

Title 8 ► Chapter 6

Livestock Manure Management

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Sec. 8-6-1 Authority.

This chapter of the Code is adopted pursuant to authority granted by Wisconsin Statutes 59.02, 59.3, 59.69, 59.70, 92.15 and 92.16.

Sec. 8-6-2 Title.

This article shall be known as, referred to, and may be Cited as the Fond du Lac County Livestock Manure Management Ordinance and is hereinafter referred to as "this article"..

Sec. 8-6-3 Findings and Declaration of Policy.

The Fond du Lac County Board of Supervisors finds that storage of manure in storage facilities, meeting sufficient technical design and construction standards, may cause pollution of the surface ground waters of Fond du Lac County and may result in actual or potential harm to the health and safety of county residents and transients; to livestock, aquatic life, and other animals and plants; and to the property tax base of the county.

The Fond du Lac County Board of supervisors also finds that improper management of manure storage facilities and utilization of stored manure may cause pollution of the ground and surface waters of Fond du Lac County.

The Fond du Lac County Board of Supervisors also finds that manure storage facilities left improperly closed over time, may cause pollution of surface and ground waters, and may cause unsafe conditions to county residents and transients if not closed using sufficient technical standards and specifications.

The Fond du Lac County Board of Supervisors further finds that the technical standards developed by the United States Department of Agriculture, Natural Resource Conservation Service and adopted by the Fond du Lac County Land Conservation Committee provide effective, practical and environmentally safe methods of storing and utilizing manure; and safely closing facilities no longer in operation.

Sec. 8-6-4 Purpose.

The purpose of this article is to assure the safe handling and spreading of manure as well as to regulate the location, design, construction, installation, alteration, operation, and maintenance of all new livestock manure storage facilities. Also regulate the closure of livestock manure storage facilities in order to prevent water pollution, protect the health and safety of residents and transients, prevent the spread of disease, and promote the prosperity and general welfare of the citizens of Fond du Lac County.

Sec. 8-6-5 Applicability.

This article applies to all the unincorporated areas of the county.

Sec. 8-6-6 Severability.

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

Sec. 8-6-7 Interpretation.

In the interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the county, and shall not be deemed a limitation or peal of any other power granted by state statutes.

Sec. 8-6-8 Effective Date.

This article shall be effective upon the date following its County publication.

Sec. 8-6-9 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings 'bed to them in this section, except where the context clearly indicates a different meaning:

1. Adequate Sod or Self-sustaining Vegetative Cover - Maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.
2. Applicant - Any person who applies for a permit under this article.
3. Animal— Domesticated and other types of animals together with fish and birds.

4. **Bedrock** - Any naturally formed consolidated rock material and weathered in-place material with >50%, by volume, larger than 2 mm in size. Bedrock includes, but is not limited to limestone (dolomite), sandstone, shale and igneous and metamorphic crystalline rock, including granite, hylite, quartzite, gabbro, basalt, gneiss, schist, diorite and greenstone.
5. **Committee** - Refers to the county land conservation committee.
6. **Department** - The enforcing authority of this article and are the staff employed by the committee.
7. **Direct Runoff** - A discharge of a significant amount of pollutants to waters of the state resulting from and of the following practices:
 - A. Runoff from a manure storage facility.
 - B. Runoff from an animal lot that can be predicted to reach surface waters of the state through a defined or channelized flow path or man-made conveyance.
 - C. Discharge of leachate from manure pile.
 - D. Seepage from a manure storage facility.
 - E. Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with s.NR 154.04(3).
8. **Ground Water** - The water filling all the unblocked pores of underlying material below the water table.
9. **Maintenance** - A nonstructural replacement or alteration of a portion of a manure storage facility or structure that does not change the design or operation of the facility or structure.
10. **Manure** - Livestock secretion and other materials such as bedding, soil, hair, feathers, rain or other water, and other debris normally included in manure handling operations.
11. **Manure Storage Facility or Structure** - A concrete, wooden, steel or other wise fabricated structure, or an excavated or earthen impoundment, pit or pond used for temporary storage of manure. Installation of a manure reception tank, and/or discharge pipe will be considered a manure storage facility or structure for purposes of this article. Other components used in the handling of manure, such as gutters, barn cleaners, manure spreaders and livestock housing are excluded from the definition of a manure storage facility or structure.
12. **NRCS Engineering Job Approval** - A complex process of review and certification by qualified NRCS engineers to determine the capability and technical competence of subordinate personnel to design, review and provide construction supervision for various soil and water conservation practices to be constructed under the terms of this article and that may be modified from time to time based upon work experience, educational training, employment status and competence of those subordinates (see A-NRCS National Engineering Manual title 210, part 500).
13. **Pasture**—Areas where grass or other growing plants are used for grazing and where the concentration of animals is such that a vegetation cover is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.

