

## **ORDINANCE TO REPEAL AND RECREATE ARTICLE IV, DIVISION 3 OF CHAPTER 62 OF THE CHIPPEWA COUNTY CODE OF ORDINANCES**

1. That Article IV, Division 3 of Chapter 62 of the Chippewa County Code of Ordinances is hereby repealed and is recreated as follows:

### **DIVISION 3. AGRICULTURAL PERFORMANCE STANDARDS, MANURE STORAGE AND LIVESTOCK FACILITY MANAGEMENT**

- Sec. 62-186. General Provisions.
- Sec. 62-187. Definitions.
- Sec. 62-188. Activities Subject to Permitting and to Regulation.
- Sec. 62-189. Dimensional Setbacks and Separation Distances
- Sec. 62-190. Performance Standards and Prohibitions.
- Sec. 62-191. Manure Storage Permits.
- Sec. 62-192. Certificate of Compliance.
- Sec. 62-193. Administration and Enforcement.
- Sec. 62-194. Violations.
- Sec. 62-195. Appeals and Variances.
- Sec. 62-196 to 62-209. Reserved.

### **DIVISION 3. AGRICULTURAL PERFORMANCE STANDARDS, MANURE STORAGE AND LIVESTOCK FACILITY MANAGEMENT**

#### **Sec. 62-186. General Provisions.**

- (a) *Authority.* This Ordinance is adopted under authority granted by ss. 59.02, 59.03, 59.70, 92.07, 92.15, and 92.16, Wisconsin Statutes (“Wis. Stats.”), and ss. ATCP 50.40 ATCP 50.56 and NR 151.05, Wisconsin Administrative Code (“Wis. Admin. Code”).
- (b) *Title.* This Ordinance shall be known as, referred to, and may be cited as the Chippewa County Agricultural Performance Standards, Manure Storage and Livestock Facility Ordinance, and is hereinafter known as the Ordinance.
- (c) *Findings and Declaration of Policy.*
  - (1) The Chippewa County Board of Supervisors finds that agricultural operations and the ongoing production of food, fuel, and fiber are essential to the county’s economy and to the well-being of county residents.
  - (2) The Chippewa County Board of Supervisors further finds the regulation of activities identified in this Ordinance will protect and promote the county’s agricultural industry; prevent pollution of surface and groundwater; protect the health, safety, and general welfare of the people and communities within the county; preserve the health of livestock, aquatic life and other animals and plants; advance the appropriate use of land and water conservation resources within the community; and protect the property tax base of the county.

- (3) The Chippewa County Board of Supervisors further finds that the technical standards developed by the USDA Natural Resources Conservation Service (“NRCS”), and performance standards, prohibitions, and conservation practices codified by Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) and Department of Natural Resources (“DNR”), which are adopted as part of this Ordinance, provide effective, practical, and environmentally protective methods for storage and managing manure.
- (4) The Chippewa County Board of Supervisors further finds that this Ordinance will be implemented to achieve resource management objectives for surface water and groundwater quality and agricultural nonpoint pollution control, as established in the Chippewa County Land and Water Resource Management Plan.
- (5) The Chippewa County Board of Supervisors further finds that the following conditions may threaten the county’s natural and water resources, cause harm to the health, safety, and welfare of people within the county, and adversely impact the property tax base of the county:
  - a. New and substantially altered manure storage facilities that fail to meet performance and technical standards for proper design, construction, and operation.
  - b. Existing manure storage facilities that are not properly functioning and pose unreasonable risks related to structural failure and leakage.
  - c. Existing manure storage facilities that overtop or are operated in a manner that creates an unreasonable risk of discharge to waters of state.
  - d. Existing manure storage facilities where no manure has been added or removed for a period of 24 months, and are not slated for future use.
  - e. Management of manure, including waste transfer, field stacking, and land application that fails to meet performance and technical standards for proper handling and land application of manure.
  - f. Management of livestock facilities and associated agricultural cropland and pasture that fail to meet state agricultural performance standards and prohibitions for agricultural runoff and nonpoint pollution control.
  - g. Management of agricultural cropland and pasture that fail to meet state agricultural performance standards and prohibitions for agricultural runoff and nonpoint pollution control.
- (d) *Purpose.* The purpose of this Ordinance is to: regulate the location, design, construction, installation, alteration, operation, maintenance, closure, and use of manure storage facilities; ensure the proper application of waste and manure from all manure storage facilities; and to prescribe agricultural performance standards and prohibitions for agricultural facilities, operations, and practices to control soil erosion, agricultural runoff, and nonpoint pollution from those operations.

This Ordinance codifies the agricultural performance standards and prohibitions that have been established under s. NR 151, Wis. Admin. Code to clarify for the benefit of the public, rural landowners, and agricultural operators the extent of agricultural management that is expected and required to control agricultural nonpoint source water pollution.

This Ordinance establishes site evaluation, cost-share, and operational reporting requirements to ensure that prescribed state agricultural performance standards are properly communicated and, if applicable, are met and maintained. This Ordinance is also intended to provide for its administration and enforcement, and to provide penalties for its violation.

