

RESOLUTION _____

TO THE HONORABLE CHAIRMAN AND MEMBERS OF THE PORTAGE COUNTY BOARD OF SUPERVISORS:

RE: REVISIONS TO THE ANIMAL MANURE STORAGE AND NUTRIENT MANAGEMENT ORDINANCE

WHEREAS, the Department of Agriculture, Trade, and Consumer Protection (DATCP), the Groundwater Citizens Advisory Committee, and the Land Conservation Committee (LCC) have reviewed the need for revisions to the Animal Manure Storage and Nutrient Management Ordinance, and

WHEREAS, nutrients have the potential for causing contamination of our surface and groundwater when improperly managed and applied.

NOW, THEREFORE, BE IT RESOLVED, that the Portage County Board of Supervisors does ordain that the attached revisions to the Animal Manure Storage and Nutrient Management Ordinance, now known as the Animal Manure Storage Ordinance and Nutrient Management Standards, are hereby adopted and effective upon publication.

Dated this 21st day of March, 2006.

Respectfully submitted,

LAND CONSERVATION COMMITTEE

William Peterson, Chair

Leif Erickson, Vice-Chair

Robert Brilowski, Secretary

Charles Gussel

Excused

Kevin Ruehl

Don Aanrud

7.10 ANIMAL MANURE STORAGE ORDINANCE AND NUTRIENT MANAGEMENT STANDARDS

7.10.1 INTRODUCTION

A. AUTHORITY

This Ordinance is adopted under authority granted by Chapters 59 and 92, Wisconsin State Statutes.

B. TITLE

This Ordinance shall be known as the PORTAGE COUNTY ANIMAL MANURE STORAGE ORDINANCE AND NUTRIENT MANAGEMENT STANDARDS and is hereinafter referred to as the Ordinance.

C. FINDINGS AND DECLARATION OF POLICY

The Portage County Board of Supervisors finds that storage of animal manure in storage facilities not meeting technical design and construction standards may cause pollution of the surface and groundwater of Portage County, and may result in actual or potential harm to the health of County residents, livestock, aquatic life, and other plants and animals, and to the property tax base of Portage County.

The Portage County Board of Supervisors also finds that improper management of animal manure storage facilities and utilization, including land application, of stored animal manure and other nutrients may cause pollution of ground and surface waters of Portage County.

The Portage County Board of Supervisors further finds that the technical standards developed by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and adopted by the Portage County Land Conservation Committee (LCC) provide for effective, practical, and environmentally safe methods of storing and utilizing animal manure and land application of nutrients.

D. PURPOSE

The purpose of this Ordinance is to regulate the location, design, construction, installation, alteration, and use of animal manure storage facilities, and the application of manure and nutrients. Portage County intends that such regulation will prevent water pollution and the spread of disease, and thereby promote the health, prosperity, and general welfare of the citizens of Portage County. Portage County also intends by this Ordinance to provide means for its administration and enforcement.

E. APPLICABILITY

This Ordinance shall apply to animal manure storage facilities and nutrient applications throughout Portage County.

F. INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Portage County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin State Statutes.

G. SEVERABILITY CLAUSE

If any portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

7.10.2 DEFINITIONS

A. *“Animal Manure”* means livestock excreta, milk house/parlor effluent and other materials such as bedding, rain or other water, soil, hair, feathers, and other debris normally included in animal manure handling operations.

B. *“Animal Manure Storage Facility”* means a concrete, steel, or otherwise fabricated structure, or an excavated or earthen impoundment using earth dikes, pits or ponds for temporary storage of animal manure or other organic materials.

C. *“Applicant”* means any person who applies for a permit under this Ordinance.

- D. *“Nutrient Management”* means managing the amount, source, placement, form and timing of the application of nutrients and soil amendments.
- E. *“Organic Amendment”* means any material applied to soil to improve crop yield or quality, including but not limited to: manure, sewage sludge, septage, whey and papermill byproducts.
- F. *“Permit”* means the signed, written statement issued by the Portage County Planning and Zoning Department, Land Conservation Division (LCD) authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter an animal manure storage facility, and to use or dispose of manure from the facility.
- G. *“Permittee”* means any person to whom a permit is issued under this Ordinance.
- H. *“Person”* means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, County, or State agency within Wisconsin, the federal government, or any combination thereof.
- I. *“Technical Guide”* means the USDA NRCS Technical Guide as adopted by the Portage County Land Conservation Committee on September 8, 1977. The said guide is on file at the Portage County LCD. Any future amendments to said guide are incorporated into this Ordinance without further action.
- J. *“Transfer Mechanism”* means any components such as conduits, pumps, valves, reception tanks, and other devices to transfer animal manure from buildings and yards to a storage and/or loading area for final disposal.
- K. *“Water pollution”* means contaminating or rendering unclean or impure the ground or surface waters of the State, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.
- L. *“Work Day”* shall mean Monday through Friday, except for holidays.

