are incorporated herein by reference and made part of this ordinance as fully set forth herein.

### **C. Bed and Breakfast Establishment Requirements**

No person, party, firm, or corporation shall operate a Bed and Breakfast Establishment as defined in WI Administrative Code DHS 197 for more than 10 nights in a year, without first obtaining a license from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 197 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

### **D. Vending of Food Requirements**

No person, party, firm, or corporation shall operate a Vending Machine Commissary or a Vending Machine, as defined in WI Administrative Code DHS 198, without first obtaining an annual license therefore from the Wisconsin Department of Health Services, or contrary to the terms and conditions of this ordinance or DHS 198 of the WI Administrative Code, and Chapter 254, Subchapter VII, WI Stat. provisions, which are incorporated by reference and made a part of this ordinance as fully set forth herein. Pursuant 254.69 Waupaca County is authorized to make

inspections and investigations of Vending Machine Commissaries, Vending Machine Operators, and Vending Machines.

**E. Public Pools & Water Attraction Requirements**

No person, party, firm, or corporation shall operate a Public Swimming Pool or Water Attraction, as defined in WI Administrative Codes DHS 172 and DSPS 390, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 172 of WI Administrative Code, and Chapter 254, Subchapter VII, WI Stat. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**F. Recreational and Educational Camp Requirements**

No person, party, firm, or corporation shall operate a Recreational and Educational Camp, as defined in WI Administrative Code DHS 175, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 175 of the WI Administrative Code, and Chapter 254 Environmental Health, Subchapter VII, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**G. Campground Requirements**

No person, party, firm, or corporation shall operate a Campground, as defined in WI Administrative Code DHS 178, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DHS 178 of the WI Administrative Code, and Chapter 254, Subchapter VII, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

**H. Tattoo and Body Piercing Establishment Requirements**

No person, party, firm, or corporation shall operate a Tattooing and/or a Body Piercing Establishment, as defined in WI Administrative Code DHS 173, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance or DHS 173 of the WI Administrative Code, and Chapter 252, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as fully set forth herein.

## **I. Manufactured Home Communities Requirements**

No person, party, firm, or corporation shall operate a Manufactured Home Community, as defined in WI Administrative Code DSPS 326, without first obtaining a annual license therefore from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, or DSPS 326 of the WI Administrative Code, and Chapter 101 and Chapter 254, Subchapter VII, Wis. Stats. Sec. provisions, which are incorporated herein by reference and made a part of this ordinance as if fully set forth herein.

## **J. Retail Food Establishment Requirements**

No person, party, firm, or corporation shall operate a Retail Food Establishment as defined in WI Administrative Code ATCP 75, without first obtaining an annual license from the Waupaca County Department of Health and Human Services, or contrary to the terms and conditions of this ordinance, ATCP 75 of the WI Administrative Code, Chapter 97, and Chapter 254, Wis. Stats. provisions which are incorporated by reference and made a part of this ordinance as if fully set forth herein.

**EFFECTIVE DATE:** Upon adoption of and publication by the County Board of Supervisors, this amendment will be in full force and effect within Waupaca County.

## **~~MANURE MANAGEMENT (Adopted June 21, 2005)~~**

### **~~10.50 GENERAL PROVISIONS~~**

#### **~~A. Title:~~**

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

#### **~~B. Findings, Purpose and Authority:~~**

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

~~The Waupaca County Board of Supervisors also finds that improper management of manure storage facilities and utilization of stored manure~~

Chapter 10.08 amended 3/18/14, 4/21/15,

Chapters 10.08, 10.09 & 10.10 amended 8/18/15

Chapter 10.50 through 10.54 removed and Chapter 51 created 8/21/18

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

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

~~**C. Applicability:**~~

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

~~**D. Interpretations:**~~

- ~~1. In their interpretation and application, the provisions of this ordinance shall be held to the minimum requirements and shall be liberally construed in favor of Waupaca County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.~~
- ~~2. Severability Clause. If any section, provision, or portion of this ordinance is ruled invalid by any court, the remainder of the ordinance shall not for that reason be rendered ineffective, but rather shall be enforced, to whatever degree possible, as if the provision which was declared invalid had not been enacted.~~

~~**E. Definitions:**~~

- ~~1. “Abandoned Storage Facility” means a facility where manure has not been added or removed for a period of twenty-four (24) months.~~
- ~~2. “Manure” means livestock excreta. “Manure” includes livestock bedding, water, soil, hair, feathers, and other debris that becomes~~

~~intermingled with livestock excreta in normal manure handling operations.~~

- ~~3. “Manure Storage Facility” means an impoundment made by constructing an embankment or excavating a pit or dug out or by fabricating a structure to contain manure and other animal or agricultural wastes.~~
- ~~4. “Applicant” means any person who applies for a permit under this ordinance.~~
- ~~5. “Approved Engineer” means an agricultural or civil engineer that is registered by the State of Wisconsin or an engineering practitioner with the proper certification for the Department of Agriculture Trade and Consumer Protection or job approval from USDA.~~
- ~~6. “Department” means the Waupaca County Land and Water Conservation Department.~~
- ~~7. “Permit” means the signed, written statement issued by the Waupaca County Land and Water Conservation Department under this ordinance authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter a manure storage facility.~~
- ~~8. “Permittee” means any person to whom a permit is issued under this ordinance.~~
- ~~9. “Person” means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the Federal Government, or any combination thereof.~~
- ~~10. “Technical Guide” means the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Technical Guide as adopted by the Waupaca County Land and Water Conservation Committee.~~
- ~~11. “Water Pollution” means contaminating or rendering unclean or impure the ground or surface waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.~~
- ~~12. “Substantially Alter” means a change initiated by an owner or operator that results in a relocation of a structure or facility or changes to the size, depth or configuration of a structure or facility including:~~

Chapter 10.08 amended 3/18/14, 4/21/15,

Chapters 10.08, 10.09 & 10.10 amended 8/18/15

Chapter 10.50 through 10.54 removed and Chapter 51 created 8/21/18

- ~~a. Replacement of a liner of any type in a manure storage structure.~~
- ~~b. An increase in the volumetric capacity or area of a structure or facility by greater than 20%.~~
- ~~c. A change in a structure or facility related to a change in livestock management from one species of livestock to another such as cattle to poultry. [NR151.015]~~

## ~~10.51 ACTIVITIES SUBJECT TO REGULATION~~

### ~~A. General Requirement:~~

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

### ~~B. Compliance with Permit Requirements:~~

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

### ~~C. Closure of a Manure Storage Facility:~~

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

- ~~1. The facility is designed, constructed and maintained to prevent water pollution.~~
- ~~2. The facility is designed to store manure for a period of time longer than 24 months.~~

3. ~~The retention of the facility is warranted based on anticipated future use. If the Land and Water Conservation Department determines that the facility must be closed, the owner shall obtain a permit for closure of the facility as provided in sec. 10.53 and comply with the USDA-NRCS Technical Guide, Standard 360, Closure of Waste Impoundments.~~