- (e) *Applicability.* The permit and other requirements in this Ordinance apply to all land within the unincorporated areas of Chippewa County, unless an intergovernmental agreement is established with the governmental entity of an incorporated municipality.
- (f) *Interpretation.* In its interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Chippewa County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes (Stats.). This Ordinance shall be interpreted to be consistent with ch. 92 and s. 281.16, Wis. Stats. and chs. ATCP 50 and NR 151, Wis. Admin. Code.
- (g) *Abrogation, Greater Restrictions, Severability, and Repeal Clause.*
  - (1) *Abrogation and Greater Restrictions.* This Ordinance is not intended to repeal, annul, abrogate, impair, or interfere with any existing covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to law.
  - (2) *Severability.* Each section, paragraph, sentence, clause, word, and provision of this Ordinance is severable if any portion shall be deemed unconstitutional or invalid for any reason, and such decision shall not affect the remainder of the Ordinance nor any part thereof other than the portion affected by such decision.
  - (3) *Repeal.* All other ordinances or parts of ordinances of Chippewa County that are inconsistent or conflicting with this Ordinance to the extent of the inconsistency only, are hereby repealed, specifically including the Chippewa County Animal Waste Storage and Utilization Ordinance.
- (h) *Effective Date.* This Ordinance shall become effective upon its adoption by the Chippewa County Board of Supervisors, and publication.

#### **Sec. 62-187. Definitions.**

For the purpose of administering and enforcing this Ordinance, certain technical terms referenced, if not included in this section, are those defined in chs. 92 and 281, Wis. Stats., and chs. ATCP 50, NR 151, and NR 243, Wis. Admin. Code.

- (a) “Agricultural Performance Standards and Prohibitions” means those performance standards and prohibitions identified in Subchapter II of ch. NR 151, Wis. Admin. Code.

- (b) *"Applicant"* means any person who applies for a permit under this Ordinance.
- (c) *"Committee"* means the Land Conservation and Forest Management Committee, acting as the Land Conservation Committee, as the committee designated by the Chippewa County Board of Supervisors pursuant to s. 92.06, Wis. Stats.
- (d) *"Department"* means the Chippewa County Department of Land Conservation & Forest Management. The Department shall have full authority for carrying out the duties under this Ordinance, as delegated by the Committee and County Board under s. 92.09, Wis. Stats.
- (e) *"Director"* means the Director of the Chippewa County Department of Land Conservation & Forest Management.
- (f) *"DATCP"* means the Wisconsin Department of Agriculture, Trade and Consumer Protection.
- (g) *"DNR"* means the Wisconsin Department of Natural Resources.
- (h) *"Direct Runoff"* has the meaning in s. NR 151.015(7), Wis. Admin. Code. The criteria in s. NR 151.055(3), Wis. Admin. Code, will be used to predict or determine if a discharge is significant.
- (i) *"Earthen Manure Storage Facility"* means a facility constructed of earth dikes, pits, or ponds used for temporary storage of manure and other allowed uses.
- (j) *"Livestock Facility"* means a feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12 month period. A "livestock facility" includes all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single "livestock facility" for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate "livestock facility".
- (k) *"Manure"* means livestock excreta and 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, and process water; and runoff collected from barnyards, animal lots, and feed storage areas.
- (l) *"Manure Storage Facility"* means one or more impoundments made by constructing an embankment, excavating a pit or dugout, or fabricating a structure specifically for the purpose of temporarily storing manure and related wastes. A facility includes stationary equipment and piping used to load or unload a manure storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility, and specifically includes components to transfer waste from milking centers, runoff from barnyards, and leachate and contaminated runoff from feed storage.
- (m) *"Natural Resources Conservation Service (NRCS)"* is an agency of the United States Department of Agriculture which, for purposes of this Ordinance, develops and maintains a technical guide with conservation practice standards and specifications, engineering manuals and handbooks, and other technical documentation related to manure storage facilities, nutrient management plans, and other technical matters covered by this Ordinance.

- (n) *"NRCS Technical Guide"* means the document, including technical notes and appendixes for the State of Wisconsin, provided by NRCS which contains technical data, including the standards referenced within this Ordinance to properly and safely locate, construct, install, alter, design, operate, and maintain a manure storage facility, as adopted by Chippewa County in accordance with Chapter 92, Wis. Stats.
- (o) *"Nutrient Management Plan"* means any of the following:
  - (1) A plan required under s. ATCP 50.04(3) or 50.62(5) (f).
  - (2) A farm nutrient plan prepared or approved for a landowner, by a qualified nutrient management planner.

Note: A nutrient management plan must comply with s. ATCP 50.04(3)
- (p) *"Overflow"* has the meaning given in s. NR 151.015(15e), Wis. Admin. Code.
- (q) *"Permit"* means the signed, written statement issued under this Ordinance authorizing the applicant to construct, install, reconstruct, extend, enlarge, substantially alter, or close a manure storage facility, and to use or dispose of waste from the manure storage facility.
- (r) *"Permittee"* means any person to whom a permit is issued under this Ordinance.
- (s) *"Person"* means any individual, corporation, limited liability company, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the federal government, or any combination thereof.
- (t) *"Public Complaint"* means a verified complaint of concern that is received by Chippewa County, DATCP, or DNR that is used to determine whether there is a nonpoint water pollution discharge that results in a significant impact to waters of the state, as determined in accordance with ch. NR 243, Wis. Admin. Code, or whether the operation meets Wisconsin Agricultural Performance Standards and Prohibitions, as established under chs. NR 151 and ATCP 50, Wis. Admin. Code.
- (u) *"Safety Devices"* means devices which are designed to protect humans and livestock from the hazards associated with a manure storage facility.
- (v) *"Significant Discharge"* means a discharge of process wastewater that is determined as "significant" in accordance with the criteria in s. NR 151.055(3), Wis. Admin. Code.
- (w) *"Site that is susceptible to groundwater contamination"* has the meaning under s. NR 151.015(18), Wis. Admin. Code.
- (x) *"Stop Work Order"* means an order to cease any activity in the operation of, or construction of, an activity subject to regulation.
- (y) *"Substantially altered"* has the meaning in s. NR 151.015(20), Wis. Admin. Code.

