CHAPTER 18

PUBLIC HEALTH, SAFETY, WELFARE AND PROTECTION

18.100 ANIMAL WASTE MANAGEMENT ORDINANCE

18.101 INTRODUCTION

18.102 AUTHORITY.

This Chapter is adopted under Wis. Stat., 59.02, 59.03, 59.70(20) 92.15 and 92.16 of the Wisconsin Statutes. The title of this ordinance is “Oconto County Animal Waste Management Ordinance.” It regulates design, construction, maintenance and abandonment of animal waste storage facilities, animal feedlots, nutrient management, silo seepage and abandoned feed piles.

18.103 DECLARATION OF POLICY.

(1) The Oconto County Board of Supervisors finds this ordinance is designed to protect and promote our agricultural industry and also to promote and enhance the water quality, aesthetic conditions, and general welfare of the people and communities within Oconto County.

(2) The County of Oconto permits properly conducted agricultural operations within the county. Owners of property included within areas zoned for agricultural use or adjacent to such areas should expect that they will be subject to conditions arising from such agricultural operations. Conditions may include, but are not limited to exposure to: noise, lights; fumes; dust; smoke; insects; chemicals; machinery operations, including aircraft during any hour of day or night; storage and land application of manure; and application by spraying or other means chemical pesticides, fertilizers and other soil amendments. The conditions described may occur as a result of any agricultural operation which is in conformance with accepted customs, standards, laws and regulations. Residents in and adjacent to agricultural areas must accept such conditions as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector. Oconto County has established the Land Conservation Department to assist in the resolution of any animal waste management disputes, which might arise between residents of the county regarding agricultural operations.
18.104 INTENT.

(1) The intent of the ordinance is to protect the groundwater and surface water resources of Oconto County by regulating

I. Permitting of Storage Facilities
II. Nutrient Management practices
III. Enforcement of the following prohibitions:
   a. No overflow of manure storage structures
   b. No unconfined manure stacking (piling) within water quality management areas (adjacent to stream banks, lakeshores, and in drainage channels.)
   c. No direct runoff from feedlots or stored manure to waters of the state.
   d. No unlimited livestock access to waters of the state where high concentrations of animals prevent adequate sod cover maintenance.

IV. Permit new and expanding feedlots
V. Required removal of feed piles.

18.105 INTERPRETATION.

(1) In its interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Oconto County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

18.106 SEVERABILITY CLAUSE.

(1) If any section, provision or portion of this ordinance is ruled invalid by a court, the remainder of the ordinance shall not for that reason be rendered ineffective.

18.107 DEFINITIONS.

(1) **Abandonment:** A livestock waste storage facility no longer being used for its intended purpose, and no longer receiving animal wastes, has not received any animal wastes for a period of two years and, based on available evidence, will not receive animal wastes from an active livestock operation within the next six months.
Abandoned Feed Piles. Piles of animal feed that are not used in two years from harvest. May include, but not limited to, silage or grain piles and bale forage which is not protected from deterioration and decomposition. Feed sealed or roofed will not have to comply with this ordinance.

Silo Runoff: Concentrated seepage from stored ensiled hay, corn or other crops and crop by products.

Animal Waste: Livestock excreta and other materials such as bedding, soil, hair, feathers, other organic waste, and rain or other contaminated water.

Animal waste storage facility: Concrete, steel, earthen or otherwise fabricated containment structure used for temporary storage of animal manure or other organic waste. This definition covers facilities relating to components of a planned agricultural waste management system. Refers to all components of a system to transfer material from the source to a storage facility, treatment facility, or loading area. However, it does not apply to conveyance systems using equipment such as barn cleaners, alley scrapers, or belts for moving manure in the housing facility to the reception pit, pump, channel or conduit.

Animal Unit: Single animal types or combination of animal types, which are fed, confined, maintained or stabled in an animal feeding operation. For the purpose of this Chapter, one animal unit is equivalent to 1000 pounds of livestock live weight. For numbers of specific species which constitute an animal unit, see NRCS Standard 243.

Animal Feedlot: A lot, building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals specifically designed as a confinement area in which manure may accumulate or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts. New animal feedlots are those that are established after the effective date of this ordinance.

Applicant: Any person who applies for a permit under the ordinance.

Land Conservation Division, Land & Water Resources Department of Oconto County. The administering authority of this ordinance.

Land Conservation Sub-committee: An operating committee of the Oconto County Board of Supervisors.
(11) **Nutrient Management Plan (590):** A plan developed by or for agricultural land operators that outlines the management and crediting of nutrients from all sources, including legumes, manure and soil reserves for the application of manure and commercial fertilizers generally to the limit of nutrient withdrawal by growing crops. Management includes the rate, method and timing of the application of all sources of nutrients to minimize the amount of nutrients entering surface and groundwater. This practice includes manure nutrient testing and routine soil testing.