## **~~10.52 STANDARDS FOR MANURE STORAGE FACILITIES~~**

- ~~A. The standards for design and construction of manure storage facilities are those in Standard 313 (Waste Storage Structure) and Standard 634 (Manure Transfer Standard) of the Technical Guide. The Standards for abandonment of manure storage are those in Standard 360 (Manure Storage Abandonment)~~
- ~~B. A nutrient management plan meeting USDA-NRCS Standard 590 (Nutrient Management) (March, 1999).~~
- ~~C. Subsequent Modification of Standards: The standards of the Technical Guide are adopted and by reference made a part of this Article as if fully set forth herein. Any proposed future amendment, revision or modification of the standards incorporated herein will be acted upon by the Land and Water Conservation Committee.~~
- ~~D. Additional Conditions: The Waupaca County Land and Water Conservation Department staff may impose additional conditions before issuing a permit if in their judgment such conditions are necessary to protect groundwater or surface water due to questionable soil or site conditions. Additional conditions required, must comply with requirements of S.92.15, Stats. Compliance with this article does not eliminate or change the applicants' duty to comply with any other restrictions, rules or regulations imposed by other entities, including but not limited to town, state, city or village requirements.~~
- ~~E. Copies of amended, revised or modified standards that have been incorporated into the ordinance will be maintained and made available by the Land and Water Conservation Department.~~

## **~~10.53 APPLICATION FOR AND ISSUANCE OF PERMITS~~**

### **~~A. Permit Required:~~**

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

**~~B. Exception to Permit Requirement:~~**

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

**~~C. Fee:~~**

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

**~~D. Manure Storage Facility Plan Required:~~**

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

- ~~1. The number and kinds of animals for which storage is provided.~~
- ~~2. A sketch of the facility and its location in relation to buildings within 250 feet and homes within 500 feet of the proposed facility. The sketch shall be drawn to scale, with a scale no smaller than 1 inch = 100 feet.~~
- ~~3. The structural details, including dimensions, cross sections, and concrete thickness.~~
- ~~4. The location of any private wells within 500 feet of the facility or public wells within 1000 feet of the proposed facility.~~
- ~~5. The soil test pit locations and soil descriptions to depth of at least three (3) feet below the planned bottom of the facility.~~
- ~~6. The elevation of ground water or bedrock if encountered in the soil profile and the date of any such determinations.~~
- ~~7. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and ground water. If a navigable body of water lies within 1000 feet of the facility, the location and distance to the body of water shall be shown.~~

- ~~8. The scale of the drawing and the north arrow.~~
- ~~9. A time schedule for construction of the facility.~~
- ~~10. A nutrient management plan that complies with ATCP 50.04 and a written statement that the manure from the storage facility will be distributed consistent with the 590 Plan.~~
- ~~11. An approved construction site erosion control plan.~~

~~**E. Closure Permit Application:**~~

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

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

~~**F. Review of Application:**~~

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

~~be deemed approved and the applicant may proceed as if a permit had been issued.~~

#### ~~G. Permit Conditions:~~

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

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

#### ~~H. Permit Revocation:~~

~~The Land and Water Conservation Department may revoke any permit issued under this ordinance if the holder of the permit has misrepresented any material fact in the permit application or manure facility plan, or if the holder of the permit violates any of the conditions of the permit.~~

## ~~I. Manure Management Prohibitions:~~

- ~~1. All livestock producers shall comply with this section.~~
- ~~2. A livestock operation shall have no overflow of manure storage facilities.~~
- ~~3. A livestock operation shall have no unconfined manure pile in a water quality management area.~~
- ~~4. A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state.~~
- ~~5. A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover.~~
- ~~6. This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.~~

## ~~10.54 ADMINISTRATION, INSPECTION AND ENFORCEMENT~~

### ~~A. Administrative Duties:~~

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

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

### ~~B. Inspection Authority:~~

~~The Land and Water Conservation Department is authorized to enter upon any lands affected by this ordinance to inspect the land prior to or after permit issuance to determine compliance with this ordinance. If~~

~~permission cannot be received from the applicant or permittee, entry by the Land and Water Conservation Department shall be according the §66.0119 Wisconsin Statutes.~~

~~**C. Enforcement Authority:**~~

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

~~**D. Penalties:**~~

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

~~**E. Appeals:**~~

- ~~1. Under authority of Chapter 59.964, Wisconsin Statutes, the Waupaca County Board of Adjustment, created under §59.694(4)(7), Wisconsin Statutes, and under Chapter 10, Sec. 10.50 of the General Code of Waupaca County, and acting as an appeal authority under §59.694(7), Wisconsin Statutes, is authorized to hear and decide appeals where it is alleged that there~~

~~is error in any order, requirement, decision or determination by the Land and Water Conservation Department in administering this ordinance.~~

- ~~2. The rules, procedures, duties and powers of the Board of Adjustment and Chapter 59, Wisconsin Statutes, shall apply to this ordinance.~~
- ~~3. Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision or determination made by the Land and Water Conservation Department.~~
- ~~4. Application for appeals may be obtained through the Waupaca County Zoning office.~~

### **10.55 INTERPRETATION**

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

### **10.56 EFFECTIVE DATE**

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

# CHAPTER 51

## AGRICULTURAL PERFORMANCE STANDARDS AND MANURE MANAGEMENT

### SUBCHAPTER I GENERAL PROVISIONS

- 51.01 Authority.
- 51.02 Jurisdiction.
- 51.03 Purpose and findings.
- 51.04 Severability.

### SUBCHAPTER II DEFINITIONS

- 51.05 Purpose.
- 51.06 Word usage.
- 51.07 Definitions.

### SUBCHAPTER III AGRICULTURAL PERFORMANCE STANDARDS AND PROHIBITIONS

- 51.08 Performance standards and prohibitions.
- 51.09 Standards.
- 51.10 Cost share required.

### SUBCHAPTER IV MANURE STORAGE FACILITY PERMIT, USE, AND SPECIFICATIONS

- 51.11 Application for issuance of permits.
- 51.12 Fees.
- 51.13 Manure storage facility plan requirements.
- 51.14 Review of application.
- 51.15 Permit conditions.
- 51.16 Permit revocation.

### SUBCHAPTER V PROCEDURES AND ADMINISTRATION

- 51.17 Administration.
- 51.18 Variances.
- 51.19 Enforcement and penalties.
- 51.20 Appeals from administrative decisions.

### SUBCHAPTER I GENERAL PROVISIONS

**51.01 Authority.** This ordinance is adopted under authority granted by Wisconsin Statutes §§ 59.02, 59.03, 59.70, 92.07, 92.15, 92.16 and Wisconsin Administrative Codes ATCP 50.14, ATCP 50.56 and NR 151.05.