7.10.3 ACTIVITIES SUBJECT TO REGULATION

A. GENERAL REQUIREMENTS

1. Any person who uses, constructs, installs, reconstructs, replaces the liner, enlarges, or substantially alters an animal manure storage facility or transfer mechanism, or who employs or is employed by another person to do the same, on land subject to this Ordinance, shall be subject to the provisions of this Ordinance.
2. The Portage County LCD may require upgrading, replacement or closure, in accordance with this Ordinance, of any storage facility that poses an imminent threat to public health, aquatic life or is causing a violation of water quality standards.

B. STATE OF WISCONSIN REQUIREMENTS

Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan using the schedule stated in Wisconsin Administrative Code, Section NR 151.07(4) and the compliance requirements stated in Section NR 151.09(3).

C. COMPLIANCE WITH PERMIT REQUIREMENTS

A person is in compliance with this Ordinance if he or she follows the procedure of this Ordinance, receives a permit from the Portage County Land Conservation Division (LCD) of the Planning and Zoning Department before beginning activities requiring permits and complies with the standards of the Ordinance.

7.10.4 STANDARDS

A. STANDARDS FOR ANIMAL MANURE STORAGE FACILITIES

1. The standards for design, management and construction of animal manure storage facilities and transfer systems are those in standards and specifications number 313, 634, and 719 of the Technical Guide.

2. The standards for closure of an animal manure storage facility are those set forth in “Closure of Waste Impoundments”, number 360 of the Technical Guide.

B. STANDARDS FOR MANAGEMENT AND UTILIZATION OF ANIMAL MANURE AND OTHER NUTRIENTS

1. The standard for management and utilization of animal manure and other nutrients are those in standard 590 of the Technical Guide.

2. Nitrogen fertilizer rates shall not exceed recommended rates using the UW-Extension “Nitrogen Source and \$ Rate of Return Calculator”, unless approved by Portage County LCD. The Portage County LCD will initially seek compliance with this Section by educating the nutrient management plan writer, operator responsible for Plan implementation and landowner (if not operator) on the Standards contained in this Section.

3. Organic Amendments shall not be allowed to run off areas of concentration or off a field site during or after application.

7.10.5 APPLICATION FOR AND ISSUANCE OF PERMITS

A. PERMIT REQUIRED

No person may undertake an activity described in Section 7.10.3(A) of this Ordinance without a permit from the Portage County LCD. Criteria for issuance of a permit are set forth in LCD policy and must be met prior to issuance of any permit.

B. EXCEPTION TO PERMIT REQUIREMENTS

Emergency repairs such as repairing broken pipe or equipment, leaking dikes, the removal of stoppages, or ordinary and required maintenance, may be performed without a permit. If repairs will significantly alter the original design and construction of the facility, a report shall be made to the Portage County LCD within one (1) work day of the emergency for a determination by the Portage County LCD on whether a permit will be required for any additional alteration or repair of the facility. The Portage County LCD determination shall be rendered within two (2) work days of the reporting.

C. FEE

The permit fee shall be set by the Land Conservation Committee.

D. ANIMAL MANURE STORAGE FACILITY PLAN REQUIRED

Each application for a permit under this section shall include an animal manure storage facility plan. Technical assistance for plan development shall be made available to applicants upon request through the Portage County LCD or the District Conservationist of the NRCS. The plan components shall be consistent with the information on the permit application necessary to determine if it meets the Portage County Technical Guide specifications as described in established LCD information policy.

E. REVIEW OF APPLICATION

The LCD shall determine if the proposed facility meets required standards set forth in this Ordinance. Within thirty (30) work days after receiving the completed application and fee, the LCD shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the LCD shall so notify the permit applicant. The LCD has thirty (30) work days from the receipt of the additional information in which to approve or disapprove the application. If the LCD fails to approve or disapprove the permit application in writing within thirty (30) work days of the receipt of the permit application or additional information, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.

All plans for animal manure storage facilities shall be reviewed and approved by the LCD. Plans bearing a registered professional engineer seal and certified as meeting the applicable technical standards may be approved by the LCD within minimum review.

F. PERMIT CONDITIONS

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

1. Animal manure storage facilities – design, installation, construction, management, and utilization activities as required under the terms of this Ordinance.
 2. The permittee shall give two (2) work days notice to the LCD before starting any construction activities authorized by the permit.
 3. Approval in writing must be obtained from the LCD prior to any modifications to the approved animal manure facility plan.
 4. The certification of installation must be provided by an agricultural or civil engineer registered in the State of Wisconsin or a Department of Agriculture, Trade and Consumer Protection engineering practitioner or NRCS engineering practitioner.
 5. The permittee shall certify in writing that the facility was installed as planned.
- Activities authorized by permit must be completed within one (1) year from the date of issuance after which such permit shall be void. However, a one (1) year extension may be granted by the LCD.