14. Permit - The signed, written statement issued by the county land & water conservation department under this article, authorizing the applicant to construct, install, reconstruct, enlarge, close, or substantially alter a manure storage facility or structure.
15. Permittee - Any person to whom a permit is issued under this article.
16. Person - Any individual, corporation, partnership, joint venture, agency, unincorporated as citation, municipal corporation, county or state agency within Wisconsin, the federal government, or an combination thereof.
17. Repair - A structural replacement or alteration of a storage facility or structure that changes or alters the design, construction or operation of the manure storage facility or structure.
18. Site That is Susceptible to Groundwater Contamination -
 - 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 downslope of karsts features
 - D. A channel with a cross-section area equal to or greater than 3 square feet that flows to a karsts feature.
 - E. An area where soil depth to groundwater bedrock is less than 2 feet.
 - F. An area where the soil does not exhibit one of the following soil characteristics.
 1. At least a 2-foot soil layer with 40% fines or greater above groundwater and bedrock.
 2. At least a 3-foot soil layer with 20% fines or greater above groundwater and bedrock.
 3. At least a 5-foot soil layer with 10% fines or greater above groundwater and bedrock.
19. State BMP Handbook - The state department of natural resources construction site best management practice handbook as adopted by the committee.
20. Substantially Altered - A change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, depth, or configuration of a structure or facility including:
 - A. Replacement of a liner in a manure storage structure, and
 - B. An increase in the volumetric capacity or area of a structure or facility by greater than 20%
21. State BMP Handbook - The state department of natural resources construction site best management practice handbook as adopted by the committee .
22. Substantially Altered - A change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, depth or configuration of structure or facility including:
 - A. Replacement of a liner in a manure storage structure, and
 - B. An increase in the volumetric capacity or an 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.

23. Technical Guide - The state version of the Natural Resource Conservation Service Field Office Technical Guide published by the Natural Resource Conservation Service of the U.S. Department of agriculture, and adopted by the County Land Conservation Committee.
24. Unconfined Manure Pile - A quantity of manure that is at least 175 cubic ft in volume and which covers the ground surface to a depth of at least 2 inches and not confined within a manure storage facility or structure, 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.
25. Waters of the State - Those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water and groundwater, natural or artificial, public or private within the state or its jurisdiction as defined in Section 147.015(20) of the Wisconsin Statutes.
26. Water Pollution - 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.
27. Water Quality Management Area - means any of the following:
 - A. The area within 1000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is glacial pot hole lake, the term means the area within 1000 feet from the high-water mark of the lake.
 - B. The area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream.
 - C. A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.
28. Working Day - A calendar day, except Saturdays, Sundays and state and federal recognized legal holidays, on which weather and other conditions not under the control of the contractor or the county will permit construction operation to proceed with normal work force.

Sec. 8-6-10 Compliance with Permit Requirement.

A person is in compliance with this article if he/she follows the procedures of this article, applies for and receives a permit from the department before beginning activities subject to regulation under this article, and complies with the requirements of the permit.

Sec. 8-6-11 Violations.

Penalties. Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this article shall be subject to a forfeiture of not less than \$100.00 no more than \$500.00 plus the costs of prosecution for each violation. An unlawful violation includes failure to comply with any standard of this article or with any condition or qualification attached to the permit. Each day a violation exists shall be a separate offense.