(12) **Pasture:** Land with uniform cover of grasses or legumes or corn stalk used as grazed forage for livestock.

(13) **Permit:** The signed, written statement issued by the Oconto County Land Conservation Division under this ordinance authorizing the applicant to construct, install, reconstruct, enlarge or substantially alter or abandon an animal waste storage facility or animal feedlot.

(14) **Permittee:** Any person to whom a permit is issued under this ordinance

(15) **Person:** Any individual, corporation, partnership, joint venture, agency, unincorporated association, Municipal Corporation, county or state agency within Wisconsin, the federal government or any combination thereof.

(16) **Technical Guide:** The United States Department of Agriculture (U.S.D.A.) Natural Resources Conservation Service Field Office Technical Guide that is currently in effect and as amended from time to time.

(17) **Waters of the State:** Those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin and all lakes, bays rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water and groundwater, natural or artificial, public or private within the state or its jurisdiction as defined in Section 147.015(20) of the Wisconsin Statutes.

(18) **Water Quality Management Area:** The area within 1,000 ft. from the ordinary high-water mark of navigable waters mark that consists of a lake, pond or flowage, except that, for navigable water that is a glacial pothole lake the term means the area within 1,000 feet from the high-water mark of the lake; the area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream, and a site that is susceptible to groundwater contamination, or that has the potential to be a direct conduit for contamination to reach groundwater.
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18.108 JURISDICTION.

(1) This ordinance shall apply to the entire geographical area of Oconto County.

18.109 TECHNICAL ASSISTANCE

(1) Land Conservation Division staff shall provide, to the extent available, technical advice to Oconto County landowners and agricultural operators for the planning, designing, and installation of facilities and practices required under this ordinance to protect surface and ground water quality.

(2) Private consultants and engineers may also be employed by landowners and agricultural operators for technical assistance. All plans developed are subject to approval and permitting by the Land Conservation Division prior to any implementation.

18.110 ADMINISTRATION.

(1) Delegation of Authority. Oconto County hereby designates the Oconto County Land Conservation Division to administer and the Oconto County Land Conservation Division and the Oconto County Zoning Division enforcement technician to enforce this ordinance.

(2) Administrative Duties. In the administration of this ordinance, the County Land Conservation Division shall:

(a) Keep an accurate record of all permit applications, animal waste facility plans, animal feedlot plans, animal waste storage facility abandonment plans, permits issued, inspections made, and other official actions.

(b) Review permit applications and issue permits in accordance with Section 18.110

(c) Inspect animal waste facility and animal feedlot construction and animal waste facility abandonment to insure the facility is being constructed according to plan specifications.

(d) Investigate complaints relating to compliance with this ordinance, and refer violations to the Zoning Division enforcement technician for citation and enforcement action.

(e) Monitor the adequacy of manure storage systems including compliance with nutrient management plans.
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(f) Perform other duties as specified in this ordinance.

(3) **Inspection Authority.** Employees of the Oconto County Land Conservation Division and enforcement technicians of the Oconto County Zoning Division are 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 Oconto County Land Conservation Division shall be according to Sections 66.0119 Wisconsin Statutes.

18.111 **APPLICATION FOR AND ISSUANCE OF PERMITS.**

(1) **Permit Required.**

(a) No Animal Waste Storage Facility or parts thereof may be located installed, moved, reconstructed, extended, enlarged, converted, substantially altered or its use changed, including abandonment, without an animal waste management permit as provided in this ordinance, and without compliance with the provisions of this ordinance, and without compliance with Natural Resources Conservation Service Technical Guide Tech. Standard 313 as adopted as part of this ordinance.

(b) Animal feedlots that exceed the prohibitions in Section 18.104 of this ordinance, or do not meet the standards in Section 18.111 of the Oconto County Code, or receive a notice of discharge under Ch. 283 Wis. Statutes, or which exceed 10 Animal Units, and/or exceed 10,000 square feet in area shall obtain an animal waste management permit as provided in this ordinance.

(c) The requirements of this ordinance shall be in addition to any other ordinance regulating animal waste management, within the boundaries of Oconto County.

(2) **Emergency Repairs.** Emergency repairs such as repairing broken pipe or equipment, leaking dikes or the removal of stoppages may be performed without an animal waste storage facility permit. Such work will be reported to the Land Conservation Division as soon as possible for a determination as to whether an animal waste storage facility permit will be required for an additional alteration or repair to the facility.