- (z) *“Technical Standard 313”* is a practice standard within the Technical Guide that covers the proper location, design, construction, installation, alteration, operation, and maintenance of a manure storage facility.
- (aa) *“Technical Standard 360”* is a practice standard within the Technical Guide that covers decommissioning of facilities and/or the rehabilitation of contaminated soil in an environmentally safe manner where agricultural waste has been handled, treated, and/or stored and is no longer used for the intended purpose.
- (bb) *“Technical Standard 634”* is a practice standard within the Technical Guide that covers the design, material types and quality, and installation of components such as conduits, pumps, valves, and other structures or devices to transfer manure and waste from buildings and yards and other sources to storage, loading areas, crop fields and other destinations. The standard establishes the minimum acceptable requirements for design, construction, and operation of waste transfer systems.
- (cc) *“Technical Standard 590”* is a practice standard within the Technical Guide that covers managing the amount, form, placement, and timing of plant nutrients associated with organic wastes (manure and organic by-products), commercial fertilizers, legume crops and crop residues.
- (dd) *“Waste Transfer System”* means components such as pumps, pipes, conduits, valves, and other mechanisms installed to convey manure, leachate and contaminated runoff, and milking center wastes from livestock structures to a storage structure loading area or treatment area.
- (ee) *“Unpermitted Manure Storage Facility”* means a manure storage facility constructed, modified, or placed in use without first obtaining permit, including facilities constructed before (the first date of the adoption of this Ordinance), and may include an earthen structure or impoundment made of a concrete liner which fully or partially covers the bottom and/or the sidewalls of the impoundment.
- (ff) *“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.
- (gg) *“Water Quality Management Area”* or *“WQMA”* has the meaning in s. NR 151.015(24), Wis. Admin. Code.
- (hh) *“Waters of the State”* is the meaning specified under s. 281.01(18), Wis. Stats.

**Sec. 62-188. Activities Subject to Permitting and to Regulation.**

- (a) *Manure Storage Facilities.* Any person who constructs, substantially alters, changes use of or closes a manure storage facility and related transfer systems, or who employs another person to do the same is subject to the performance standards and prohibitions in Sec. 62-190 and shall be subject to the permit requirements of this Ordinance in Sec. 62-191 .
- (b) *Performance Standards and Prohibitions.* Any person who owns or operates cropland or livestock facilities in this county is subject to the performance standards and prohibitions in Sec.

62-190. This Ordinance incorporates by reference the definitions in chs. ATP 50 and NR 151, Wisconsin Admin. Code, to the extent that they are not explicitly referenced herein.

- (c) *Safety Devices.* All manure storage facilities shall be equipped with safety devices, including fences and warning signs intended to protect humans and livestock from the hazards associated with such facilities. Safety devices shall be designed and installed as required by the NRCS Technical Guide.

#### **Sec. 62-189. Dimensional Setbacks and Separation Distances**

This ordinance incorporates the existing dimensional setbacks and environmental separation distances referenced in the NRCS Technical Guide, and those established in chs. ATP 50, NR 151, and NR 243, Wis. Admin. Code.

#### **Sec. 62-190. Performance Standards and Prohibitions.**

- (a) *Purpose.* The purpose of this section is to identify the agricultural performance standards and prohibitions that apply to cropland owners and operators, and to livestock facility owners and operators after the effective date of the Ordinance, whether or not the owners or operators have received a permit under this Ordinance. This section outlines the procedures the Department will follow in implementing and enforcing these standards and prohibitions consistent with state requirements, and the circumstances under which an owner or operator of a livestock facility is required to comply with these standards and prohibitions.
- (b) *Activities Subject to Agricultural Performance Standards and Prohibitions.*
  - (1) *Livestock Manure Storage.* All owners and operators of livestock facilities shall manage livestock facilities and operations, and store manure in accordance with State agricultural performance standards and prohibitions and Secs. 62-190 sub (c) and (d), whether or not a permit has been issued under Sec. 62-191.
  - (2) *Cropland and Pastures.* All owners and operators of cropland and pastures shall manage cropland and pastures in accordance with State agricultural performance standards and prohibitions, and Sec. 62-190, whether or not a permit has been issued.
- (c) *Manure Storage Facilities Performance Standards.* (see ss. NR 151.05 and NR 151.08, Wis. Admin. Code)
  - (1) Manure storage facilities constructed or substantially altered after October 1, 2002, shall be designed, constructed, and maintained to minimize the risk of structural failure of the facility and minimize leakage from the facility.
    - a. Storage facilities that are constructed or significantly altered shall be designed and operated to contain the additional volume of runoff and direct precipitation entering the facility as a result of a twenty-five (25)-year, twenty-four (24)-hour storm.

