

## CHAPTER 26

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### ANIMAL WASTE STORAGE ORDINANCE

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**26.01 Introduction.** (1) Title. This section may be referred to as the “Animal Waste Storage Ordinance.”

(2) Authority. This section is adopted under authority granted by Wis. Stat. secs. 59.02 and 92.16.

(3) Purpose. The purpose of this ordinance is to promote the health and general welfare of the public by protecting the surface and groundwater of the County through the regulation of local animal waste management practices.

(4) Applicability. This ordinance applies to all unincorporated areas of the County and to any person that owns, operates, constructs, installs, alters, closes, or changes the use of an animal waste storage facility or transfer system.

(5) Construction. This ordinance is to be interpreted liberally to affect the purposes of the ordinance. This ordinance does not abrogate, annul, impair, interfere with, limit, or repeal any existing ordinance or any other power granted by the Wisconsin Statutes.

(6) Severability. The provisions of this ordinance are severable. If any provision or its application to any person or circumstance is determined to be invalid, that invalidity will not affect any other provision or application that can be given effect without the invalid provision or application.

**26.02 Definitions.** In this ordinance:

“Animal unit” means a unit of measure used to determine the total number of single animal types or the combination of animal types that are fed, confined, maintained, or stabled in an animal feeding operation. For the purpose of this ordinance, one animal unit is equivalent to 1000 pounds of livestock live weight.

“Animal waste” means manure from livestock, poultry or other animals; manure processing derivatives; leachate from manure piles, manure storage, or feed storage; and runoff or wastewater that contains manure.

“Animal waste storage facility” or “storage facility” means an impoundment or structure that is intended or used to store animal waste and that has a volume of 500 cubic feet or more and a depth of 2 feet or more.

“Director” means the Director of the Soil and Water Conservation Department or the Director’s designee.

“Land Conservation Committee” or “LCC” means the Land Conservation Committee created by sec. 2.04(7).

“Livestock facility” means a feedlot, dairy farm, or other operation where livestock are or will be fed, confined, maintained, or stabled for a total of 45 days or more in any 12-month period. A livestock facility includes all of any tax parcel of land on which it is located, but does not include a pasture or winter grazing area.

“Manure” means excreta from livestock kept at a livestock facility and includes feathers, hair, livestock bedding, soil, water, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

“Natural Resources Conservation Service” or “NRCS” means the United States Department of Agriculture agency that provides technical assistance and information in order to help people conserve, maintain, and improve natural resources and the environment.

“Nutrient Management Plan” means a plan that balances the nutrient needs of a crop with the nutrients

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available from fertilizer, legume crops, manure, and other sources, and that minimizes the movement of nutrients to surface and groundwater.

“Safety Device” means a device that is designed to protect people and livestock from the hazards associated with an animal waste storage facility or transfer system. Safety devices include fences and other devices required by Technical Standards 313, 360, 382, and 634.

“SWCD” means the Soil and Water Conservation Department.

“Transfer system” means a conveyance system that uses equipment, a structure, or permanent conduit or pipeline that is intended or used to move animal waste from a source to cropland, a loading area, a storage facility, or a treatment area; but does not include a system such as an alley scraper, barn cleaner, or belt that moves manure within a housing facility to the transfer system and it does not include a vehicle used to transfer manure from a loading area, storage facility, or treatment area to a field or to another storage facility.

“Technical Guide” means the United States Department of Agriculture, Natural Resources Conservation Service, Wisconsin Field Office Technical Guide that contains technical data and technical standards referenced in this ordinance. The technical guide can be accessed through the USDA website.

“Technical Standard” means a numbered section in the Technical Guide.

**26.03 Regulation of Animal Waste Storage Facilities Pursuant to Wis. Stat. sec. 92.16.** (1) Immediate Response to Imminent Threat Required. The owner or operator must immediately repair, replace, or close any animal waste storage facility or transfer system that poses an imminent threat to public health or fish and aquatic life.

(2) Overflowing, Leaking, Malfunctioning, or Failing Facilities. The owner or operator must repair, replace, or close any animal waste storage facility or transfer system that is overflowing, leaking, malfunctioning, or failing within 1 year. The Director may grant an extension of up to 1 year if a written request is made within the first year and the Director determines that the request is reasonable under the circumstances.

(3) Operational Compliance. The owner and operator must operate any animal waste storage facility

and transfer system in a manner that is consistent with the operating methods contained in the Technical Standards.

(4) Corrective Action. The owner and operator must bring the operation of any animal waste storage facility and transfer system into compliance with the operating methods contained in the Technical Standards within 1 year of being notified by the Director of any noncompliance. The Director may grant an extension of up to 1 year if a written request is made within the first year and the Director determines that the request is reasonable under the circumstances.

(5) Closure. (a) An animal waste storage facility must be closed if animal waste has not been added to the facility for a period of 24 months. The closure must comply with the requirements of Technical Standard 360.

(b) The Director may exempt an animal waste storage facility from the closure requirement if the Director determines that the facility meets current Technical Standards, appropriate safety devices are installed, the owner has demonstrated an anticipated future use for the facility, and the owner agrees that all waste and waste-saturated soils will be removed from the facility within 36 months following the last date on which any animal waste was added to the facility.