(3) **Fee.** The fee for a permit under this ordinance shall be established through the annual budget process.
(4) Animal Waste Storage Facility Plan Requirement. Each application for a permit under this section shall include an animal waste storage facility plan. The plan shall include drawings and descriptions showing the facility will meet NRCS 313 which is the Conservation Practice Standard of the Natural Resources Conservation Service, Code 313 for Waste Storage Facilities. A printed copy of the most current version of this standard shall be available to interested persons upon request from the Land Conservation Division Office.

(5) Animal Feedlot Plan Requirements. Each application for a permit under this section shall include an animal feedlot facility plan. The plan shall specify:

(a) A plan map showing location of the facility, including buildings, homes, and wells within 300 feet of the proposed site. The sketch shall be drawn to scale, with a scale no smaller that 1 inch = 60 feet.

(b) Depth of high ground water estimated or observed.

(c) Ground contours (2-foot maximum intervals), with spot elevations, indicating land slope at and around the site for a minimum distance of 100 feet.

(d) Provisions for adequate drainage and control of runoff to prevent pollution of surface and ground water such as exposed bedrock or sinkholes. The location of any navigable body of water within 500 feet of the proposed site must be shown. River and streams in Oconto County shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on U.S. Geological Survey (USGS) quadrangle maps.

(e) Description of the type(s) of materials the facility is to consist of. Size, dimensions, and cross sections of the facility, and any other specific details including, but not limited to concrete thickness in floors and walls, steel schedules and fencing.

(f) A time schedule for construction of the facility.

(g) Scale of the plan drawing(s) and north arrow.

(h) Description of bench mark(s)
(6) **Animal Waste Storage Facility Abandonment Plan Requirements.** Each application for a permit under this section shall include an abandonment plan. The plan shall include drawings and descriptions showing how the abandonment will meet standards for waste storage facility closure set forth under NRCS 313 which is the Conservation Practice Standard of the Natural Resources Conservation Service, Code 313 for Waste Storage Facilities and Waste Storage Facility Closure Criteria. A printed copy of the most current version of this standard shall be available to interested persons upon request from the Land Conservation Division Office.

(7) **Abandoned Feed Piles:** Landowners with feed piles that are not used in two years from harvest and which are located within 50 feet of a rock outcropping, surface drain, or within 1 foot of groundwater, or within a water quality management area shall be removed within 30 days of issue of failure to comply with this ordinance.

(8) **Silo Runoff:** Landowner with concentrated seepage from stored ensiled hay or other crops will not be allowed to have such seepage reach waters of the state or have five (5) acres or more drain into the seepage area. Landowners with these conditions will receive 6 months to correct the problem.

(9) **Review of Application.** The County Land Conservation Division shall receive and review all permit applications.

(a) The County Land Conservation Division shall determine if the proposed facility meets the required standards set forth in Section 18.111 of this ordinance. Within 40 calendar days after receiving the completed application, supporting documents and fee, the County Land Conservation Division shall inform the applicant in writing whether the permit application is approved or disapproved. When additional information is required, the County Land Conservation Division has thirty days from the receipt of the additional information in which to approve or disapprove the permit application. Failure by the Land Conservation Division to approve permits within 40 calendar days of the receipt of the initial application or within 30 calendar days of the receipt of additional information, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.
(10) **Permit Conditions.** All permits issued under this ordinance shall be issued subject to the following conditions and requirements;

(a) Design, construction and management shall be carried out in accordance with the animal waste facility plan and applicable standards specified in Section 18.111 of this ordinance.

(b) The permittee shall give five (5) working days notice to the County Land Conservation Division before starting any construction activity authorized by the permit.

(c) Approval in writing must be obtained from the County Land Conservation Division prior to any modifications to the approved animal waste facility plan.

(d) The permittee and, if applicable, the contractor, shall certify in writing by signing the certification sheet that the facility was installed as planned and designed. A copy of the signed certification sheet shall be mailed to the County Land Conservation Division within 30 calendar days of completion of installation.

(e) Activities authorized by permit must be completed within two years from the date of issuance after which such permit shall be void.

(11) **Permit Revocation.** The County Land Conservation Division may revoke any permit issued under this ordinance if the holder of the permit has misrepresented any material fact in the permit application or animal waste facility plan or if the holder of the permit violates any of the conditions of the permit.