- b. A manure storage facility located in permeable soils or over fractured bedrock must be constructed with a liner designed in accordance with NRCS Technical Guide.
- (2) Closure of a manure storage facility shall occur when the farm where the storage facility is located ceases operation, or manure has not been added or removed from the storage facility for a period of twenty-four (24) months. Manure storage facilities shall be closed in a manner that prevents future contamination of groundwater and surface waters, and shall conform to the permit and other requirements in this Ordinance.
- (3) The owner or operator may avoid closure of a manure storage facility as required under subsection (c)(2) by demonstrating to the Department that all of the following conditions are met:
  - a. The facility is designed, constructed, and maintained in accordance with subsection (c)(1).
  - b. The facility is designed to store manure for a period of time longer than twenty-four (24) months.
  - c. Retention of the facility is warranted based on anticipated future use.
- (4) Manure storage facilities that pose an imminent threat to public health, fish and aquatic life, or groundwater shall be upgraded, replaced, or closed in accordance with this Ordinance.
- (5) Manure storage facilities constructed or substantially altered after October 1, 2002, may be required to comply with Sec. 62-190 without cost-sharing.
- (6) Levels of materials in manure storage facilities may not exceed the margin of safety level as defined in s. NR 151.015(13g), Wis. Admin. Code.
- (7) No livestock facility in the county shall have:
  - a. Overflow of manure from storage facilities.
  - b. Direct runoff from stored manure into the waters of the state.
- (8) All owners and operators of manure storage facilities shall apply manure and nutrients to cropland according to a nutrient management plan prepared in compliance with ATCP 50.04(3), Wis. Admin. Code.
- (d) *Livestock Management Performance Standards.*
  - (1) All pastures shall be managed to achieve a soil erosion rate equal to, or less than, the “tolerable” (T) rate established for that soil (s. NR 151.02, Wis. Admin. Code).
  - (2) All owners and operators of pastures shall have and follow a nutrient management plan prepared in accordance with s. ATCP 50.04(3), Wis. Admin. Code if the pastures are

stocked at an average stocking rate of more than one animal unit per acre at all times during the grazing season, or if the pasture receives mechanical applications of nutrients (s. NR 151.07, Wis. Admin. Code).

- (3) Each pasture and winter grazing area covered by a nutrient management plan shall have a phosphorus index average of six (6) or less over the accounting period and may not exceed a phosphorus index of twelve (12) in any individual year within the accounting period (s. NR 151.04, Wis. Admin. Code).
- (4) Livestock facilities may have no significant discharge of process wastewater to waters of the state (s. NR 151.055, Wis. Admin. Code).
- (5) Livestock facilities shall divert runoff away from contacting feedlot, manure storage areas and barnyard areas within WQMAs, except that a diversion to protect a private well under NR 151.015(18)(a), Wis. Admin. Code is required only when the feedlot, manure storage area, or barnyard area is located upslope from the private well (s. NR 151.06, Wis. Admin. Code).
- (6) No livestock facility shall:
  - a. Have an unconfined manure pile in a WQMA.
  - b. Have direct runoff from a feedlot into the waters of the state.
  - c. 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. (s. NR 151.08, Wis. Admin. Code)

(e) *Cropland Performance Standards.*

- (1) All land where crops or feed are grown shall be managed to achieve a soil erosion rate equal to, or less than, the “tolerable” (T) rate established for that soil (s. NR 151.02, Wis. Admin. Code).
- (2) No crop producer may conduct a tillage operation that negatively impacts stream bank integrity or deposits soil directly in surface waters (s. NR 151.03, Wis. Admin. Code).
- (3) No tillage operations may be conducted within five (5) to twenty (20) feet of a surface water, as specified in accordance with ss. NR 151.03 and ATCP 50.04(4), Wis. Admin. Code.
- (4) Croplands and winter grazing areas shall average a phosphorus index of six (6) or less over the accounting period and may not exceed a phosphorus index of twelve (12) in any individual year within the accounting period (s. NR 151.04, Wis. Admin. Code).
- (5) All owners and operators of cropland shall apply nutrients according to a nutrient management plan prepared in accordance with s. ATCP 50.04(3), Wis. Admin. Code.

(f) *Implementation and Enforcement Procedures for Performance Standards and Prohibitions.*

- (1) *Procedures.* To implement and enforce the performance standards and prohibitions defined in Sec. 62-187, and referenced in Sec. 62-190, the Department shall do all of the following:
- a. Provide voluntary cost-sharing to secure compliance, when required.
  - b. Follow the procedures in s. NR 151.09, Wis. Admin. Code to implement and enforce the performance standards for cropland in Sec. 62-190(e) and the pastures standards in Sec. 62-190(d), and the procedures in s. NR 151.095, Wis. Admin. Code, to implement and enforce the performance standards for livestock operations in Sec. 62-190(d).
  - c. Pursue any other action or remedies authorized under Secs. 62-193, 62-194, and 62-195 of this Ordinance.

- (2) *Farm Evaluation.* Farm evaluations shall be scheduled with persons subject to regulation under Sec. 62-188 and with those subject to public complaint.

Farm evaluations will be conducted by the Department using standardized protocols, with opportunity for participation by the landowner and operator.

Evaluations will be conducted to:

- a. Inform the landowner and operator of the performance standards and prohibitions, and to document the extent of current compliance with ss. NR 151.09 and NR 151.095, Wis. Admin. Code.
  - b. In circumstances where there is a spill, runoff event, or direct discharge, document the occurrence as necessary, to evaluate potential impacts on waters of the state and to determine possible regulatory response and enforcement under s. NR 243, Wis. Admin. Code and Sec. 62-193 and Sec. 62-194.
- (3) *Cost-Sharing Required.* Pursuant to chs. ATPC 50 and NR 151, Wis. Admin. Code, the Department shall determine if a landowner of existing cropland or livestock facilities must be made a bona fide offer of cost-sharing to achieve compliance with a performance standard or prohibitions. The Department shall do all of the following, notifying the landowner regarding its determinations:
- a. Identify the specific areas in which the landowner or operator has failed to comply with the performance standards and prohibitions, and the corrective actions the landowner or operator must pursue to achieve compliance.
  - b. Determine whether farmland that is out of compliance is “existing cropland” or an “existing livestock facility”. If cropland or a livestock facility has been determined to be in compliance with a performance standard or prohibition, it no longer qualifies as an “existing” cropland or facility for cost-share purposes

under that performance standard. If the cropland or facility later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost-sharing.

