

Buffalo County Ordinance



Drafted By:
Land Conservation Committee
Presented Month/Year:
August 2007
Involved Committees:
Land Conservation

County Department:
Land Conservation
Fiscal Impact: YES / NO
CA Approved: YES / NO

ORDINANCE # 07-08-01

BUFFALO COUNTY MANURE STORAGE ORDINANCE

SECTIONS:

1. Introduction
2. Definitions
3. Activities Subject to Regulation
4. Standards
5. Application for and Issuance of Permits
6. Administration
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SECTION 1. INTRODUCTION

1.01 Authority & Name. This ordinance is adopted under authority granted by sections §59.02, 59.03, 59.69, 59.70 and 92.15, 92.16, Wis. Stats.

1.02 Title. This ordinance shall be known as, referred to, and may be cited as the Buffalo County Manure Storage Ordinance and is hereby referred to as the "ordinance".

1.03 Findings and Declaration of Policy. The Buffalo County Board of Supervisors finds that storage of animal manure in storage facilities not meeting technical design and construction standards is a threat to cause pollution of the surface and ground waters of Buffalo County, and may result in actual or potential harm to the health of county residents and transients; to livestock, aquatic life and other animals and plants; and to the property tax base of Buffalo County.

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

The Buffalo County Board of Supervisors further finds that the technical standards developed by the United States Department of Agriculture-Natural Resource Conservation Service (U.S.D.A., N.R.C.S.) as adopted by the Land Conservation Committee, provide effective, practical, and environmentally safe methods of storing and utilizing animal waste.

1.04 Purpose. The purpose of this ordinance is to regulate the location, design, construction, installation, alteration, closure and use of manure storage facilities, and the land application of wastes from these facilities in order to prevent water pollution and thereby protect the health of Buffalo County residents and transients; prevent the spread of disease; and promote the prosperity and general welfare of the citizens of Buffalo County. It is also intended to provide for the administration and enforcement of the ordinance and to provide penalties for its violation.

1.05 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 Buffalo County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

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

1.07 Applicability. This ordinance applies to the unincorporated areas of Buffalo County and to all manure storage facilities constructed therein.

1.08 Effective Date. This ordinance shall become effective upon its adoption by the Buffalo County Board of Supervisors, the first day of the first month following publication.

SECTION 2. DEFINITIONS

A. Abandoned Manure Storage Facility means any manure storage facility, not used for its intended purpose for a period of 24 consecutive months, and will by all available evidence, not again be used to store manure by an active livestock operation.

B. Manure means a material that consists primarily of excreta from livestock, poultry and other materials, such as bedding, rain or other water, soil, hair, feathers, and other debris normally included in manure handling operations.

C. Manure Storage Facility means any earthen, concrete, wooden, steel or otherwise fabricated structure intended to temporarily store an accumulation of manure. For the purpose of this ordinance, any facility constructed or excavated for the purpose of storing manure shall be considered a manure storage facility. An uncontained deposit of animal waste in place for less than 100 consecutive days located on an earthen, concrete, or other surface, necessary to facilitate daily or periodic land spreading is considered a manure stack. Manure stacks do not require a permit, but should have their location approved by LCD staff or their designee prior to stacking. All manure storage facilities constructed after the effective date of this ordinance must have a permit.

D. Applicant means any person who applies for a permit under this ordinance.

E. Bedrock means the rocks that underlay soil material or at the earth's surface. Bedrock is encountered when the weathered-in-place consolidated material, larger than two millimeters (2mm) in size, is greater than fifty percent (50%) by size.

F. Groundwater Level means the higher of either the elevation to which the soil is saturated as observed as a free water surface in and unlined hole, or the elevation to which the soil has been seasonally or periodically saturated as indicated by soil color patterns throughout the soil profile. For the purpose of these rules, high groundwater color patterns should be established by the presence of low chroma- mottles.