18.112 **STANDARDS AND SPECIFICATIONS.**

(1) **Animal Feedlots.** The Standards and specifications for design, construction, operation and maintenance of animal feedlots are those identified in Standard 350 and 312, USDA-NRCS Technical Guide. Feedlots requiring a permit under this ordinance shall be designed to deliver no more than 20 pounds of phosphorus annually draining into waters of the state as determined by the Oconto County Land Conservation Division (using the latest computer model).
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(2) **Animal Feedlot Separation Requirements.** All new animal feedlots permitted under this ordinance shall be sited a minimum of 100 feet from the property line of any other property owner, 300 feet from any lake or perennial stream (as defined by the USGS quadrangle maps), and at least 2 vertical feet from ground water.

(3) **Animal Waste Storage Facilities.** The standards and specifications for design, construction, operation, and maintenance of animal waste storage facilities are those identified in Standard 313, USDA-NRCS Technical Guide.

(4) **Animal Waste Storage Facilities Separation Requirements.** All new animal waste storage facilities shall be sited a minimum of 250 feet from property lines of adjacent property owners, 300 feet from any lake or perennial stream (as defined by USGS quadrangle maps), and separated from ground water according to NRCS Standard 313. Reception pits as part of the animal feedlot or buildings with underfloor storage shall be sited a minimum of 100 feet from adjacent properties.

(5) **Animal Waste Management and Utilization.** Animal wastes for which storage permits are issued under this chapter of the Code shall be managed and utilized in accordance with Standard 590, USDA-NRCS Technical Guide. A current (590) Nutrient Management Plan must be submitted annually to the Oconto County Land Conservation Division until the animal waste storage facility is no longer in use and it has been properly abandoned.

18.113 **VIOLATIONS.**

(1) **Penalties.** Any person who violates, neglects, or refuses to comply with or resists the enforcement of any provision of this ordinance shall be subject to a forfeiture of not less than $50 plus costs of prosecution of each violation. An unlawful violation includes failure to comply with any standard of this ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense. Failure to obtain proper permit is considered a violation. Oconto County Land Conservation Division shall refer all enforcement’s to the Oconto County Corporation Counsel and the Zoning Division enforcement technician for commencement of enforcement action.

(2) **Enforcement Actions, Temporary Restraining Order and/or Other Necessary Remedial Action.** As a substitute for or an addition to forfeiture actions, Oconto County may seek enforcement of any part of this ordinance by Court Actions seeking injunctions or restraining orders.
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18.114 APPEALS.

(1) Authority. Under authority of Chapter 68 Wisconsin Statutes the Oconto County Land Conservation Sub-committee, created under Sections 59.878 Wisconsin Statutes and by the Oconto County Board of Supervisors, acting as an appeal authority under Section 68.09(2) Wisconsin Statutes is authorized to hear and decide all appeals where it is alleged that there is error in any order, requirement, decision, or determination by the County Land Conservation Division in administering this ordinance.

(2) Procedure. The rules, procedures, duties and powers of Land Conservation Sub-committee and Chapter 68 Wisconsin Statutes, shall apply to this ordinance.

(3) Who May Appeal. Appeals may be taken by any person having a substantial interest which is adversely affected by this order, requirement, decision, or determinations made by the County Land Conservation Division.
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ADOPTED, THIS 22‘nd DAY OF MARCH, 2001, OCONTO COUNTY BOARD OF SUPERVISORS

________________________________________________________________________________________
Chairperson

________________________________________________________________________________________

Reviewed by Corporation Counsel

Vote:

Ayes: _______ Nays:_______

Initials of Corp. Counsel Date Approved

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ORDINANCE #_______-2002

TO: The Honorable Chairman and Members of the Oconto County Board of Supervisors

RE: Amendment to the Oconto County Animal Waste Management Ordinance

WHEREAS, the Oconto County Animal Waste Management Ordinance does not presently permit the granting of dimensional variances where property owners are faced with unnecessary hardships resulting from the application of the terms of the ordinance; and

WHEREAS, for a more effective, fair and reasonable application of the County’s Animal Waste Management Ordinance, the County needs to be able to grant variances to property owners faced with unnecessary hardships.

NOW, THEREFORE, the Oconto County Board of Supervisors does ordain as follows:

SECTION 1: Sec. 18.115, Dimensional Variances, of the Oconto County Animal Waste Management Ordinance as set forth in the Oconto County Code of Ordinances is created to read as follows:

18.115  DIMENSIONAL VARIANCES

(1) Power. The Land Conservation Committee, hereinafter referred to as the “Committee”, may grant in specific cases dimensional variances from the terms of the ordinance that will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. As used in this section, the term “unnecessary hardship” shall be defined to mean that the terms of the ordinance as applied to the applicant’s property will be unduly burdensome and cause the applicant practicable difficulties.

(2) Application and Fee. A person requesting a variance under the provisions of this section shall submit an application on a form provided by the Committee and at the same time pay the required fee. The fee for requesting a variance shall be $200.00. Applications shall be filed in the Land Conservation Office.