G. PERMIT REVOCATION

The Portage County LCD may revoke any permit issued under this Ordinance if the holder of the permit has misrepresented any material fact in the permit application or animal manure facility plan, or if the holder of the permit violates any of the conditions of the permit.

7.10.6 ADMINISTRATION

A. DELEGATION OF AUTHORITY

Portage County hereby designates the LCD to administer and enforce this Ordinance.

B. ADMINISTRATIVE DUTIES

In the administration and enforcement of this Ordinance, the Portage County LCD will:

1. Keep an accurate record of all permit applications, animal manure facility plans, permits issued, inspections made, and other official actions.
2. Review permit applications and issue permits in accordance with this Ordinance.
3. Inspect any animal manure facility during construction or installation to insure the facility is being constructed according to plan specifications.
4. Inspect any animal manure facility to document if it poses an imminent threat to public health or fish and aquatic life or is causing a violation of groundwater standards.
5. Investigate complaints relating to compliance with the Ordinance.
6. Perform other duties as specified in this Ordinance.

C. INSPECTION AUTHORITY

The Portage County LCD/LCC is authorized to enter upon any lands affected by this Ordinance to inspect the land prior to or after permit issuance to determine compliance with this Ordinance. If permission cannot be received from the landowner, entry by the Portage County LCD and LCC shall be according to Section 92.07(14), Wisconsin State Statutes.

D. ENFORCEMENT AUTHORITY

The LCD is authorized to post an order stopping use of a storage facility or work upon land which has had a permit revoked or as to land on which an activity is taking place in violation of this Ordinance. Notice is given by posting upon the land where the violation occurs one or more copies of a poster stating violation, by mailing a copy of the order by certified mail to the person whose activity is in violation of this Ordinance, or by personally serving said person. The order shall specify that the activity must cease or be brought into compliance.

Any permit revocation or order stopping work shall remain in effect unless retracted by the Portage County LCD or by a court of general jurisdiction. The LCD is authorized to refer any violation of this Ordinance or of an order stopping work issued pursuant to this Ordinance to the District Attorney for commencement of further legal proceedings.

7.10.7 VIOLATIONS

A. PENALTIES

Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Ordinance shall be subject to a forfeiture of not less than \$100 nor more than \$1000 plus costs of prosecution for each violation. An unlawful violation includes failure to comply with any standard of this Ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense.

B. ENFORCEMENT BY INJUNCTION

As a substitute for or in addition to forfeiture actions, Portage County may seek enforcement of any part of this Ordinance by court actions seeking injunctions or restraining orders.

7.10.8 APPEALS

A. AUTHORITY

Under Chapter 68, Wisconsin State Statutes, the Portage County LCD is designated to act in accord with Section 68.09(2), Wisconsin State Statutes, to review initial determinations as to the grant or denial, revocation or conditions imposed as regarding any permits under this Ordinance which are deemed to be reviewable in accord with Section 68.02, Wisconsin State Statutes.

B. PROCEDURE

Persons alleged to have been aggrieved by an initial determination made under this Ordinance shall follow the procedure, both as to time and other requirements, of Chapter 68, Wisconsin State Statutes. The Portage County LCC is designated as the body under Section 68.11(2), Wisconsin State Statutes, to handle the appeal of an initial determination under this Ordinance.

C. WHO MAY APPEAL

For the purpose of this section, "Persons" shall be defined in accord with Section 68.06, Wisconsin State Statutes, and only those who qualify under Section 68.01, Wisconsin State Statutes, may seek review of a determination.

7.10.9 ENFORCEMENT AND PENALTIES

The provisions of this ordinance shall be enforced under the direction of the Portage County Board of Supervisors, its Land Conservation Committee and the County Conservationist. Any person, firm, corporation, company, agent, contractor or subcontractor who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this ordinance, including any failure to obtain an animal waste storage facility permit under Section 7.10.7 of the Ordinance, shall be subject to a forfeiture of not less than \$100.00 (one hundred dollars), together with court and other costs of the action. Default of such payment shall result in imprisonment in the county jail for a period of up to six months or until such costs are paid. Each day of violation shall, as a matter of law, be deemed a separate offense. Compliance and the provisions of this ordinance may be enforced by injunctive order at the suit of the County. Citations may be issued for failure to comply with any provision of this ordinance in ordinance in order to collect forfeitures pursuant to Chapter 66, Wisconsin State Statutes and Portage County Ordinance, Section 5.1.

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