(6) Safety Devices. Safety devices are required on all animal waste storage facilities. A safety fence must be constructed around the storage facility. The fence must be at least 4 feet in height and constructed of woven or welded wire or livestock panel, or the fence must be of a design that provides people and livestock equal or greater protection from the hazards associated with a storage facility. Any fence, gate, and other safety device must be installed in compliance with Technical Standards 313, 382, and 634.

**26.04 Standards.** Manitowoc County adopts the conservation practice standards promulgated by the United States Department of Agriculture, Natural Resources Conservation Service, Wisconsin Field Office in its Technical Guide and by the Wisconsin Department of Natural Resources. In the event that these conservation practice standards are revised, the LCC is authorized to adopt the revised standard, which will then be applied prospectively.

**26.05 Permits.** (1) Permit Required. Any owner, operator, or other person who constructs, installs, modifies, closes, or changes the use of an animal waste storage facility or transfer system; activates a closed animal waste storage facility or transfer system; or

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undertakes an activity subject to this ordinance must have a permit from SWCD.

**(2) Emergency Exception.** A permit is not required for emergency repairs on any component of an animal waste storage facility or transfer system that restores the facility or system to its original permitted condition or that brings an unpermitted facility or system into compliance with the technical standards. The owner or operator must report any emergency repair to the Director within 3 days of the start of any emergency repair.

**(3) Fees.** (a) The fee for a permit for an animal waste storage facility with 300 or fewer animal units is \$500.

(b) The fee for a permit for an animal waste storage facility with 301 to 1,000 animal units is \$750.

(c) The fee for a permit for an animal waste storage facility with 1,001 to 2,000 animal units is \$1,150.

(d) The fee for a permit for an animal waste storage facility with 2,001 to 3,000 animal units is \$1,500.

(e) The fee for a permit for an animal waste storage facility with more than 3,000 animal units is \$2,500.

(f) The fee for a permit for modifying an animal waste storage facility or for activating a closed animal waste storage facility is \$500.

(g) The fee for a permit for constructing or modifying a transfer system is \$100, except that the fee is waived if the transfer system is constructed or modified in conjunction with the permitted construction or modification of an animal waste storage facility or the permitted activation of a closed animal waste storage facility.

(h) There is no fee for a permit for closing an animal waste storage facility.

(i) The fees specified in pars. (a) through (g) are doubled if any excavation, construction, or other activity that requires a permit is started before the permit is issued, and other penalties may be imposed for any excavation, construction, or other activity that takes place in violation of any provision of this ordinance.

**(4) Plan Requirement.** (a) Any person who applies for a permit to construct, install, modify, or change the use of an animal waste storage facility or transfer system must submit a storage facility plan certified by

an agricultural or civil engineer or by a DATCP or NRCS engineering practitioner; an animal waste management plan; and a preliminary closure plan showing that person will comply with the requirements of Technical Standards 313, 360, 382, 590, and 634.

(b) Any person who applies for a permit to close an animal waste storage facility must submit a closure plan showing that the storage facility will be closed in compliance with the requirements of the technical standards.

**(5) Review of Application.** (a) SWCD will review each permit application and determine whether the application is complete. SWCD will notify the applicant within 45 days of the date of the application whether the application is complete. If the application is not complete, the applicant must submit the missing information. SWCD may conduct an onsite inspection.

(b) SWCD will issue a written decision to grant the permit or deny the application within 90 days of the date that it declares that the application is complete.

(c) If SWCD fails to issue a permit or deny the application within 90 days of the date the application is complete, the application will be deemed approved and the applicant may proceed as if the permit had been issued.

**(6) Permit Conditions.** All permits issued under this ordinance are subject to the following conditions:

(a) The design, construction, and management of a storage facility must be carried out in accordance with the storage facility plan, animal waste management plan, and any standards adopted pursuant to sec. 26.04.

(b) The permit holder must notify SWCD at least 5 business days before starting any construction activity authorized by the permit.

(c) The permit holder must obtain written approval from SWCD prior to modifying the approved storage facility plan or the animal waste management plan.

(d) The owner must provide SWCD with written certification within 30 days following completion of the construction, installation, alteration, or closure of an animal waste storage facility or transfer system. The written certification must be signed by an agricultural or civil engineer or by a DATCP or NRCS engineering practitioner; provide an as-built drawing or plan; and state that the activity was completed in accordance with the approved storage facility plan and complies with all permit conditions.

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(e) A permit issued pursuant to this ordinance expires 2 years from the date the permit is issued, but the Director may extend the permit in response to a written request made prior to its expiration if the Director determines that an extension is reasonable under the circumstances.

(7) Permit Revocation. SWCD may revoke any permit issued under this ordinance if the permit holder misrepresents or omits any material fact in the permit application, storage facility plan, or animal waste management plan, or if the permit holder violates any permit condition. The Director will provide written notice of the revocation and the reason for the revocation.