G. Land Conservation Committee (LCC) means the committee created by a county board under Wisconsin Statutes.

- H. Land Conservation Department (LCD)** means the county staff assigned the responsibility of enforcing, and providing technical assistance for this ordinance.
- I. Nutrient Management Plan** means a written plan detailing the amount, form, placement, and timing of application of plant nutrients, including manure. The plan must meet Natural Resource Conservation Service Standard 590 and must be written or approved by a person certified to do nutrient management planning.
- J. Permit** means the signed, written statement issued by the Buffalo County Land Conservation Department under this ordinance authorizing the applicant to construct, install, reconstruct, enlarge, substantially alter or close a manure storage facility and to use or dispose of manure from the facility.
- K. Permittee** means any person to whom a permit is issued under this ordinance.
- L. Person** means an individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the federal government, or any combination thereof.
- M. Technical Guide** means the U.S.D.A Natural Resource Conservation Service Field Office Technical Guide as adopted by the Buffalo County Land Conservation Committee and its Department
- N. Unconfined Manure Pile** means a quantity of manure that is at least 175 cubic feet in volume (approx. size of pile – 50 ft. x 20 ft. x 2” in depth) and is not confined within a manure storage facility, livestock housing facility, or barnyard runoff control facility and contained in a manner that prevents storm water access and direct runoff to surface water or leaching of pollutants to groundwater.
- O. 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.
- P. Substantially Altered** means 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.
 - b) An increase in a volumetric capacity or area of a structure or facility by greater than 20%.
 - c) A change in a structure or facility related to a change in livestock management from one species of livestock to another such as cattle to poultry.
- Q. Water Quality Management Area** means any of the following:
- a) The area within 1,000 feet of the ordinary high water mark of a navigable lake, pond, or flowage other than a glacial pothole lake.
 - b) The area within 1,000 feet of the high water mark of a glacial pothole lake.
 - c) The area within 300 feet of the ordinary high water mark of a navigable river or stream.
 - d) An area that is susceptible to groundwater contamination, or has the

potential to be a direct conduit for contamination to reach groundwater.

R. Susceptible to Groundwater Contamination means any one of the following:

- a) An area within 250 feet of a private well.
- b) An area within 1,000 feet of a municipal well.
- c) An area within 300 feet up-slope or 100 feet down-slope of karst features.
- d) A channel with a cross-sectional area equal to or greater than 3 square feet that flows to a karst feature.
- e) An area where the soil depth to groundwater or bedrock is less than 2 feet.
- f) An area where the soil does not exhibit one of the following characteristics:
 - 1. At least a 2 foot soil layer with 40 percent fines or greater above groundwater and bedrock.
 - 2. At least a 3 foot soil layer with 20 percent fines or greater above groundwater and bedrock.
 - 3. At least a 5 foot soil layer with 10 percent fines or greater above groundwater and bedrock.{See NR 151.002(32) for definition of percent fine} {NR 151.05}

SECTION 3. ACTIVITIES SUBJECT TO REGULATION

3.01 General Requirement. Any person who designs, constructs, installs, reconstructs, enlarges, or substantially alters a manure storage facility; or who employs another person to do the same, on land subject to this ordinance, shall be subject to the provisions of this ordinance. The requirements of this ordinance are in addition to any other permits or requirements that may apply to construction or abandonment of manure storage facilities.

3.02 Closure Requirement. Closure of a manure storage facility shall occur when an 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 water. The owner or operator may retain the facility for a longer period of time by demonstrating to the Land Conservation Department that all of the following conditions are met:

- a) The facility is designed, constructed and maintained in accordance to sub. (2) NR 151.05.
- b) The facility is designed to store manure for a period of time longer than 24 months.
- c) Retention of this facility is warranted based on anticipated future use.

3.03 Failing and Leaking Existing Systems. Manure storage facilities in existence as of October 1, 2002, that pose an imminent threat to public health or fish and aquatic life or are causing a violation of groundwater standards shall be upgraded, replaced or closed in accordance with this section.

3.04 Compliance with Permit Requirements. A person is in compliance with this ordinance if he or she follows the procedures of this ordinance, receives a permit from the Land Conservation Department before beginning activities subject to regulation under this ordinance, and complies with the requirements of the permit.