- c. Determine whether cost-sharing is available following the requirements of s. NR 151.09(4)(d) or NR 151.09(5)(d), Wis. Admin. Code, when funding is provided under s. 281.65, Wis. Stats., and use ch. ATCP 50, Wis. Admin. Code, to determine whether cost-sharing is available when funds are from any other source.

#### **Sec. 62-191. Manure Storage Permits.**

**(a) *Permit Required.***

- (1) No person may do any of the following without obtaining a permit in accordance with this section:
  - a. Construct a new manure storage facility or substantially alter an existing manure storage facility, including the construction or substantial alteration of waste transfer systems connected to a manure storage facility.
  - b. Upgrade, repair, or replace a manure storage facility that has been identified as posing an imminent threat to public health, fish and aquatic life, or groundwater under Sec. 62-187.
  - c. Close an existing manure storage facility, including conversion of its use, regardless of whether the facility must be closed in accordance with Sec. 62-190.
  - d. Change the use of the manure storage facility to store industrial, food processing, septage, or other wastes.
  - e. Operate an existing manure storage facility, permitted through this Ordinance, without a certificate of compliance issued under Sec. 62-192.
- (2) For the purposes of this section, a manure storage facility is subject to the permit requirements if:
  - a. It is intended to hold an accumulation of manure within an impoundment or enclosure that is excavated or fabricated.
  - b. It is an enclosed area for holding manure within or below a feedlot or structure for confinement of livestock.
- (3) Requirements of this Ordinance shall be in addition to any other legal requirements regulating animal waste. Specific exemptions to cost-share requirements apply to the issuance of permits. See ss. NR 151.095(5)(b)2. and ATCP 50.54(2)(b), Wis. Admin. Code. In the case of conflict, the most stringent provisions shall apply.

- (4) A person shall be deemed to be in compliance with this section if he or she follows the application and other procedures specified in this section, receives a permit and approval from the Department before beginning activities subject to regulation under this section, complies with the requirements of the permit, and receives any required approvals or certifications from the Department. The Department may establish a timetable for the applicant to complete required activities to ensure compliance with requirements of this Ordinance.
- (b) *Exemption to Permit Requirement.* A permit is not required for:
- (1) Routine maintenance of a manure storage facility.
- (2) Emergency equipment repairs of a manure storage facility, if the following conditions are met:
- a. All emergency repairs on a manure storage facility or waste transfer system which cause any disruption of the original construction of the manure storage facility shall be done so as to restore the manure storage facility to the original state, as determined by the performance standards set forth in Sec. 62-190.
- b. Such repairs shall be reported to the Department, by the landowner, within one (1) working day of the emergency for the Department to determine whether a permit will be required for any additional alteration or repair to the manure storage facility, which shall be rendered by the Department within three (3) working days of reporting.
- (c) *Fee.* All fees under this Ordinance are established pursuant to a Fee Schedule duly adopted by the County Board/Committee & County Board throughout the County budget process. Copies of the current fee schedule are kept on file at the Department or are available from the County website at [www.co.chippewa.wi.us](http://www.co.chippewa.wi.us). Permit fees shall be payable at the time of submission of a permit application. Separate fees may apply for engineering assistance provided by the Department to design a manure storage facility.
- (d) *Manure Storage Facility Construction Plan and Nutrient Management Plan Required.* Each application for a permit under Sec. 62-191 shall be on a form provided by the Department and include plans for the manure storage facility (including waste transfer system) and the management of manure prepared in accordance with following requirements:
- (1) A narrative of the general criteria required within Technical Standard 313, and of other applicable Technical Standards including management and site assessments. The narrative should include, but is not limited to:
- a. The number and type of animals for which manure storage is provided, the duration for which housing or manure storage is to be provided, daily gallons and/or cubic feet of waste and manure produced, bedding type, and manure handling practices.
- b. For manure storage, a description and construction plan of the method of transferring manure into and from the manure storage facility.

- c. For manure storage, soil test pit or boring logs and their locations with soil descriptions and test results, prepared following a soils site investigation conducted by the Department. Soil test pit or boring criteria shall follow Technical Standards 313V.A.2.b. and characterize the subsurface (soils, saturation, and bedrocks). This includes the elevation of redoximorphic features (mottling), gleyed soil and moisture condition.
- (2) A general location map drawing of the livestock facility site which shall include:
  - a. The location of structures in relation to buildings, homes, property lines, roads, wells, karst features, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand (1000) feet of the proposed facility or system.
  - b. The location of any wells within two hundred fifty (250) feet of the facility.
  - c. The scale of the drawing and the north arrow with the date the general location map was prepared.
  - d. The location of any floodplains.
- (3) An engineering design drawing of the manure storage facility or waste transfer system, which shall include:
  - a. Specific design components that shall comply with Technical Standards 313, 634, and any additional applicable Technical Standards.
  - b. A recoverable benchmark(s), including elevation(s) expressed in feet and tenths.
  - c. The scale of the drawings and the north arrow. The engineering design drawing shall be drawn to a scale no smaller than one (1) inch equals one hundred (100) feet.
  - d. The date the engineering design drawings were prepared.
  - e. The engineering stamp of a licensed professional engineer.
- (4) The structural details, including but not limited to dimensions, cross-sections, concrete thickness, concrete joint design and placement, design loads, design computations, reinforcement schedules, thickness and placement of groundwater protection liners, and all material specifications. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater.
- (5) A construction site erosion control plan.
- (6) Estimated start of construction and construction schedule.