(3) Standards. Following notice and public hearing and other investigations, the Committee shall decided the matter based on the standards set forth in paragraph (1) and on the following standards:

a. A variance shall be consistent with the spirit and purpose of this ordinance.

b. Shall not be granted unless it is shown that the variance will not be contrary to the public interest and will not be damaging to the rights of other persons.

c. Shall not be granted for actions which require an amendment to this Ordinance.
d. Shall not be granted solely on the basis of economic gain or loss.

e. Shall not be granted for a self-created hardship.

f. Must be due to unique property condition and not to the circumstances of the applicant.

g. No variance may be granted which would have the effect of allowing a use of land or property, which would violate state laws or administrative rules.

(4) Administration. In considering variance applications under the terms of this ordinance, the Committee shall conduct business as follows:

a. The Committee shall comply with all requirements of the Wisconsin Open Meeting Law in the conduct of the business before it. The Nature of the Committee’s proceedings are quasi – judicial. The Committee may, therefore, deliberate in closed session, after a hearing on the matter, provided legal requirements are complied with.

b. The Committee may conduct site inspections of premises and the surrounding areas which are the subject of matters before the Committee, provided that when the Committee as a unit or individual members interested parties to present arguments and materials shall be received only at hearings before the Committee.

c. The Committee shall conduct a public hearing on all variance matters. The Committee shall cause a Class 2 notice under chapter 985 of the Wisconsin Statutes to be published and shall give the due notice of the hearing to all parties in interest, the town clerk and the town chairman. The Committee Chairman shall administer oaths to parties testifying and may compel attendance of witnesses by subpoena.

d. Due notice to parties in interest shall mean that the office of the Land Conservation Division will mail, by ordinary postage pending matter to the applicant, to the clerk of any city or village located within 1.5 miles of the property involved in the application, and to other parties who have been made known to the office, their specific interest in the matter and their request to receive such notices, and office of the Land Conservation Division shall mail, by ordinary postage, notice of the public hearing to owners of record of properties which adjoin the parcel involved in the application.

e. Failure of the office to mail advance notice to parties in interest shall not invalidate or prejudice the proceedings, providing the Committee concludes that the parties who subsequently complain of having been sent or of not receiving notice did, in fact, know of the proceedings and had reasonable opportunity to attend or be represented, or to convey their views prior to the Committee’s decision.
f. All testimony before the Committee by persons other than Committee members and written or documentary evidence or material pertaining to matters before the Committee shall be received at the hearings conducted by the Committee, provided, however that the content of before the Committee in all materials or information so received. Committee members who are in possession of facts which may have a hearing on the matter before the Committee shall enter same into the record of the hearing and opportunity shall be allowed for comments on such entries.

g. If, following the close of hearing, the Committee finds it necessary or desirable to receive additional information, evidence or arguments which may have a bearing upon the Committee’s decision, it shall reconvene a public hearing, with notice given in the same manner as for the initial hearing, for the purpose of so doing.

h. The Committee shall deliberate on matters before it. The concurring vote of a majority of the Committee shall be necessary to approve any variances before the Board. The vote of each member on each matter decided by the Committee shall be recorded in the minutes. If a member is absent or if a member fails to vote, such fact shall similarly be recorded. The minutes of the Committee shall show the Board’s decisions and the votes of members thereon. Each decision of the Board shall be accompanied by written reasons in support of the decision, which written statement shall be signed or acknowledged by the members and entered into the minutes.

i. All decisions by the Committee shall be made in accord with the standards of this ordinance. The Committee shall decide all matters before it within a reasonable time.

j. The Committee shall cause complete records to be kept of its examinations on matters before it, of public hearings, site inspections, decisions and other official actions, which shall be immediately filed in the Land Conservation Office and shall be a public record.

(5) Appeals. Any person aggrieved by the decision of the Committee may, within 30 days after the filing of the decision in the Office of the Land Conservation Committee, commence an action in circuit court seeking the remedy available by certiorari. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
SECTION 2: This ordinance shall take effect after passage and publication as provided by law.

Submitted this 20th day of June, 2002.

By: LAND CONSERVATION COMMITTEE

____________________________  _________________________________
Ronnie Kruse, Chairperson   Doug Dorrow

____________________________  _________________________________
Leon Gohr     Bill Grady

____________________________  _________________________________
Buzz Kamke     Doug Allen

____________________________  _________________________________
Russel Brock

Reviewed by Corporation Counsel  VOTE: _______ ayes _______ nays _______ absent

Initials of Corporation Counsel  Date