Enforcement by Injunction. As a substitute for or in addition to forfeiture actions, the county seek enforcement of any part of this article by court actions seeking injunctions or restraining orders.

Sec. 8-6-12 General Requirement.

Any person or their agent who acquires ownership of, leases, or designs, constructs, installs, reconstructs, enlarges, closes, or substantially alters a manure storage facility or structure, or applies manure on land subject to this article, shall be subject to the provisions of this article of the Code.

New Construction and Alterations.

1. New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility, minimize leakage of the facility in order to comply with groundwater standards, and maintain one foot of freeboard storage or adequate freeboard storage to the equivalent volume of a 25- year, 24 hour storm, whichever is greater.

Closure.

1. Closure of a manure storage facility permitted under this Article shall occur when a n operation where the facility is located ceases operation, or manure has not been added or removed from the 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. Compliance with NRCS Technical Guide, Standard 360, Closure of Waste Impoundments, and this Article, is required.
2. The owners or operator may retain the facility for a longer period of time by demonstrating to the department that all of the following conditions are met:
 - A. The facility is designed, constructed and maintained in accordance with Sub. (2) of NR 151.05;
 - B. The facility is designed to store manure for a period of time longer than 24 months,
 - C. Retention of the facility is warranted based on anticipated future use.

Failing and Leaking Existing Facilities.

1. Manure storage facilities in existence as of the effective date of this ordinance amendment that may 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 closed in accordance with this section.

Sec. 8-6-13 Administration.

Delegation of Authority. The county conservationist, as department head of the land and water conservation department, is authorized to administer and enforce this article. The county conservationist may, in turn, delegate the necessary functions to such staff as deemed desirable and who have appropriate levels of NRCS engineering job approval for the review of applications.

Administrative Duties. In the administration and enforcement of this article, the county conservationist or a designated representative shall:

- (a) Keep an accurate record of all permit applications, manure storage facility plans, permits issued, inspections made, and other official actions.
- (b) Review permit applications and issue permits in accordance with this article.
- (c) Inspect manure storage facility construction to ensure the facility is being constructed according to plan specifications.
- (d) Inspect manure storage facility closure to ensure the facility is being closed according to plans and specifications.
- (e) Investigate complaints relating to compliance with this article.
- (f) Perform other duties as specified in this article.
- (g) Provide technical services to the applicant to the extent resources are available.

Inspection Authority.

- (a) The county conservationist or a designated representative is authorized to enter upon any lands affected by this article to inspect the land prior to or after permit issuance to determine compliance with this article pursuant to the authority granted by WIS. Stats. 92.07(14).
- (b) Entry by the county conservationist or a designated representative may also be according to WIS. Stats. 66.0119 and 66.0119(3). Refusal to grant permission to enter lands affected by this article for purposes of inspection may be grounds for denial of the permit or revocation thereof.

Enforcement Authority.

- (a) The county conservationist or a designated representative is authorized to post an order stopping work upon land that has had a permit revoked or on land currently undergoing activity in violation of this article. Notice is given by both posting upon the land where the violation occurs with 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 article. A copy of the certified letter shall be sent to the members of the committee as well. The order shall specify that the activity must cease, and the reason.
- (b) Any permit revocation or order stopping work shall remain in effect unless retracted by the committee, the county conservationist or a designated representative, or by a court of general jurisdiction; or until the activity is brought into compliance with this article. The county conservationist is authorized to refer any violation of this article or of an order stopping work issued pursuant to this article to the corporation counsel upon authorization of the committee, for commencement of legal proceedings.

Sec. 8-6-14 Appeals and Variances

Authority. Under authority of Wis. Stats. 68, the committee, created under Wis. Stats. 59.0 (19), and acting as an appeal authority under Wis. Stats. 68.09(2), is authorized to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination by the department in administering this article.

Who May Appeal. Appeals may be taken by any person having a substantial interest that is adversely affected by the order, requirement, decision or determination made by the department.