**51.02 Jurisdiction.** This ordinance applies to all land located within unincorporated areas of Waupaca County.

**51.03 Purpose and findings.**

- (1) The purpose of this ordinance is to provide for proper and safe storage, handling, and land application of manure and to reduce the delivery of manure, other waste materials, fertilizers, and sediment to surface waters and groundwater through the use of conservation practices and implementation of state performance standards and prohibitions for agriculture. This ordinance is also intended to provide for administration, enforcement and penalties for violation of the ordinance.
- (2) The Waupaca County Board of Supervisors finds that polluted surface runoff and leachate from improperly designed or maintained manure storage facilities, feed storage facilities, unconfined manure piles, animal lots, milking centers, and agricultural practices causing excessive tillage and land applications of manure and fertilizers have resulted in the delivery of sediment, manure, other waste materials, and nutrients to surface waters and groundwater within Waupaca County. The Board recognizes the importance of protecting our ground and surface water resources and finds that proper management of agricultural practices contributes to the protection of ground and

surface waters; public health; plant, animal, and aquatic life; and the property tax base of Waupaca County. The Board finds that adherence to agricultural performance standards in Wis. Admin. Code Ch. NR 151 and ATCP 50 by the county landowners is necessary to reduce these risks.

- (3) Compliance with this ordinance requires that individuals follow the procedures contained herein, receive a permit from the department before beginning regulated activities, and comply with the requirements of this ordinance and the permit.

#### **51.04 Severability.**

- (1) **JUDGMENT OF ORDINANCE PROVISIONS.** If a court of competent jurisdiction adjudges any provision of this chapter to be invalid, the judgment shall not affect any other provision of this chapter not specifically included in the judgment.
- (2) **JUDGMENT OF ORDINANCE APPLICATION.** If a court of competent jurisdiction adjudges invalid the application of any portion of this chapter to a particular property, building, use, or structure, the judgment shall not affect the application of the provision to any other property, building, use, or structure not specifically included in the judgment.
- (3) **JUDGMENT OF PERMIT.** If a court of competent jurisdiction adjudges as invalid any requirement or limitation contained in a permit given under this chapter, it shall be presumed that the permit would not have been granted without the requirement or limitation, and therefore, the permit shall also be invalid.

## **SUBCHAPTER II**

### **DEFINITIONS**

**51.05 Purpose.** To define words, terms, and phrases contained in this chapter that are essential to the understanding, administration, and enforcement of this chapter.

**51.06 Word usage.** For the purposes of this chapter, certain words and terms are used as follows:

- (1) Words used in the present tense include the future.
- (2) Words in the singular include the plural.
- (3) Words in the plural include the singular.
- (4) The word “shall” is mandatory and not permissive.

**51.07 Definitions.** For the purposes of this chapter, certain words and terms are defined as follows:

- (1) “Adequate sod or self-sustaining vegetative cover” means maintenance of sufficient vegetation types and densities that provide 70% coverage such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, duff layers of fallen leaves, and woody debris.
- (2) “Agricultural lands” means lands in agricultural use as provided under Wis. Stat. § 91.01(1).
- (3) “Applicant” means any person who applies for a permit under this ordinance.
- (4) “Best management practices (herein after “BMP”)” mean structural or nonstructural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.
- (5) “Committee or Land & Water Conservation Committee” means the committee designated by the county board pursuant to Wis. Stat. § 92.06
- (6) “Department” means the Waupaca County Land & Water Conservation Department (herein after LWCD).

- (7) “Direct conduit to groundwater” means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.
- (8) “Direct runoff” means any of the following:
- Runoff of stored manure, including manure leachate, that discharges a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.
  - Runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or a direct conduit to groundwater.
  - Discharge of a significant amount of leachate from stored manure to waters of the state.
  - Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with Wis. Admin. Code Ch. NR 154.04(3).
- (9) “Feedlot” means a barnyard, exercise area, or other outdoor area where livestock are concentrated for feeding or other purposes and self-sustaining vegetative cover is not maintained. “Feedlot” does not include a winter grazing area or a bare soil area such as a cattle lane or a supplemental feeding area located within a pasture, provided that the bare soil area is not a significant source of pollution to waters of the state as determined by the Barnyard Evaluation Rating Tool (BERT) or an equivalent predictive model for manure runoff utilized by the department.
- (10) “Idle storage facility” means a facility where manure has not been added or removed for a period of 24 months.
- (11) “Land application” means the physical transfer of manure from any animal confinement area or manure storage facility to fields for purposes of fertilization or disposal.
- (12) “Landowner” means any person holding fee title, an easement, or other interest in a property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMP’s on the property.
- (13) “Leachate” means the concentrated liquid which has percolated through, or drained from, animal feed areas or manure storage areas.
- (14) “Livestock” means all domestic animals, including deer, elk, or any fenced-in animals.
- (15) “Livestock operation” means a feedlot or other facility or a pasture where animals are fed, confined, maintained, or stabled.
- (16) “Manure” means livestock excreta. “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 bio-solids, process water; and runoff collected from barnyards, animal lots, and feed storage areas.
- (17) “Manure storage facility” means 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 waste.
- (18) “Manure storage facility, existing” means a facility that was constructed prior to October 1, 2002.
- (19) “Manure storage facility, substantially altered” means a change initiated by an owner or operator that results in a relocation of a manure structure or facility or significant changes to the size, depth or configuration of a manure structure or facility including:
- Replacement of a liner in a manure storage structure.
  - An increase in the volumetric capacity or area of a structure or facility by greater than 20%.
  - 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.
- (20) “Manure storage facility, unpermitted” means a facility that was constructed prior to April 15, 1986.
- (21) “Margin of safety” means the level in a manure storage facility that is vertically one foot below the lowest point of the top of the facility or structure.

- (22) “Natural Resources Conservation Service (herein after “NRCS)” means an agency of the United States Department of Agriculture (USDA) which, for purposes of this chapter, provides the department with construction standards, technical assistance and information on the design criteria, size, shape, engineering strength, and other necessary technical data for the proper and safe installation of a manure storage facility.
- (23) “Navigable waters” and “navigable waterway” means any body of water that is navigable under the laws of the state as defined in Wis. Stat. § 30.01(4m).
- (24) “Nutrient management plan” means a plan that balances the nutrient needs of a crop with the nutrients available from legume crops, manure, fertilizer, or other sources. The requirements for a nutrient management plan are as established in Wis. Admin. Codes ATCP 50.04(3), ATCP 50.62(5)(f), and NR 151.07.
- (25) “Nutrients” means plant nutrients derived from commercial fertilizers, manure, organic wastes, soil reserves, legumes, or other sources.
- (26) “Operator” means a person responsible for the oversight or management of equipment, facilities or livestock at a livestock operation, or is responsible for land management in the production of crops.
- (27) “Ordinary high water mark” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.
- (28) “Pasture” means land on which livestock graze or otherwise seek feed in a manner that maintains the vegetative cover over the grazing area. Pasture may include limited areas of bare soil such as cattle lanes and supplemental feeding areas provided the bare soil areas are not significant sources of pollution to waters of the state.
- (29) “Permit” means the signed, written statement issued by the department under this ordinance authorizing the applicant to construct, install, substantially alter, close, or reuse a manure storage facility or manure transfer facility, and to use or dispose of waste from the facility.
- (30) “Permitted facility” means a facility that was permitted under this ordinance.
- (31) “Permittee” means any person to whom a permit is issued under this ordinance.
- (32) “Person” means any individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency, or federal agency pursuant to Wis. Stat. § 283.01(11).
- (33) “Phosphorus index” means the State’s agricultural land management planning tool for assessing the potential of a cropped or grazed field to contribute phosphorus to surface waters.
- (34) “Pollutant” means any dredged, spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water as defined in Wis. Stat. § 283.01(13).
- (35) “Pollution” includes contaminating or rendering unclean or impure the 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.
- (36) “Process wastewater” means wastewater from the production area directly or indirectly used in the operation of animal feeding operation that results from any or all of the following:
- a. Spillage or overflow from animal or poultry watering systems.
  - b. Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities.
  - c. Direct contact swimming, washing, or spray cooling of animals or dust control.

