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WAUPACA CHAPTER 51 -2019 Ammendment Clean Copy _____ 3
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**Waupaca County
Legislative, Judicial, Ethics, Safety & Security Committee
November 4, 2019 – Minutes**

Chair Kussmann called the meeting to order at 10:30 a.m. and gave the open meeting statement.

Roll call: Chair Kussmann, Supr. Terry Murphy, Mary Kay Poehlman, Kevin Will, and Fred Zaug. A quorum was established. Others present: Supr. Craig, Diane Meulemans, Terrie Tews, Amanda Welch and Jill Lodewegen.

Agenda: Motion: Supr. Will moved and Supr. Zaug seconded the motion to approve the agenda. The motion carried without a negative vote.

Approve minutes: Motion: Supr. Zaug moved and Supr. Will seconded to approve the minutes of the October 14, 2019 meeting. Motion carried without a negative vote.

Public Comment – No comments.

Contingency Fund Transfer Request: Clerk of Courts Terrie Tews requested a contingency fund transfer in the amount of \$8,000 for the AVI project in the three courtrooms and jury assembly room. These funds are for furniture needs that were not considered in the original request. **Motion:** Supr. Poehlman moved and Supr. Zaug seconded to approve the contingency fund transfer for furnishing need for the AVI project. Motion carried without a negative vote.

Chapter 2 of the General Code of Ordinance Repeal and Replace: The committee discussed the draft presented at the October 14 meeting.

- Authorization for attendance in section 2.13 was discussed at length. Staff was directed to update section 2.13 to add webinar, to keep the wording regarding authorization but to update the paragraph to make it clearer
- Staff was asked to research how other counties add or remove member from committees outside of the committees on committees meeting and allowing the chair to appoint himself/herself to any committee.
- Staff was also asked to look into wording for breach of closed session rules. Possibly adding to the ethics code.
- Final request for this meeting was that staff look into section 2.16 “Creating a Subgroup” to make sure that prior subgroups that were created would remain if needed.

Clerk Lodewegen requested that she also be allowed to research if in the future, per diem, Chair/Vice Chair Salary and payment for attendance to seminars etc. could be done by resolution. Her hope is to make it so that these sections of Chapter 2 would not have to be updated by ordinance, which requires additional publications and cost.

Chair Kussmann determined that an additional meeting should be scheduled each month to continue to discuss Chapter 2 until it is complete.

Next Meeting Date: November 11, 2019 at 10:00 a.m. as well as an additional meeting to discuss Chapter 2 on December 2.

Adjourn: Motion: Supr. Poehlman moved and Supr. Zaug seconded the motion to adjourn at Noon. The meeting adjourned.

Jill Lodewegen
County Clerk

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.

CHAPTER 51

AGRICULTURAL PERFORMANCE STANDARDS AND AGRICULTURAL WASTE MANAGEMENT

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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 agricultural waste 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 agricultural waste 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 and prohibitions in Wis. Admin. Code Ch. NR 151 and ATCP 50 by 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) “Agricultural Waste” has the same definition as “Manure” in Waupaca County Chapter 51.07(17)
- (4) “Applicant” means any person who applies for a permit under this ordinance.
- (5) “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.
- (6) “Committee or Land & Water Conservation Committee” means the committee designated by the county board pursuant to Wis. Stat. § 92.06.
- (7) “Department” means the Waupaca County Land & Water Conservation Department (herein after LWCD).

- (8) "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.
- (9) "Direct runoff" means any of the following:
- a. 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.
 - b. 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.
 - c. Discharge of a significant amount of leachate from stored manure to waters of the state.
 - d. 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).
- (10) "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.
- (11) "Idle storage facility" means a facility where manure has not been added or removed for a period of 24 months.
- (12) "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.
- (13) "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.
- (14) "Leachate" means the concentrated liquid which has percolated through, or drained from, animal feed areas or manure storage areas.
- (15) "Livestock" means all domestic animals, including deer, elk, or any fenced-in animals.
- (16) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained, or stabled.
- (17) "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.
- (18) "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.
- (19) "Manure storage facility, existing" means a facility that was constructed prior to October 1, 2002.
- (20) "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:
- a. Replacement of a liner in a manure storage structure.
 - b. An increase in the volumetric capacity or area of a structure or facility by greater than 20%.
 - c. A change in a structure or facility related to a change in livestock management from one species of livestock to another, such as cattle to poultry.
- (21) "Manure storage facility, unpermitted" means a facility that was constructed prior to April 15, 1986.

- (22) “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.
- (23) “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.
- (24) “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).
- (25) “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.
- (26) “Nutrients” means plant nutrients derived from commercial fertilizers, manure, organic wastes, soil reserves, legumes, or other sources.
- (27) “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.
- (28) “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.
- (29) “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.
- (30) “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.
- (31) “Permitted facility” means a facility that was permitted under this ordinance.
- (32) “Permittee” means any person to whom a permit is issued under this ordinance.
- (33) “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).
- (34) “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.
- (35) “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).
- (36) “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.
- (37) “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.
- (38) “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.
- (39) “Safety devices” means constructed measures designed to protect humans and livestock from hazards associated with a manure storage facility.
- (40) “Sediment” means settleable solid material that is transported by runoff away from its original location.
- (41) “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.
- (42) “Stored manure” means manure that is kept in a manure storage facility or an unconfined manure pile.
- (43) “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.
- (44) “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.
- (45) “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.
- (46) “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.
- (47) “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.
- (48) “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.

- (49) “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.
- (50) “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.
- (51) “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.
- (52) “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.
- (53) “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.
- (54) “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. The Plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.
 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.
 - iv. An updated nutrient management plan shall be submitted to the department annually, by April 15th, to ensure the plan meets the requirements of this section. Submitted plans shall include a current DATCP approved checklist, full nutrient management plan and the associated soil test data.