3.05 Manure Management Prohibitions.

- 1) A livestock operation shall comply with the following:
 - a) A livestock operation shall have no overflow of manure storage facilities
 - b) A livestock operation shall have no unconfined manure pile in a water quality management area.
 - c) A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state.
 - d) A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self sustaining vegetative cover. This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.
- 2) Cost-sharing requirement pursuant to Section 281.16 (3) of the Wisconsin Statutes, a livestock operation that is in existence prior to October 1, 2002, shall not be required to comply with the manure management prohibitions unless cost-sharing is made available.
- 3) Non-compliance with the manure management prohibitions shall result in enforcement actions in accordance with NR 151.095, WI Admin. Code.

SECTION 4. STANDARDS

Compliance with this ordinance shall be through standards, specifications, and policies adopted by the Buffalo County Land Conservation Committee. Standards and specifications are minimums. The following components of the USDA Natural Resource Conservation Service's Technical Guide will be used when a storage facility is to be designed, constructed, installed, moved, reconstructed, enlarged, removed, abandoned, or substantially altered:

4.01 Standards for Manure Storage Facilities. The standards for design and construction of manure storage facilities are standards 313 (Waste Storage Facility) and 634 (Manure Transfer) in the Technical Guide.

4.02 Standards for Nutrient Management. The standard for management of manure storage facilities and utilization of manure is standard 590 (Nutrient Management) in the Technical Guide.

4.03 Standards to Close a Manure Storage Facility. The standard to close a manure storage facility that is no longer used for their intended purpose, in an environmentally safe manner, is standard 360 (Closure of Waste Impoundments) in the Technical Guide.

4.04 Subsequent Modification of Standards. The standards of the Technical Guide are adopted and by reference made a part of this ordinance as if fully set forth. Any future amendment, revision or modification of the Standards incorporated herein are made a part of this ordinance upon Land Conservation Committee approval. Standards adopted by the Land Conservation Committee are available for review at the Land Conservation Department office.

SECTION 5. APPLICATION FOR AND ISSUANCE OF PERMITS

5.01 Permit Required. A permit from the Land Conservation Department is required for the following activities:

- a) Construction or substantial alteration of a manure storage facility.
- b) To close any facility that is no longer used for storage.

5.02 Exception to Permit Requirement. Emergency repairs such as repairing a broken pipe or equipment, leaking dikes, or the removal of obstructions from transfer pipes 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 Department of Land Conservation within two (2) work days of the emergency for a determination by the Land Conservation Department on whether a permit will be required for any additional alteration or repair to the facility.

5.03 On Site Investigation Required. Each application for a permit under this section shall require an on site inspection prior to issuance and include a summary report on site conditions. The site inspection shall be conducted by the Land Conservation Department staff.

5.04 Fee. A non-refundable fee of \$50.00 will be required for the permit. A minimum of \$ 250.00 will be charged for a permit cost after any construction has commenced without a permit. No fee will be charged for permit closure.

5.05 Construction Plan. Each application for a permit under this section shall include a manure storage facility plan or design for construction.

The Manure Storage Facility Plan or Design - shall include the following:

1. A determination will be conducted to demonstrate that suitable land base is available for utilization of waste.
2. The number and kinds of animals for which storage is provided and the duration for which storage is to be provided.
3. A plan view of the facility and its location in relation to the waste transfer inlet, all buildings, roads, wells, lot lines, and other features within 300 feet of the proposed facility. The plan view shall be drawn to scale, with a scale no smaller than 1 inch = 100 feet, the North arrow, scale of drawing, legal description of the proposed facility, and location, description and elevation of temporary bench mark.
4. The structural details, including, but not limited to, dimensions, cross section showing elevations, concrete thickness, concrete joint design and placement, design loads, design computations, reinforcement schedules, construction and material specifications including but not limited to, applicable specifications for earthen fill, excavation, concrete, liner material, reinforcing steel, timber and pipes.
5. Make and model of pre-qualified structure, if used. Concrete quantity not included in pre-qualified structure.