- d. Water that comes into contact with any raw materials or animal byproducts including manure, feed, milk, eggs, or bedding.
- (37) “Runoff” means storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (38) “Safety devices” means constructed measures designed to protect humans and livestock from hazards associated with a manure storage facility.
- (39) “Sediment” means settleable solid material that is transported by runoff away from its original location.
- (40) “Site that is susceptible to groundwater contamination” under Wis. Stat. § 281.16 (1) (g) means any one of the following:
- a. An area within 250 feet of a private well.
  - b. An area within 1000 feet of a municipal well.
  - c. An area within 300 feet upslope or 100 feet down slope of a direct conduit to groundwater.
  - d. A channel that flows to a direct conduit to groundwater.
  - e. An area where the soil depth to groundwater or bedrock is less than 2 feet.
  - f. An area where the soil does not exhibit one of the following soil characteristics:
  - g. At least a 2-foot soil layer with 40% fines or greater above groundwater and bedrock.
  - h. At least a 3-foot soil layer with 20% fines or greater above groundwater and bedrock.
  - i. At least a 5-foot soil layer with 10% fines, or greater above groundwater and bedrock.
- (41) “Stored manure” means manure that is kept in a manure storage facility or an unconfined manure pile.
- (42) “Substantially alter or significantly alter” means a change initiated by a landowner or operator that results in a relocation of a structure or facility or changes to the size, depth or configuration of a structure or facility including any of the following:
- a. Replacement of a liner of any type in a manure storage facility.
  - b. An increase in the volumetric capacity or area of a manure storage facility.
  - c. A change in a manure storage facility related to a change in livestock management from one species of livestock to another such as cattle to poultry.
  - d. The addition of a new pipe penetration or waste transfer system that requires an alteration to the manure storage facility.
- (43) “Surface waters” means all natural and artificial named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters.
- (44) “T-value (“T”), or Tolerable soil loss” means the maximum average annual rate of soil erosion for each soil type that will permit a high level of crop productivity to be sustained economically and indefinitely.
- (45) “Technical guide” means the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Technical Guide as adopted by the agency, including subsequent amendments or additions.
- (46) “Top of the channel” means an edge, or point on the landscape landward from the ordinary high water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet landward from the ordinary high water mark, the top of the channel is the ordinary high water mark.
- (47) “Unconfined manure pile” means a quantity of manure that is at least 175 cubic feet in volume and which covers the ground surface to a depth of at least 2 inches and is not confined within a manure storage facility, livestock housing facility or barnyard runoff control facility or covered or contained in a manner that prevents storm water access and direct runoff to surface water or leaching of pollutants to groundwater.

- (48) “Waste transfer system” means components such as pumps, pipes, gutters, flow channels, conduits, valves, and other mechanisms installed to convey manure, leachate, contaminated runoff, and milking center wastes from livestock structures to a storage structure, loading area, or treatment area.
- (49) “Waste utilization” means the land application of manure at an environmentally acceptable rate and in such a manner as to make use of the constituent nutrients for maintenance or improvement of the soil and plant resources.
- (50) “Water pollution” means any act or condition 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.
- (51) “Water quality management area (herein after “WQMA”)” means the area within 1000 feet of the ordinary high water mark of navigable waters that consist of a lake, pond, or flowage, except that, for a navigable water that is a glacial pothole lake, the term means the area within 1000 feet from the ordinary high water mark of the lake; an area within 300 feet of the high water mark of navigable waters that consist of a river or stream; and an area that is susceptible to groundwater contamination or has the potential to be a direct conduit for contamination to reach groundwater.
- (52) “Waters of the state” mean those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.
- (53) “Winter grazing area” means a cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period of October 1 to April 30.

### SUBCHAPTER III

## AGRICULTURAL PERFORMANCE STANDARDS AND PROHIBITIONS

### 51.08 Performance standards and prohibitions.

- (1) SHEET, RILL, AND WIND EROSION. All land where crops and feed are grown, including pastures, shall be managed to achieve a soil erosion rate equal or less than the “tolerable” (T) rate established for that soil by the USDA-NRCS.
- (2) TILLAGE SETBACK.
- No crop producer may conduct a tillage operation that negatively impacts stream bank integrity or deposits soil directly in surface waters.
  - No tillage operations may be conducted within 5 feet of the top of the channel of surface waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be required to meet this standard.
  - Crop producers shall maintain the area within the tillage setback required under sub. (b) in adequate sod or self-sustaining vegetative cover that provides a minimum of 70% coverage.
  - This section does not apply to grass waterways installed as conservation practices.
- (3) PHOSPHORUS INDEX. All cropland, pastures, and winter grazing areas must meet the Wisconsin Phosphorus Index (herein after “PI”) established in Wis. Admin. Code NR 151.04 including where the PI applies, the methods for calculating the PI, and acceptable PI runoff levels. A nutrient management plan meeting the standard in Wis. Admin. Code ATCP 50.04 (3) may be used to demonstrate compliance with Wis. Admin. Code NR 151.04.
- (4) NUTRIENT MANAGEMENT.

- a. All crop and livestock producers that apply manure or other nutrients directly or through contract to agricultural fields shall comply with this section. Nutrient management plans are required on pastures unless exempt as established in Wis. Admin. Code ATCP 50.04(3)(b).
- b. This performance standard does not apply to industrial waste and byproducts regulated under Wis. Admin. Code Ch. NR 214, municipal sludge regulated under Wis. Admin. Code Ch. NR 204, or septage regulated under Wis. Admin. Code Ch. NR 113.
- c. Manure, commercial fertilizer, and other nutrients shall be applied in conformance with a nutrient management plan as established in Wis. Admin. Code ATCP 50.04(3).
  - i. The nutrient management plan shall be designed to limit or reduce the discharge of nutrients to waters of the state for the purpose of complying with state water quality standards and groundwater standards.
  - ii. Nutrient management plans for croplands in watersheds that contain impaired surface waters or in watersheds that contain outstanding or exceptional resource waters shall meet the following criteria:
    - 1. Unless otherwise provided in this subsection, the plan shall be designed to manage soil nutrient concentrations so as to maintain or reduce delivery of nutrients contributing to the impairment of impaired surface waters and to outstanding or exceptional resource waters.
    - 2. An updated plan shall be submitted to the department annually, by April 15<sup>th</sup>, to ensure the plan meets requirements of this section.
    - 3. For lands in watersheds containing exceptional or outstanding resource waters, the plan may allow an increase in soil nutrient concentrations if the plan documents that any potential nutrient delivery to the exceptional or outstanding resource waters will not alter the background water quality of the exceptional or outstanding resource waters. For lands in watersheds containing impaired waters, the plan may allow an increase in soil nutrient concentrations if a low risk of delivery of nutrients from the land to the impaired water can be demonstrated.
  - iii. In this ordinance, impaired surface waters are waters identified as impaired pursuant to 33 USC 1313(d)(1)(A) and 40 CFR 130.7. Outstanding and Exceptional Resource Waters are defined in Wis. Admin. Code Ch. NR 102.