- (7) A safety plan that identifies hazards to animals and people in the production area, and design features to minimize those hazards.
  - (8) An operation and maintenance plan for installed practices.
  - (9) A nutrient management plan prepared in compliance with the requirements of this Ordinance.
  - (10) Other additional information requested by the Department to comply with this Ordinance.
- (e) *Manure Storage Closure Plan Required.* Each application for a closure permit under Sec. 62-191 shall be on a form provided by the Department and include a closure plan. The closure plan shall include:
- (1) A general location map drawing of the manure storage facility, which shall include:
    - a. The location of the manure storage facility in relation to buildings, homes, property lines, roads, wells, karst features, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand (1000) feet of the existing manure storage facility.
    - b. The scale of the drawing and the north arrow.
    - c. The date the general location map was prepared.
  - (2) A description of the method and specifications in transferring manure into and from the manure storage facility to ensure proper closure of manure transfer systems.
  - (3) Provisions to remove or permanently plug the manure transfer system serving the manure storage facility.
  - (4) Provisions to remove and properly dispose of all accumulated manure in the manure facility in compliance with applicable standards contained in the NRCS Technical Guide.
  - (5) Provisions and references to assure compliance with applicable standards contained in the NRCS Technical Guide.
  - (6) Provisions to implement safety measures to ensure the protection of the public from hazardous conditions.
  - (7) For proposals to convert the manure storage facility to an alternative use, including the storage of other water materials, a detailed description of the intended alternative use, including a site specific engineering analysis that demonstrates to the Department provides an assurance that the conversion will not result in a degradation of ground and/or surface waters or be a threat to public health, safety, or general welfare.
  - (8) Any other additional information required by the County to protect water quality and achieve compliance with the requirements of this Ordinance.

(f) *Permit Provisions.*

- (1) *Manure Storage Construction.* Permit applications under this Sec. 62-191 shall provide sufficient documentation to demonstrate that a new or substantially altered storage facility:
  - a. Is designed in accordance with the following technical standards:
    1. Technical Standard 313.
    2. Technical Standard 634.
  - b. Meets the performance standards in Sec. 62-190(c).
- (2) *Manure Storage Closure.* Permit applications under Sec. 62-190(e) shall provide sufficient documentation to demonstrate that the plan for manure storage facility closure meets Technical Standard 360.
- (3) *Manure and Nutrient Management.* Nutrient management plans submitted under Secs. 62-190(d) and (e), if needed, shall comply with Technical Standard 590, and ss. ATCP 50.04(3) and NR 151.07, Wis. Admin. Code.
- (4) *Other Standards.* Other technical guides such as AWMFH or EFH may be used to evaluate compliance with the requirements of this Ordinance.
- (5) *Incorporation of Standards and Specifications.* All standards and specifications are incorporated by reference and made part of this Ordinance. Any future amendment, revision, or modification of the standards or specifications incorporated herein are made a part of this Ordinance, unless the Committee specifically acts to adopt a different version. Copies of all applicable standards and specifications may be obtained from the permitting authority or on the county's website at [www.co.chippewa.wi.us](http://www.co.chippewa.wi.us).
- (6) *Certification.* All permit applications must include a certification provided by a qualified person that designs and plans meet the technical standards and specifications in this subsection.
- (7) *Variances.* Variances from these standards and specifications can only be granted in accordance with Sec. 62-195 of this Ordinance.

- (g) *Review of Application.* The Department shall receive and review all permit applications and shall determine if the proposed facility meets required standards set forth in this Ordinance. Within forty-five (45) calendar days after receiving the completed application and fee, the Department shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the Department shall so notify the permit applicant. The Department shall have thirty (30) calendar days from the receipt of the additional information in which to approve or disapprove the application. No construction may commence without the final approval form issued by the Department.

(h) *Permit Approval Conditions.* All permits issued under this Ordinance shall be issued subject to the following conditions and requirements.

- (1) Facility and system design, construction, and closure shall be carried out in accordance with the approved plans and applicable standards.
- (2) Permittees must obtain all required permits and authorization before commencing construction activities.

*Note:* DNR and other permits may be needed for construction site erosion control and stormwater management, floodplain and shoreland construction, and livestock facilities with 1,000 or more animal units.

- (3) The permittee shall provide five (5) working days written notice to the Department before starting any construction activity authorized by the permit.
- (4) Approval in writing must be obtained from the Department prior to making any changes or modifications to the approved plans and specifications.
- (5) Following completion of construction and prior to use, an agricultural or civil engineer registered in the State of Wisconsin, or DATCP or NRCS or Department 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 changes or modifications as authorized per Sec. 62-191(h)(4) made during construction.
- (6) The Department shall provide onsite inspection and final approval for all construction projects conducted under a permit issued under this Ordinance. 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.
- (7) No permitted manure storage facility may receive manure until the Department provides its final approval. No manure may be emptied from a permitted manure storage facility until the Department approves the nutrient management plan submitted by the applicant.

(i) *Permit Implementation.* All planning and construction-related activities authorized by a permit shall be completed within two (2) years from the date of issuance after which time such permit shall be voided, unless otherwise extended by the Department.