Procedure. The rules, procedures, duties and powers of the committee and provisions of Wis. Stats. Ch. 68 shall apply to appeals under this article.

- (a) A request for an appeal shall be filed with the department within 30 days of action or decision to be appealed. The appeal request shall specify whether an interpretation of this article or a variance is sought and the grounds thereof
- (b) The appeal shall be heard by the committee at a regularly scheduled meeting with public notice as required by Wis. Stats. 19.81. The appeal shall be heard within 45 days of the date the appeal is filed with the department. A copy of the meeting notice shall be sent to the applicant and the appropriate town board. The department shall transmit to the committee all documents constituting the record from which the appeal was taken.
- (c) A written decision regarding the appeal shall be made within 30 days.
- (d) The final decision on an appeal shall be in the form of a written determination signed by the chairperson or secretary of the committee. The determination shall state the specific facts that are the basis for the committee's decision and shall affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part; deny the appeal for lack of justification; or grant or deny the application for a variance. The reasons or justification for granting an appeal that was demonstrated by the applicant in the case of a variance shall be clearly stated in the recorded minutes of the committee meeting.

Variances. The committee may upon appeal authorize a variance from the requirements of this article when, upon showing by the applicant, unnecessary hardship would result from literal enforcement of article. The granting of a variance for unnecessary hardship shall:

- (a) Be consistent with the spirit and purpose of this article as stated in section 14-39.
- (b) Not permit an activity or practice that may fail structurally or otherwise and cause significant water pollution or other off-site impacts.
- (c) Be due to unique circumstances and not to the general conditions of the area.
- (d) Not be granted for a self-created hardship.
- (e) Not be granted unless it is shown that the variance will not be contrary to the public interest and will not be damaging to the rights of other persons.
- (f) Not be granted solely on the basis of economic gain or loss.

- (g) Not be granted solely on the fact that certain conditions existed prior to the effective date of the ordinance from which this article is derived.

The committee may authorize a variance from the requirements of this article contingent on the applicant's receiving a variance from the technical standards through the Natural Resource Conservation Service or other qualified engineering authority. The committee may also authorize a variance from the requirements of this article contingent on the applicant's receiving a variance from the state performance standards through the Wisconsin Department of Natural Resources.

Sec. 8-6-15 Appeals and Variances

Application For and Issuance Of Permits.

Manure Storage Facility Permit Generally. No manure storage facility, or parts thereof may be constructed, substantially altered, or closed without a manure storage facility permit as provided in this article and without compliance with the provisions of this article. The requirements of this article shall be in addition to any other ordinance or administrative rule regulating manure storage or applicable technical standards. In the case of conflict, the most stringent provisions shall apply.

Exceptions 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 manure storage facility permit. If repairs will significantly alter the original design and construction of the facility, a report shall be made to the department within one working day of the emergency for a determination by the department on whether a permit will be required for any addition alteration or repair to the facility. The department's determination shall be rendered within two working days of the reporting. The department may consult with the committee prior to making this determination.

Permit Fee. Any person who by this article requires the issuance of a permit shall pay a fee, if required, for such permit to help defray the cost of administration, inspection and processing of permits. The amount of the fee shall be established on an annual basis by the committee.

Manure Storage Facility Permit Application. An application for a manure storage facility permit shall be filed with the department on forms supplied by the department. A copy of the permit application shall be mailed to the appropriate town board by the department. In addition, the department may mail a copy of the application to other agencies or units of government that may have jurisdiction over the proposed activity. Each application for a permit under this article shall include a manure storage facility plan, certified as meeting technical standards by an agricultural or civil engineer registered in the State of Wisconsin, or a Department of Agriculture, Trade, and Consumer Protection or NRCS engineering practitioner.