**(5) CLEAN WATER DIVERSION.**

- a. All livestock producers within a water quality management area shall comply with this section.
- b. Runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within water quality management areas except that a diversion to protect a private well under Wis. Admin. Code NR 151.015(18)(a) is required only when the feedlot, manure storage area, or barnyard area is located upslope from the private well.

**(6) MANURE MANAGEMENT PROHIBITIONS.** All livestock producers shall comply with this section as follows:

- a. A livestock operation shall have no overflow of manure storage structures.
- b. A livestock operation shall have no unconfined manure piles in a water quality management area.
- c. A livestock operation shall have no direct runoff from a feedlot or stored manure to waters of the state.
- d. A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover. This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

**(7) PROCESS WASTEWATER HANDLING.** All livestock producers shall comply with this section.

- a. There may be no significant discharge of process wastewater to waters of the state.
- b. The department shall consider all of the following factors when determining whether a discharge of process wastewater is a significant discharge to waters of the state:
  - i. Volume and frequency of the discharge.
  - ii. Location of the source relative to receiving waters.
  - iii. Means of process wastewater conveyance to waters of the state.
  - iv. Slope, vegetation, rainfall, and other factors affecting the likelihood of process wastewater discharge to waters of the state.
  - v. Available evidence of discharge to a surface water of the state or to a direct conduit to groundwater as defined under Wis. Administrative Code NR 151.002(11m).
  - vi. Whether the process wastewater is discharged to a site that is defined as a site that is susceptible to groundwater contamination as defined under Wis. Administrative Code NR 151.015(18).
  - vii. Other factors relevant to the impact of the discharge on water quality standards of the receiving water or to groundwater standards.

**(8) MANURE STORAGE FACILITIES.**

- a. Applicability. All livestock producers building new manure storage facilities, substantially altering manure storage facilities, or choosing to abandon their manure storage facilities shall comply with this section.
- b. New construction and alterations.
  - i. New or substantially altered manure storage facilities shall be designed, constructed, and maintained to minimize the risk of structural failure of the facility and to minimize leakage of the facility in order to comply with groundwater standards. The levels of materials in the storage facility may not exceed the margin of safety level.
  - ii. Storage facilities that are constructed or significantly altered on or after January 1, 2011, shall be designed and operated to contain the additional volume of runoff and direct precipitation entering the facility as a result of a 25-year, 24-hour storm.
  - iii. A new manure storage facility means a facility constructed after October 1, 2002.
  - iv. A substantially altered manure storage facility is a manure storage facility that is substantially altered after October 1, 2002.
- c. Closure.
  - i. Closure of a manure storage facility shall occur when an operation where the facility is located ceases operations or manure has not been added or removed from that facility for a period of 24 months. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters.
  - ii. The owner or operator may retain the facility for a longer period of time to be determined by the department on a case by case basis by department consideration of all of the following conditions:
    - 1. The facility is designed, constructed and maintained in accordance with Waupaca County Code Ch. 51.08(8)(b)1.
    - 2. The facility is designed to store manure for a period of longer than 24 months.
    - 3. Retention of the facility is warranted based on anticipated future use.
- d. Existing Facilities. Manure storage facilities in existence as of October 1, 2002, that pose an imminent threat to public health or fish and aquatic life, or are causing a violation of groundwater standards, shall be upgraded, replaced, or abandoned in accordance with this

section. Levels of materials in manure storage facilities may not exceed the margin of safety level.

#### **51.09 Standards.**

- (1) **STANDARDS FOR EVALUATING SHEET, RILL, AND WIND EROSION.** The standards for evaluating sheet, rill, and wind erosion shall be the Revised Universal Soil Loss Equation II (RUSLE2) equation or the Wind Erosion Prediction System (WEPS) models published by NRCS. Copies of RUSLE2 and the WEPS models are on file with the department.
- (2) **STANDARDS FOR DESIGN AND CONSTRUCTION OF MANURE STORAGE FACILITIES.** The standards for design and construction of manure storage facilities shall be the current standards in the NRCS Technical Guide, including 313 Waste Storage Facility, 634 Manure Transfer, 533 Pumping Plant, 520 Pond Lining and Sealing, 521 Pond Lining and Sealing, 522 Pond Lining and Sealing, 378 Pond, 635 Vegetated Treatment Area, 638 Water and Sediment Control Basin, 366 Anaerobic Digester, 632 Waste Separation Facility, and 629 Waste Treatment.
- (3) **STANDARDS FOR NUTRIENT MANAGEMENT.** The standards for management of manure and nutrients applied to cropland and pastures shall be the current standards in the NRCS Technical Guide, including 590 Nutrient Management.
- (4) **STANDARDS FOR CLOSURE OF MANURE STORAGE FACILITY.** The standards for closure of an unused manure storage facility shall be the current standards in the NRCS Technical Guide, including 360 Closure of Waste Impoundments.
- (5) **STANDARDS FOR DETERMINATION OF SIGNIFICANT DISCHARGE AND DIRECT RUNOFF.** The standards for determination of direct runoff shall be the Barnyard Runoff Evaluation Tool (BERT or BARNY) or an equivalent predictive model for manure runoff or the Feedstock Storage Area Evaluation Rating Tool or equivalent predictive model for feed leachate.
- (6) **STANDARDS FOR THE DETERMINATION OF ADEQUATE SOD OR SELF-SUSTAINING VEGETATIVE COVER.** Standards for determination of adequate sod or self-sustaining vegetative cover shall be the standards outlined in the NRCS Technical Guide 528 Prescribed Grazing or vegetative measurement by grid sample shall show at least 70% living plant material cover.
- (7) **SUBSEQUENT MODIFICATION OF STANDARDS.** The standards of the NRCS Technical Guide are adopted and by reference made a part of this section as if fully set forth herein. Any future amendment, revision or modification of the standards incorporated herein are made a part of this section, unless otherwise acted upon by the agency. Copies of the current standards are available at the department.