6. Agitation access layout, grading plan to keep clean water from entering structure, seeding specifications, and tile and drainfill layout, if needed.
7. The location of any wells within 300 feet of the facility.
8. The location of any sinkholes within 1, 000 feet of the manure storage facility.
9. The soil test pit locations and soil descriptions to a depth of at least five feet below the planned bottom of the facility.
10. The elevation of seasonally high groundwater level or bedrock, if encountered in the soil profile and the date of any such determinations.
11. 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. Any floodplains and/or wetlands shall be located also.
12. A time schedule for construction of the facility.
13. A description of the method to be used in transferring animal waste into and from the facility.
14. A description of the location and type of fences, warning signs and safety features needed to meet the technical standards.
15. Certification by a registered Professional Engineer (PE), Department of Agriculture Trade and Consumer Protection (DATCP), Land Conservation Department, or Natural Resource Conservation Service certified Agricultural Engineering Practitioner that the plans meet the requirements of the ordinance.
16. A written operation and maintenance, and safety plan for the facility.
17. A nutrient management plan meeting the NRCS 590 standard.

5.06 Nutrient Management Plan. As part of the application for construction permit, a landowner must develop an annual nutrient management plan that complies with ATCP 50.04.

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 tests conducted at a laboratory certified under ATCP 50.50.
- d) Comply with the NRCS technical guide nutrient management standard 590.
- e) Follow recommendations for nutrient applications in the University of Wisconsin Extension in a Soil Test Recommendation for Field, Vegetable, and Fruit Crops, UWEX publication A-2809 (1998), unless the nutrient management planner can show that circumstances justify more than the recommended application.

This plan shall be submitted to the Land Conservation Department no later than March 15th of the year following installation of the manure storage facility and every year thereafter, by March 15th, while the facility is in use.

5.07 Closure Plan. Each Application for a closure permit under this ordinance shall include a closure plan prepared in accordance with Technical Standard 360. Manure Storage Facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters.

The Closure Plan shall include the following:

- a) A description of the type and size of the waste storage facility and an estimate of the amount of waste in the facility.
- b) A description of where and how the waste and soil saturated with manure will be applied in accordance with Technical Standard 590.
- c) A description of where the liner, if any, will be disposed of.
- d) A description of how the transfer system will be removed or permanently plugged.
- e) A description of how the evacuated area will be filled in and where the clean fill will come from.
- f) A plan view showing the final grade, the area to be reseeded, and how runoff will be diverted away from the site.
- g) Certified by a registered Professional Engineer (PE), Department of Agriculture Trade and Consumer Protection (DATCP), Land Conservation Department, or Natural Resource Conservation Service certified Agricultural Engineering Practitioner that the plans meet the requirements of the ordinance.

5.08 Review of Application. The Land Conservation Department shall receive all permit applications. All permit applications shall be reviewed by the Land Conservation Department and the Land Conservation Committee prior to issuance of the permit. Permit applications must be received on forms provided by the Land Conservation Department. The Land Conservation Department or a designee shall determine if the proposed facility meets required standards set forth in "Standards" of this ordinance.

Within fifteen (15) working days after receiving the completed application and fee, the Land Conservation Department shall inform the applicant in writing whether the permit application is approved or disapproved.

If additional information is required, the Land Conservation Department shall so notify the permit applicant. The Land Conservation Department has fifteen (15) working days from the receipt of the additional information in which to approve or disapprove the application. If the applicant receives no response within fifteen (15) working days of application, the application will be considered denied.

No construction may commence without the final approval form being executed by the Land Conservation Department.

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

1. Animal waste storage facility design and construction management, and utilization activities shall be carried out in accordance with the manure facility plans and applicable standards specified in Standards and Application for and Issuance of Permits sections of this ordinance.
2. The permittee shall give five (5) working days notice to the Land Conservation Department before starting any construction activity authorized by the permit.
3. Approval in writing must be obtained from the Land Conservation Department prior to any modifications to the approved manure facility plan.
4. The permittee and, if applicable, the contractor shall certify in writing that the facility was installed as planned.
5. The Land Conservation Department staff may conduct on site inspections during and after construction.
6. Within 30 days of completion, the facility must be certified as meeting standards, including as-built plans and design changes. The certification must be made by a registered PE, or by a DATCP, Land Conservation Department or Natural Resource Conservation certified Engineering Practitioner. This certification must be made before the storage facility is put into service.