(j) *Permit Term and Duration.* Permits issued under this Ordinance shall extend for a period of twenty-five (25) years, and shall be subject to review and renewal under Sec. 62-191 at the end of the permit term.

(k) *Permit Revocation.* In addition to any other actions authorized under this Ordinance, the Department may revoke any permit issued under this Ordinance if the holder of the permit has misrepresented any material fact in the permit application, plan, or specification, or if the holder

of the permit violates any of the conditions of the permit. The decision of the Department may be appealed to the Board of Adjustment pursuant to Sec. 62-195(a).

**Sec. 62-192. Certificate of Compliance.**

- (a) *Certificate of Compliance Purpose.* The purpose of a certificate of compliance is to monitor and regulate the management of manure and nutrients from agricultural operations and to assure the adequacy of related nutrient management practices.
- (b) *Certificate of Compliance Requirement.* No person may operate or use a manure storage facility permitted under Sec. 62-191 unless the person has a valid certificate of compliance for the permitted manure storage facility that is being operated or used.
- (c) *Issuance to Permitted Manure Storage Facility Owners.* The Department may issue a certificate of compliance upon the operator's compliance with performance standards and prohibitions in Sec. 62-190. The certificate of compliance shall remain in effect for as long as the manure storage facility owner or operator does all of the following:
  - (1) Updates and follows an annual nutrient management plan that complies with requirements in this Ordinance, and covers all manure that is land applied from the manure storage facility for which the certificate of compliance is issued.
  - (2) Provides a nutrient management plan checklist annually to the Department by a date specified by the Department, to document compliance with requirements of this Ordinance. The Department may require the manure storage facility owner or operator to submit the documentation to substantiate the planner's answer to one or more questions on the nutrient management checklist. The Department may take appropriate action authorized by this Ordinance if the submitted documentation does not reasonably substantiate a checklist answer.
  - (3) Properly operates the manure storage facility in accordance with performance standards and prohibitions in Sec. 62-190(c) and consistent with the recommended operating methods as defined by the NRCS Technical Guide.
  - (4) Properly maintains the manure storage facility free from visible and serious damage, erosion, or deformities that would impair the manure storage facility's safety or function as determined by the NRCS Technical Guide.
  - (5) Properly maintains the safety devices for a manure storage facility.
  - (6) Provides the Department proof of compliance with the requirements in Sec. 62-190(c) by participating in a periodic reporting and self-certification process administered by the Department, and submitting to periodic inspections of the manure storage facility upon advance notice from the Department.
  - (7) Develops and implements a plan for closure of the manure storage facility when the operator ceases use of the manure storage facility or closure is required based on conditions specified in this Ordinance.

- (8) Provides notice to the Department and any would-be buyers at the time of real estate transfer for parcels subject to the certificate of use.

(d) *Issuance to Cropland Owners*

The Department may issue a certificate of compliance upon the cropland owner's compliance with agricultural performance standards and prohibitions in Sec. 62-190(e). The certificate shall remain in effect for as long as the cropland owner or operator does the following:

- (1) Updates and follows an annual nutrient management plan that complies with requirements in this Ordinance, and covers all manure land applied from the manure storage facility for which the certificate of compliance is issued.
- (2) Provides a nutrient management plan checklist annually to the Department by a specified date to document compliance with Ordinance requirements. The Department may require the cropland owner or operator to submit the documentation to substantiate the answer of a nutrient management planner who is qualified under ATCP 50.48, Wis. Admin. Code, to address one or more questions on the nutrient management checklist. The Department may take appropriate action authorized by this Ordinance if the submitted documentation does not reasonably substantiate a checklist answer.
- (3) Properly operates the cropland and pasture land in accordance with performance standards and prohibitions in Sec. 62-190(d) and (e).

- (e) *Certificate of Compliance Revocation.* In addition to any other actions specified under this Ordinance, the Department may revoke a certificate of use if there is a misrepresentation of any material fact in the documents submitted in connection with the certificate of compliance, a misrepresentation of any material fact in the management plan, a failure to submit required documentation or allow inspection, a condition that immediately threatens public health and safety, or for multiple or repeat violations of this Ordinance. The landowner will be immediately provided written notice of the revocation and the reasons for the revocation. No manure be added to or removed from a manure storage facility for which the certificate of compliance has been revoked.

**Sec. 62-193. Administration and Enforcement.**

- (a) *Delegation of Authority.* The Chippewa County Board of Supervisors hereby designates the Department to administer and enforce this Ordinance.
- (b) *Administrative Duties.* In the administration and enforcement of this Ordinance, the Director or the Director's designated representative shall:
- (1) Keep an accurate record of all permit applications, animal waste facility plans, nutrient management plans, permits issued, inspections made, and other official actions.
  - (2) Review permit applications and issue permits in accordance with Sec. 62-191 of this Ordinance.