The plan shall specify:

- (a) The number and kinds of animals for which storage is provided, and design storage period.
- (b) A plan view of the facility and its location in relation to buildings, roads, wells, lot lines and other features within 300 feet, and homes within 500 feet of the proposed facility. The plan view shall be drawn to scale, with a scale of one inch equals 10, 20, 40, or 100 feet.
- (c) The structural details of the facility, including dimensions, cross sections, and concrete thickness and reinforcement, if applicable.
- (d) The soil test pit and/or soil depth boring locations and soil descriptions to a depth of at least five feet below the planned bottom of the facility, or to bedrock if at a lesser depth. The soil description shall conform to the Unified Soil Classification System.
- (e) The elevation of seasonally high groundwater or bedrock if encountered in the soil profile and date of any such determination.
- (f) Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater. If a navigable body of water lies within 500 feet of the facility, the location and distance to the body of water shall be shown.
- (g) Description of bench mark(s) including elevation(s) expressed in feet and hundredths.
- (h) Ground contours (2-foot maximum intervals), with spot elevations, indicating land slope at and around the site for a minimum distance of 100 feet.
- (i) Planned duration of storage, expressed in days or months, and volume of storage, expressed in cubic feet.
- (j) The scale of the drawing and a north arrow.
- (k) An animal waste assessment plan is required initially to demonstrate that suitable area is available for land application and crop uptake of manure nutrients. Manure applications shall be limited only by the nitrogen needs of the crops to be grown and the nitrogen contributions from the manure and other noncommercial nutrient sources (e.g. previous legume crops) based upon University of Wisconsin Extension recommendations.
- (l) A description of the method of transferring manure into and from the facility.
- (m) A construction site erosion control plan which meets the standards specified in Chapter 17 of the County Code.
- (n) Any other additional information required by the department to determine compliance with this section.

Nutrient Management Plan. As part of an application for a construction permit, a landowner must develop a nutrient management plan that complies with ATCP 50.04(3). The nutrient management plan must be submitted to the department before any manure is removed from the permitted manure storage facility or structure. The nutrient management plan shall include the following:

- A. Identification of every field on which the landowner mechanically applies nutrients.
- B. Be prepared by a nutrient management planner qualified under ATCP 50.48.

- C. Rely on soil nutrient test conducted at a laboratory certified under ATCP 50.50.
- D. Comply with the NRCS technical guide nutrient management standard 590 dated March, 1999. NOTE: Standard 590 dated March 1999 is a nitrogen based standard. The NRCS revised 590 in July 2002 to incorporate a phosphorus-based standard. The Wisconsin DATCP will initiate rulemaking to adopt the NRCS phosphorus-based standard by January 1, 2005.

Permit Application for Closure of Manure Storage Facility. An application for the closure of a manure storage facility permit shall be filed with the department on forms supplied by the department. Each application for a permit under this article shall include a plan for the closure of the manure storage facility, certified as meeting technical standards by an agricultural or civil engineer registered in the state of Wisconsin, or a Department of Agriculture, Trade, and Consumer Protection or NRCS engineering practitioner. The plan shall be consistent with NRCS Technical Standard Code 360.

Review Of Application.

- (a) The department shall receive and review all permit applications.
- (b) The department shall determine if the proposed facility meets the required standards set forth in this article. In making this determination, the department may require a site inspection and/or may consult with an outside agency at the expense of the department.
- (c) Within 30 days after receiving the completed application and fee, if required, the department shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required from the applicant, the department has 30 days from the receipt of the additional information in which to approve or disapprove the application. If in addition to the applicant's information the department requires comments from an outside agency, the department has 30 days from receipt of the comments from the referral agency. If the department fails to approve or disapprove the permit application in writing within 30 days of the receipt of the permit application, receipt of additional applicant information, or receipt of referral agency comments, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.
- (d) A copy of the action taken by the department on the permit application shall be mailed to the appropriate town board. In addition the department may mail a copy of the action taken to other agencies or units of government that may have jurisdiction over the proposed facility.

Permit Conditions. All permits issued under this article shall be issued subject to the following conditions and requirements:

- (a) A nutrient management plan that complies with ATCP 50.04(3) shall be submitted to the department prior to removal of any manure from the manure storage facility or structure.