(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

AGRICULTURAL WASTE 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 agricultural waste or feed leachate storage facility or substantially alter existing agricultural waste or feed leachate storage facility, including the construction or substantial alteration of waste transfer systems connected to an agricultural waste storage facility.
 - b. Upgrade, repair or replace an agricultural waste 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 agricultural waste 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.** Agricultural waste 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 Agricultural waste storage facility plan requirements. Each application for an agricultural waste storage permit under this section shall include the completion of the county permit application and a

detailed agricultural waste 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) **AGRICULTURAL WASTE STORAGE FACILITY PLAN REQUIREMENTS.** Agricultural waste storage structures, and any additions to such structures, shall maintain the setbacks pursuant to Ch. 34 Waupaca County Code of Ordinances.
- (2) **AGRICULTURAL WASTE 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 agricultural waste storage facility is required unless the agricultural waste storage facility has vertical walls 5 feet above the ground surface or the agricultural waste 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. Agricultural waste 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) AGRICULTURAL WASTE 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 agricultural waste 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 agricultural waste 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 agricultural waste 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) Agricultural waste 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 agricultural waste storage facilities may receive agricultural waste until the county provides its final approval. No agricultural waste may be emptied from a permitted agricultural waste 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 agricultural waste 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 August 21, 2018 – Chapter 51.

CHAPTER 51
AGRICULTURAL PERFORMANCE STANDARDS
AND AGRICULTURAL WASTE MANAGEMENT

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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 agricultural waste 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 agricultural waste 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 and prohibitions in Wis. Admin. Code Ch. NR 151 and ATCP 50 by 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) “Agricultural Waste” has the same definition as “Manure” in Waupaca County Chapter 51.07(17)
- (4) “Applicant” means any person who applies for a permit under this ordinance.
- (5) “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.
- (6) “Committee or Land & Water Conservation Committee” means the committee designated by the county board pursuant to Wis. Stat. § 92.06.
- (7) “Department” means the Waupaca County Land & Water Conservation Department (herein after LWCD).

- (8) “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.
- (9) “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).
- (10) “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.
- (11) “Idle storage facility” means a facility where manure has not been added or removed for a period of 24 months.
- (12) “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.
- (13) “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.
- (14) “Leachate” means the concentrated liquid which has percolated through, or drained from, animal feed areas or manure storage areas.
- (15) “Livestock” means all domestic animals, including deer, elk, or any fenced-in animals.
- (16) “Livestock operation” means a feedlot or other facility or a pasture where animals are fed, confined, maintained, or stabled.
- (17) “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.
- (18) “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.
- (19) “Manure storage facility, existing” means a facility that was constructed prior to October 1, 2002.
- (20) “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.
- (21) “Manure storage facility, unpermitted” means a facility that was constructed prior to April 15, 1986.

- (22) “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.
- (23) “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.
- (24) “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).
- (25) “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.
- (26) “Nutrients” means plant nutrients derived from commercial fertilizers, manure, organic wastes, soil reserves, legumes, or other sources.
- (27) “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.
- (28) “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.
- (29) “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.
- (30) “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.
- (31) “Permitted facility” means a facility that was permitted under this ordinance.
- (32) “Permittee” means any person to whom a permit is issued under this ordinance.
- (33) “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).
- (34) “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.
- (35) “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).
- (36) “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.
- (37) “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.
- (38) “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.
- (39) “Safety devices” means constructed measures designed to protect humans and livestock from hazards associated with a manure storage facility.
- (40) “Sediment” means settleable solid material that is transported by runoff away from its original location.
- (41) “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.
- (42) “Stored manure” means manure that is kept in a manure storage facility or an unconfined manure pile.
- (43) “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.
- (44) “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.
- (45) “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.
- (46) “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.
- (47) “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.
- (48) “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.

- (49) “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.
- (50) “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.
- (51) “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.
- (52) “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.
- (53) “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.
- (54) “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 15th, to ensure the plan meets requirements of this section. The Plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.~~
 - 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.
 - iv. ~~An updated nutrient management plan shall be submitted to the department annually, by April 15th, to ensure the plan meets the requirements of this section. Submitted plans shall include a current DATCP approved checklist, full nutrient management plan and the associated soil test data.~~

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(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

AGRICULTURAL WASTE 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 agricultural waste or feed leachate storage facility or substantially alter existing agricultural waste or feed leachate storage facility, including the construction or substantial alteration of waste transfer systems connected to an agricultural waste storage facility.
 - b. Upgrade, repair or replace an agricultural waste 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 agricultural waste 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.** Agricultural waste 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 Agricultural waste storage facility plan requirements. Each application for an agricultural waste storage permit under this section shall include the completion of the county permit application and a detailed agricultural waste 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) **AGRICULTURAL WASTE STORAGE FACILITY PLAN REQUIREMENTS.** Agricultural waste storage structures, and any additions to such structures, shall maintain the setbacks pursuant to Ch. 34 Waupaca County Code of Ordinances.
- (2) **AGRICULTURAL WASTE 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 agricultural waste storage facility is required unless the agricultural waste storage facility has vertical walls 5 feet above the ground surface or the agricultural waste 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. Agricultural waste 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) AGRICULTURAL WASTE 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 agricultural waste 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 agricultural waste 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 agricultural waste 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) Agricultural waste 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 agricultural waste storage facilities may receive agricultural waste until the county provides its final approval. No agricultural waste may be emptied from a permitted agricultural waste 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 agricultural waste 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 August 21, 2018 – Chapter 51.