- (3) Conduct, or cause to conduct, reviews of the nutrient management plans and their implementations.
  - (4) Conduct or cause to conduct, reviews of the nutrient management plans and their implementation.
  - (5) Implement the performance standards and prohibitions in accordance with Sec. 62-190 of this Ordinance.
  - (6) Review certificate applications and issue and record certificates of compliance in accordance with Sec. 62-192 of this Ordinance.
  - (7) Investigate complaints relating to compliance with the requirements of this Ordinance and act upon the findings in accordance with provisions of this Ordinance.
  - (8) Perform other duties as specified in this Ordinance.
- (c) *Inspection Authority.* The Director or the Director's designated representative is authorized to enter upon any lands affected by this Ordinance to inspect the land, and request records to determine compliance with this Ordinance, including inspection of sites prior to or after the issuance of a permit or certificate of compliance, and sites with unpermitted manure storage facilities. If permission cannot be received from the applicant or permittee, entry by the Director or the Director's designated representative may proceed in accordance with Sec. 66.0119, Wis. Stats. Refusal to grant permission to enter lands affected by this Ordinance for purposes of inspection shall be grounds for permit denial or revocation. The Department may take any action authorized by this Ordinance to enforce this right of inspection.
- (d) *Enforcement Authority.* In addition to the authority to revoke permits and certificates of compliance specified in this Ordinance, the Director or the Director's designated representative is authorized to issue Stop Work Orders. The Director or the Director's designated representative is authorized to post an order stopping work upon land that has had a permit or certificate of compliance 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 the order 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 must cease immediately or be brought into compliance within five (5) calendar days.
- (e) *Stop Work Order Authority.* Any permit revocation or order stopping work shall remain in effect unless retracted by the Director or the Director's designated representative, the Board of Adjustment, or by a court of general jurisdiction; or until the activity is brought into compliance with this Ordinance. The Director or the Director's designated representative is authorized to refer any violation of this Ordinance or of any stop work order issued pursuant to this Ordinance to the Corporation Counsel for commencement of further legal proceedings.
- (f) *Abatement Order Authority.* The Director or the Director's designated representative may issue an order to abate any violation of this Ordinance with proper authorization. In the event an offense is not abated as ordered, the Department may take such action as is necessary to abate the offense and the cost of such abatement will become a lien upon the person's property and may be collected in the same manner as other taxes.

- (g) *ch. NR 151 Procedures.* The Director or the Director's designated representative shall follow the procedures in sec. NR 151.09, Wis. Admin. Code to implement and enforce the cropland performance standards and the procedures in s. NR 151.095, Wis. Admin. Code to implement and enforce the livestock performance standards.
- (h) *Citation and Referral Authority.* The Director or the Director's designated representative shall have the authority to issue citations for violations of this Ordinance. The Director or the Director's designated representative may refer a violation of this Ordinance to Corporation Counsel to pursue legal action, including but not limited to the enforcement of any part of this Ordinance through injunctions or restraining orders.
- (i) *Other Lawful Remedies.* Nothing in this section may be construed to prevent the Department from using any other lawful means to enforce this Ordinance.

**Sec. 62-194. Violations.**

- (a) It is unlawful for a person to violate any provisions of this Ordinance or any condition contained in a permit or certificate issued pursuant to this Ordinance.
- (b) It is unlawful for any person to knowingly provide false information, make a false statement, or fail to provide or misrepresent any material fact to a county agent, board, commission, committee, department, employee, officer, or official acting in an official capacity under this Ordinance.
- (c) It is unlawful for a person to disobey, fail, neglect, or refuse to comply with; or otherwise resist an order issued pursuant to this Ordinance.
- (d) A separate offense is deemed committed on each day that a violation occurs or continues.
- (e) A person shall, upon conviction for a violation of this Ordinance, be subject to a forfeiture of not less than \$100.00, together with the costs in such action, and not more than \$500.00, together with the costs of such action, for each violation.

**Sec. 62-195. Appeals and Variances.**

- (a) *Appeals.*
  - (1) Under authority of Chapter 68, Wis. Stats., the Chippewa County Board of Adjustment, created under s. 59.69, Wis. Stats., and acting as an appeal authority under s. 59.69, Wis. Stats., is authorized to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination by the permitting authority in administering this Ordinance.
  - (2) Any person having a substantial interest, which is adversely affected by the order, requirement, decision, or determination made under this Ordinance may file an appeal.

- (3) All appeals shall specify written evidence and the reason for the request, including which requirements from this Ordinance are involved, and shall be filed via certified mail.
- (4) Upon receipt of the appeal, the Board of Adjustment shall set a meeting to hear the appeal.
- (5) A written decision shall be mailed to the appellant within thirty (30) days of the appeal. The decision will affirm, deny, or modify the initial determination.
- (6) The rules, procedures, duties, and powers of the Board of Adjustment shall apply to appeals filed under this section.

(b) *Variances.*

- (1) The Board of Adjustments may, upon appeal, authorize a variance from the standards requirements of this Ordinance when, upon showing by the applicant, unnecessary hardship would result from literal enforcement of this Ordinance.
- (2) A variance shall:
  - a. Be consistent with the spirit and purpose of this Ordinance.
  - b. Be based on unique circumstances and not to the general conditions of the area.
  - c. Not be granted for a self-created hardship.
  - d. Not permit an activity or practice that may fail structurally or otherwise, and cause significant water pollution or other off-site impacts.
  - e. Not be granted if the variance will result in an outcome that is contrary to the public interest and 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.
- (3) No variance from the standards in the Technical Guide may be approved unless the county receives a variance or waiver from the technical standards through the NRCS, or other qualified engineering authority. If public funds are involved, this may be a program requirement.
- (4) No variance from the performance standards and prohibitions in Sec. 62-190 may be granted unless the county complies with the variance requirements specified in s. NR 151.097, Wis. Admin. Code, and receives approval from the Department of Natural Resources. Requests for a variance shall be made in writing and shall provide information documenting 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 ch. NR 151, Wis. Admin. Code.
- c. The landowner or operator, or their agents or assigns, did not create the conditions for which the variance is requested.

2. That this ordinance shall take effect upon passage and publication.

Forwarded to the County Board by the Land Conservation and Forest Management Committee.