**51.10 Cost share required.** An owner or operator of an agricultural facility or practice that is in existence before October 1, 2002 may not be required to comply with the performance standards, prohibitions, conservation practices or technical standards under this ordinance unless cost-sharing is available from any source to the owner or operator. A determination that cost-sharing is available to meet the performance standards, prohibitions, conservation practices or technical standards under this subsection will be determined in accordance with Wis. Admin. Code NR 151.09(4)(d) or NR 151.095(5)(d) when funding is provided under Wis. Stat. § 281.65, and will be determined in accordance with Wis. Admin. Code Ch. ATCP 50 when funds are from any other source. Cost sharing under this section is only required for the minimum practice necessary to meet the performance standards and prohibitions.

## SUBCHAPTER IV

### MANURE STORAGE FACILITY PERMIT, USE, AND SPECIFICATIONS

#### **51.11 Application for Issuance of Permits.**

- (1) **PERMIT REQUIRED.** No person may do any of the following without obtaining a permit in accordance with this section:
  - a. Construct new manure or feed leachate storage facility or substantially alter existing manure or feed leachate storage facility, including the construction or substantial alteration of waste transfer systems connected to a manure storage facility.
  - b. Upgrade, repair or replace a manure storage or feed leachate storage facility that has been identified as posing an imminent threat to public health, fish and aquatic life, or groundwater under 51.08(8)(d).
  - c. Close an existing manure storage facility, including conversion of its use, regardless of whether the facility must be closed in accordance with s. 51.08(8)(d).
- (2) **NO PERMIT REQUIRED.** Manure storage facilities in place as of the date of passage of this ordinance shall be determined to be existing storage facilities subject to the rules in place at the time of construction and shall not be required to obtain a permit unless they are being substantially altered or closed after the date of passage.
- (3) **EXCEPTION TO PERMIT REQUIREMENT.** Emergency repairs such as repairing a broken pipe or equipment, leaking dikes, or the removal of stoppages may be performed without a permit. Any repairs performed as a result of the facility failing, overtopping or repairs substantially altering the original design or construction of a facility shall be reported, in writing, immediately within one business day of the emergency to the department for a determination by the department whether the repairs made were reasonably necessary to respond to the existing emergency. The department is authorized to enter upon lands without owner consent where a repair has been made to a facility to make this determination.

A permit shall be required for any work deemed to constitute additional alteration or repair to the facility in excess of that reasonably necessary to respond to the emergency. The department's determination shall be rendered within 5 business days of the reporting. Work done without a proper permit shall constitute noncompliance with the ordinance. The passage of this ordinance is not to be construed as a requirement that livestock operations construct manure storage facilities but rather that facilities that are constructed be required to obtain the appropriate permits and approvals.

**51.12 Fees.** All fees under this ordinance are established pursuant to a fee schedule adopted by the Land & Water Conservation Committee. Copies of the current fee schedule are kept on file at the department. Any permit fee is payable upon submission of a permit application.

**51.13 Manure storage facility plan requirements.** Each application for a manure storage permit under this section shall include the completion of the county permit application and a detailed manure storage facility construction plan. The applicant can employ the services of a private design consultant or a registered professional engineer to prepare the plan. Technical assistance for plan development may also be made available to applicants upon request through the department, as available staff time will allow.

- (1) MANURE STORAGE FACILITY PLAN REQUIREMENTS. Manure storage structures, and any additions to such structures, shall maintain the setbacks pursuant to Ch. 34 Waupaca County Code of Ordinances.
- (2) MANURE STORAGE CONSTRUCTION PLAN REQUIREMENTS. A complete permit application for a new or modified storage facility shall meet or exceed the minimum established limits and specific criteria within NRCS Technical Standard 313 for Waste Storage and additional Technical Standards, including, but not limited to, 342 Critical Area Planting, 382 Fence, 558 Roof Runoff Structure, 590 Nutrient Management, 533 Pumping Plant, 520 Pond Lining and Sealing, 521 Pond Lining and Sealing, 522 Pond Lining and Sealing, 378 Pond, 360 Waste Storage Closure and 634 Manure Transfer where applicable. The plan shall include all of the following:
  - a. The number, type, and size of animals for which storage is provided and the duration for which storage is to be provided.
  - b. The type of bedding to be used in the operation and all aspects of handling and recovery of this bedding material.
  - c. A site plan of the facility and its location in relation to the following:
    - i. "Residences." The location of any residential buildings other than that of the owner of the premises, or owned by the owner of the premises but occupied by his/her family, agent or employee within 300 feet of the facility shall be identified.
    - ii. "Property Lines." The location of any property lines within 1500 feet of the facility shall be identified.
    - iii. "Wells." The location of any wells within 500 feet of the facility shall be identified.
    - iv. "Utilities." The location of all utilities within 500 feet of the facility shall be identified.
    - v. "State and federal highways, county and town roads, and public streets designated as roadways." The location of any roadway within 200 feet of the facility shall be identified.
    - vi. "Navigable waters and drainage ways." The location of any navigable water and drainage ways within 300 feet of the facility shall be identified.
    - vii. "Floodplains and other water bodies." The location of floodplains and other waterways within 100 feet of the facility shall be identified.
  - d. The north arrow, scale of the drawing, legal description of the proposed facility, and location, description and elevation of a temporary benchmark.
  - e. The structural details including, but not limited to, dimensions, cross-sections, concrete thickness, reinforcing steel location and design loading details when other than NRCS pre-qualified designs and drawings are used.
  - f. The construction and material specifications including, but not limited to, applicable specifications for earth fill, excavation, concrete, reinforcing steel, timber and pipes.
  - g. The soil test pit locations, elevations, and soil descriptions to a depth as required for the planned structure according to the NRCS Technical Standard 313. Soil test pits must be verified by department staff at the time of investigation.
  - h. The elevation of groundwater, bedrock or seasonally saturated conditions if encountered in the soil profile and the date of any such determinations.
  - i. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater.
  - j. A time schedule for construction of the facility.
  - k. The details and plans for the method and structures used in transferring manure into and from the facility.
  - l. A plan to control erosion during the construction or modification of the facility.