**26.06 Certificate of Use.** (1) Certificate Requirement. No person may operate or use an animal waste storage facility or any portion of an animal waste storage facility that was constructed after the effective date of this ordinance unless the person has a valid certificate of use for the storage facility or portion of the animal waste storage facility that is being operated or used.

(2) Issuance. SWCD will issue a certificate of use upon receipt of the written certification required by sec. 26.05(6)(d).

(3) Nutrient Management Plan Requirement. The owner or operator of a storage facility must annually prepare and follow a nutrient management plan that complies with technical standard 590. A copy of the nutrient management plan must be provided to SWCD upon request.

(4) Certificate Revocation. SWCD may revoke a certificate of use if there is a misrepresentation of any material fact in the permit application, a misrepresentation of any material fact in the storage facility plan, a misrepresentation of any material fact in the animal waste management plan, a failure to comply with the nutrient management plan requirement, a failure to provide SWCD with a copy of the nutrient management plan upon request, or for multiple or repeat violations of this ordinance. The Director will immediately provide written notice of the revocation and the reason for the revocation.

**26.07 Land Conservation Committee Powers.** The LCC has the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Director.

(2) To hear and decide special exceptions to the terms of this ordinance upon which the LCC is required to pass.

**26.08 Administration and Enforcement.** (1) This ordinance will be administered by the Soil and Water Conservation Department and the Director shall:

(a) Keep an accurate record of all permit applications, permits issued, plans, inspections, and other official actions.

(b) Review permit applications and issue permits under sec. 26.05.

(c) Investigate complaints relating to compliance with this ordinance.

(d) Assure that cost-share funds are made available as required by law.

(e) Perform any other duties specified in this ordinance.

(2) Inspection Authority. The Director is authorized pursuant to Wis. Stat. sec. 92.07(14) to enter upon any lands affected by this ordinance to inspect the land prior to or after issuance of a permit to determine compliance with this ordinance. If permission to enter lands is not given by the applicant or permit holder, entry may be gained pursuant to Wis. Stat. sec. 66.0119. Refusal to grant permission to enter lands affected by this ordinance for purposes of inspection is grounds for denial or revocation of a permit.

(3) Stop Work Order Authority. The Director is authorized to post an order stopping work upon any land whenever the Director has reason to believe that such work violates this ordinance or whenever a permit authorizing such work has been revoked. Notice will be given by posting one or more copies of an order describing the violation on the land where the violation occurs and by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order will specify that the activity must cease or be brought into compliance within a specified time period. Any order stopping work will remain in effect until withdrawn by the Director or vacated by a court of competent jurisdiction. Any permit revocation will be permanent, but the Director may issue a new permit upon a showing that all violations have been or will be corrected and that any future activity will be in compliance with this ordinance.

(4) Abatement Order Authority. The Director may issue an order to abate any violation of this ordinance.

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(5) Citation Authority. The Director may issue a citation for any violation of this ordinance.

(6) Referral Authority. The Director may refer a violation of this ordinance to Corporation Counsel for legal action.

(7) Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

**26.09 Appeals.** (1) Appeals under this ordinance will be conducted in accordance with Wis. Stat. Ch. 68.

(2) The LCC is authorized to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination by the Director in administering this ordinance.

**26.10 Violations.** (1) It is unlawful for a person to violate any provision of this ordinance or any condition contained in a permit issued pursuant to this ordinance.

(2) It is unlawful for any person to knowingly provide false information, make a false statement, or fail to provide or misrepresent any material fact to a county agent, board, commission, committee, department, employee, officer, or official acting in an official capacity under this ordinance

(3) It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or otherwise resist an order issued pursuant to this ordinance.

(4) A separate offense is deemed committed on each day that a violation occurs or continues.

(5) The failure of any agent, board, commission, committee, department, employee, officer, or official to perform any official duty imposed by this code will not subject the agent, board, commission, committee, department, employee, officer, or official to the penalty imposed for a violation of this code unless a penalty is specifically provided.

**26.11 Penalties.** (1) Except as provided in subs. (2) and (3), a person will, upon conviction for a violation of this ordinance, forfeit not less than \$250 nor more than \$500 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

(2) A person will, upon conviction for a violation of any provision contained in sec. 26.03(2) forfeit not

less than \$500 nor more than \$1,000 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

(3) The minimum and maximum forfeitures specified in this section are doubled for a person who is convicted for the same violation of this ordinance within a 24-month period.

(4) A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but who fails or refuses to do so may be confined in the county jail until the forfeiture and costs are paid, but the period of confinement may not exceed 30 days. In determining whether a person has the ability to pay, all items of income and all assets may be considered regardless of whether the income and assets are subject to garnishment, lien, or attachment by creditors.

(5) In the event an offense is not abated as ordered, Manitowoc County may take such action as is necessary to abate the offense and the cost of such abatement will become a lien upon the person's property and may be collected in the same manner as other taxes.

(6) The failure of any employee, official, or officer of the County to perform any official duty imposed by this code will not subject the employee, official, or officer to the penalty imposed for violation of this code unless a penalty is specifically provided.

### HISTORY

1/16/07: Created by Ord. 2006/2007-111 effective May 1, 2007.