- m. Plans that address the safety requirements of the facility as needed.
  - n. An emergency response plan identifying the names and phone numbers of individuals or others to be notified in the event of any leaks, spills or other system failures that could discharge manure.
  - o. A certification by a professional engineer registered in the State of Wisconsin, or an engineering practitioner certified by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or the NRCS that the plans meet technical and ordinance standards.
  - p. An operation and maintenance plan for the facility signed by the owner that identifies the basics of operation, the manure removal interval, the use of agitation pads, and required repairs to berms and roads that are a necessary part of the facility function and meets all other requirements of NRCS Technical Standards 313 and 634.
  - q. A nutrient management plan that complies with Wis. Admin. Code ATCP 50.04. The nutrient management plan must be prepared by a nutrient management planner qualified under Wis. Admin. Code ATCP 50.04(3) and submitted prior to issuance of the permit.
  - r. Any other additional information required by the department to protect water quality and determine compliance with this section.
- (3) SAFETY DEVICES.** The following safety devices are required on all manure storage facilities in Waupaca County whether or not a permit has been issued under this ordinance:
- a. A fence around the manure storage facility is required unless the manure storage facility has vertical walls 5 feet above the ground surface or the manure storage facility has a cover that will support foot traffic. Fences shall be built according to NRCS 382 Fence.
  - b. A grate or tank cover, covering the opening to the pump or gravity flow collection pit, which is designed to withstand all load requirements. A barrier around the transfer system may be used in lieu of the grate only if the barrier provides protection to children and others.
  - c. Proper ventilation is required in enclosed areas.
  - d. Safety stops, gates, or both shall be installed at push-off ramps and load out areas of impoundments and structures to prevent accidental entry of tractors and other equipment.
  - e. Manure storage facilities and their components shall have signs at all access points to warn of the danger of entry. The department may make such signs available.
  - f. Other devices deemed necessary by the department, NRCS Technical Guide, Agricultural Waste Management Field Handbook (AWMFH) or Engineering Field Handbook (EFH).
- (4) MANURE STORAGE FACILITY CLOSURE APPLICATION REQUIREMENTS.** A complete permit application for waste storage facility closure shall meet all standards as outlined in NRCS Technical Standard 360 and shall specify:
- a. Provisions to remove and properly dispose of all accumulated wastes in the manure facility.
  - b. Provisions to remove any concrete or synthetic liner, or properly use pieces of the concrete or synthetic liner as clean fill at the site.
  - c. Provisions to remove and properly dispose of any soil saturated with waste from the manure storage facility.
  - d. Provisions to remove any soils, to the depth of significant manure saturation or 2 feet, whichever is less, from the bottom and sides of a facility without a constructed liner.
  - e. Provision to remove or permanently plug the waste transfer system serving the manure storage facility.
  - f. Covering all disturbed area with topsoil, seeding the areas with a grass mixture, and mulching the seeded area. This section does not apply if an alternative use of the site is authorized under an abandonment plan approved by the county as part of the permit.
  - g. Any other additional information required by the department to protect water quality and determine compliance with this section.

**51.14 Review of application.** The department shall receive and review all permit applications. The department shall determine if the proposed facility meets required standards set forth in Waupaca County Code s. 51.13. Within 45 calendar days after receiving the completed application and fee, the department shall inform the applicant, in writing, whether the permit application is approved and issue the permit or shall inform the applicant, in writing, of the reasons for disapproval. If additional information is required, the department shall notify the permit applicant. The department has 30 calendar days to approve or disapprove the permit application, in writing, from receipt of the requested additional information.

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

- (1) Manure storage facility design, construction, closure, management and utilization activities shall be carried out in accordance with the manure facility plan and applicable standards specified in Waupaca Co. Code s. 51.13.
- (2) Permittees must obtain all required permits and authorizations required by the State of Wisconsin, Waupaca County and the local municipality before beginning any construction activity.
- (3) The permittee shall give 5 working days' notice to the department before starting any construction or closure activity authorized by the permit.
- (4) Written approval from the department must be obtained prior to any modifications to the permitted plans.
- (5) Activities authorized by permit must be completed within two (2) years from the date of issuance, after which the permit shall be void. Permits may be extended annually upon request made prior to the expiration with approval from the department.
- (6) Following completion of construction and prior to use, an agricultural or civil engineer registered in the State of Wisconsin or a DATCP, NRCS, or LWCD engineering practitioner and the permittee, and, if applicable, the contractor shall certify in writing on forms provided by the Department that all facilities and systems were installed as planned, including as-built dimensions and authorized changes or modifications made during construction.
- (7) The permittee, engineer and contractor shall participate in a pre-construction conference with county staff before initiating construction of a new facility to outline the requirements and responsibilities of all of the involved parties.
- (8) The department shall provide onsite inspection and final approval for all construction projects conducted under a permit issued under this chapter. To receive final approval, a manure storage facility must be fully constructed as designed including the marking of the maximum operating level and implementation of all safety devices.
- (9) No permitted manure storage facilities may receive manure until the county provides its final approval. No manure may be emptied from a permitted manure storage facility until the county approves the nutrient management plan submitted by the applicant.
- (10) Provide a copy of the complete nutrient management plan annually to the department by April 15th of each year to document compliance with ordinance requirements.

**51.16 Permit revocation.** The department may revoke the permit issued under this ordinance if the holder of the permit has misrepresented any material fact in the permit application or manure facility plan, or if the holder of the permit violates any of the conditions of the permit.

## SUBCHAPTER V

### PROCEDURES AND ADMINISTRATION

#### **51.17 Administration.**

- (1) DELEGATION OF AUTHORITY. The department shall be the agency designated to administer and enforce this ordinance.
- (2) ADMINISTRATIVE DUTIES. In the administration and enforcement of this ordinance, the department shall:
  - a. Keep an accurate record of all permit applications, manure facility plans, permits issued, inspections made and other official actions.
  - b. Review permit applications and issue permits in accordance with this chapter.
  - c. Review the nutrient management plan prepared for the facility.
  - d. Review designs of conservation practices and inspect construction and implementation of them to ensure that they are constructed and maintained according to technical standards and design specifications.
  - e. Inventory and ensure landowner compliance with agricultural performance standards and prohibitions in Waupaca County Code s. 51.08.
  - f. Inspect manure facility construction to insure the facility is being constructed according to plan specifications.
  - g. Investigate complaints relating to compliance with the ordinance.
  - h. Perform other duties as specified in this ordinance.
- (3) INSPECTION AUTHORITY. The department is authorized to enter upon any lands affected by this chapter to inspect the land for the purpose of determining compliance with this chapter including the inspection of sites prior to or after the issuance of a permit, inspection of sites where unpermitted storage facilities are located, and inspection of land subject to agricultural performance standards. If permission cannot be received from the applicant or permittee, entry by the department shall be according to Wis. Stat. § 92.07(14). Refusal by the applicant or permittee to grant permission to the department to enter lands affected by the provisions of this ordinance shall be grounds for denial of or revocation of the permit. The Department, at its discretion, may seek the assistance of the Corporation Counsel in obtaining a Special Inspection Warrant pursuant to Wis. Stat. § 66.0119 for entry upon affected lands. The department is also authorized to request records from landowners to determine compliance with this chapter.
- (4) ENFORCEMENT AUTHORITY.
  - a. The cost share requirements, notification requirements, and compliance periods for landowners listed in Wis. Admin. Code NR 151.09, NR 151.095, ATCP 50.08, ATCP 50.40, and ATCP 50.54 shall be used when applicable in the enforcement of this ordinance.
  - b. In addition to the authority to revoke permits specified in this chapter, the department is authorized to post an order stopping construction work upon any permitted facility that has had a permit revoked or on land currently undergoing activity in violation of this ordinance. Notice is given by both posting upon the land where the violation occurs one or more copies of a poster stating the violation and by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order shall specify that the activity shall cease immediately. Failure to comply with such an order shall constitute a separate and independent violation of the ordinance.
  - c. A permit revocation or order stopping work shall remain in effect until retracted by the department, or by a court of competent jurisdiction, or until the activity is brought into compliance with the ordinance and approved by the department.
  - d. The department is authorized to refer any violation of this ordinance, or of an order stopping work issued pursuant to this ordinance, to the Waupaca County Corporation Counsel for commencement of further legal proceedings, seeking penalties and other appropriate relief in enforcement of the ordinance, as set forth in Waupaca Co. Code s. 51.19.

#### **51.18 Variances.**

- (1) No variance from the standards in the technical guide may be granted unless the applicant or department receives a variance from the technical standards through the NRCS or other qualified engineering authority. If public funds are involved, this may be a program requirement.
- (2) No variance from the performance standards in Waupaca County Code s. 51.08 may be granted unless the county complies with the requirements for variances specified in Wis. Admin. Code NR 151.097, and receives approval from the Department of Natural Resources (“WDNR”). Requests for a variance shall be made in writing and shall provide information documenting all of the following:
  - a. Compliance with the performance standard or technical standard is not feasible due to site conditions.
  - b. The landowner or operator will implement best management practices or other corrective measures that ensure a level of pollution control that will achieve a level of water quality protection comparable to that afforded by the performance standards in Wis. Admin. Code Ch. NR 151.
  - c. The landowner or operator or their agents or assigns did not create the conditions for which the variance is requested.
- (3) PROCESS. The department shall use the following process when administering a variance request:
  - a. The landowner or operator shall submit the variance request to the department within sixty (60) calendar days of receiving the notice. The department shall send any variance request to the WDNR within ten (10) business days of receiving the variance request.
  - b. The WDNR shall make its determination based on the factors in Wis. Admin. Code NR 151.097(3).
  - c. The WDNR shall notify the landowner or operator and the department of its determination. If the variance is granted, the WDNR or department shall send to the landowner or operator an amended notice.
  - d. The period of time required to make a ruling on a variance request does not extend the compliance period allowed under Wis. Admin. Code NR 151.09 and 151.095.

## **51. 19 Enforcement and penalties.**

- (1) PROCEDURES. The department may do all of the following:
  - a. Provide voluntary cost sharing to secure compliance.
  - b. Follow the procedures in Wis. Admin. Code NR 151.09 to implement and enforce the cropland performance standards and the procedures in Wis. Admin. Code NR 151.095 to implement and enforce the livestock performance standards.
  - c. Pursue any other action or remedy authorized under this ordinance.
- (2) INVESTIGATION AND NOTICE OF VIOLATION. Department staff is responsible for conducting the necessary inspection and investigation to ensure compliance with this chapter and documenting the presence of violations.
- (3) ENFORCEMENT OF VIOLATIONS.
  - a. Violations of a permit or other approval issued under this chapter, or any condition or approved plan associated with such permit or other approval, shall be deemed a violation of this chapter and shall constitute grounds for revocation of the permit as well as fines, forfeitures, and any other available remedies. A permit or other approval may be revoked only by action of the body that initially granted the permit or other approval, following procedures required for its initial issuance to the extent practical. The decision of the appropriate body shall be furnished to the permit holder in writing, stating the reasons thereof.
  - b. A permit or other approval issued in violation of this chapter, other ordinances of the Waupaca County Code of Ordinances, the Wisconsin Administrative Code, or Wisconsin

Statutes, gives the permit holder no vested right to continue the activity authorized by the permit, and the permit is considered voidable.

- (4) Any manure storage facility erected, moved or structurally altered or any use established in violation of the provisions of this chapter by any person, firm, association, corporation, including building contractors or their agents, shall be an unlawful structure or use.
- (5) The Waupaca County Corporation Counsel may bring an action to enforce this chapter and seek any remedy, legal or equitable, subject to prosecutorial discretion. The Corporation Counsel may seek an order to enjoin, remove, or vacate any violation of this chapter, or any use, erection, moving or structural alteration of any building, or use in violation of this chapter and seek fines as provided herein.
- (6) The provisions of this chapter shall be enforced under the direction of the Waupaca County Board of Supervisors, through the department, law enforcement officers, and the Corporation Counsel. Any person, firm, company, or corporation that violates, disobeys, omits, neglects, or refuses to comply with, or who resists the enforcement of any of the provisions of this chapter, shall be subject to a fine of not less than \$50 or more than \$500 together with the costs of action. Any person found guilty of violating this chapter who has previously been convicted of a violation of the same ordinance, shall be subject to a fine of not less than twice the established forfeiture for each such offense, together with the costs of action. Each day a violation exists or continues constitutes a separate offense. This chapter may be enforced by any remedy, legal or equitable. Actions may be brought in Waupaca County Circuit Court by the Corporation Counsel.

#### **51.20 Appeals from administrative decisions.**

- (1) **AUTHORITY.** The committee shall hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination by department staff in administering this ordinance.
- (2) **PROCEDURE.** Any appeal shall be made by written request, mailed or delivered to the Waupaca County Land & Water Conservation Department, c/o Waupaca County LWCD 811 Harding St., Waupaca, Wisconsin, 54981, within 60 calendar days of any determination of the department. The request shall state the grounds upon which it is contended that the decision should be modified or reversed. The committee shall, as soon as is reasonable but no later than its next regularly scheduled meeting, review the determination under appeal.
- (3) **PERSONS WHO MAY APPEAL.** Appeals may be taken by any person having substantial interest that is adversely affected by the order, requirement, decision, or determination for which review is sought.

Effective upon passage and publication.

As adopted by the Waupaca County Board of Supervisors on June 21, 2005 - Chapter 10.50. Repealed and recreated by the Waupaca County Board of Supervisors on XXXXX 00, 2018 – Chapter 51.

**REPEAL SECTIONS 10.50 THROUGH 10.54 OF  
THE WAUPACA COUNTY CODE OF ORDINANCES CHAPTER 10 PUBLIC  
NUISANCES/HEALTH HAZARDS AND CREATE CHAPTER 51 AGRICULTURAL  
PERFORMANCE STANDARDS AND MANURE MANAGEMENT**

The Waupaca County Board of Supervisors does hereby ordain that the current Waupaca County Public Nuisance/Health Hazards Ordinance, Chapter 10 of the Waupaca County Code of Ordinances sections 10.50 through 10.54 be entirely repealed and that Agricultural Performance Standards and Manure Management, Chapter 51 of the Waupaca County Code of Ordinances be created.

Recommended by the Land & Water Conservation Committee and the Legislative, Judicial, Ethics, Safety & Security Committee for consideration by the Waupaca County Board of Supervisors.

**EFFECTIVE DATE**

Upon enactment of the County Board of Supervisors, the ordinance amendment to repeal and recreate sections of the Waupaca County Code of Ordinances as set forth above will be in full force and effect within Waupaca County and each Town as provided in Section 59.14(1), Wis. Stats.

Approved on the 21<sup>st</sup> day of August, 2018

\_\_\_\_\_ ayes \_\_\_\_\_ nays

**ATTEST:**

\_\_\_\_\_  
Jill Lodewegen  
Waupaca County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane L. Meulemans  
Corporation Counsel