Activities authorized by permit must be completed within two (2) years from the date of issuance after which such permit shall be void. Extensions may be granted by the Land Conservation Department upon written request from the permittee.

5.10 Permit Revocation. The Land Conservation Department may revoke any permit issued under this ordinance if the holder of the permit has misrepresented any material in the permit application or animal waste facility plan, or if the holder of the permit violates any of the conditions of the permit.

SECTION 6. ADMINISTRATION

6.01 Delegation of Authority. Buffalo County hereby designates the Buffalo County Land Conservation Department to administer and enforce this ordinance.

6.02 Administrative Duties. In the administration of this ordinance, the Land Conservation Department shall:

1. Keep an accurate record of all permit applications, animal waste facility
2. Review permit applications and issue permits in accordance with the Application for and Issuance of Permits section of this ordinance.
3. Inspect animal waste facility construction to insure the facility is being constructed according to plan specifications.
4. Investigate complaints relating to compliance with the ordinance.
5. Randomly determine individual compliance with the ordinance requirements at least once every four year.
6. Provide technical services to the extent resources are available.
7. Perform other duties as specified in this ordinance.

6.03 Inspection Authority. Pursuant to §92.07(14), Wis. Stats, the Land Conservation Department 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 applicant or permittee to enter the land, then the Land Conservation Department shall enter under its legal authority.

6.04 Enforcement Authority. The Land Conservation Department is authorized to post an order stopping work upon land which has had a permit revoked or on land in violation of this ordinance. Notice is given by both posting upon the land where the violation occurs, one or more copies of a poster stating the violation, and by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order shall specify that the activity must cease immediately and be brought into compliance within five (5) working days.

Any permit revocation or order stopping work shall remain in effect unless retracted by the County Board of Adjustment, the LCC, the LCD, or by court of general jurisdiction; or until the activity is brought into compliance with the ordinance. The Land Conservation Department is authorized to refer any violation of this ordinance to the corporation counsel for commencement of further legal proceedings seeking penalties and other appropriate relief in enforcement of the ordinance.

SECTION 7. VIOLATIONS

7.01 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 up to \$200.00 plus costs of prosecution for each violation. An unlawful violation includes failure to comply with any activity or standard of this ordinance or with any permit requirement, condition or qualification. Each day that a violation exists shall be a separate offense.

7.02 Enforcement of Injunction. As a substitute for or as an addition to forfeiture actions, Buffalo County may seek enforcement of any part of this ordinance by court action seeking injunctions or restraining orders.

SECTION 8. APPEALS

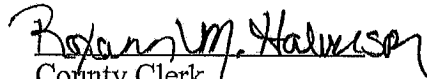
8.01 Authority. The Buffalo County Board of Adjustment shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination by Land Conservation Department staff in administering this ordinance.

8.02 Procedure. Any Appeal shall be made by written request, mailed or delivered to the Buffalo County Land Conservation Department, 407 South Second Street, Alma, WI 54610. The request shall state the ground or grounds upon which it is contended that the decision should be modified or reversed. The committee shall, as soon as reasonable, but no later than its next regular meeting, review the determination under appeal.

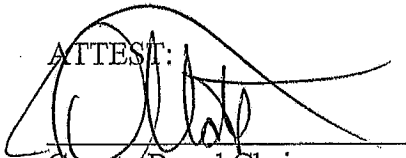
8.03 Statutory Administrative Review and Certiorari. The decision of the Buffalo County Land Conservation Committee shall be subject to further administrative review by the Board of Adjustments if a written appeal seeking such review is filed within thirty (30) days after the decision of the committee. The decision of the Board of Adjustments Committee shall be subject to judicial review, if within thirty (30) days after the decision of the Board of Adjustment an action seeking the remedy available by certiorari is commenced, as authorized by Section 59.99 of the Wisconsin Statutes.

8.04 Who May Appeal. Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision, or determination for which review is sought.

Duly adopted at a duly called and noticed meeting of the Buffalo County Board of Supervisors on the 21st day of August, 2007.


County Clerk

ATTEST:


County Board Chairperson

Respectfully Submitted:

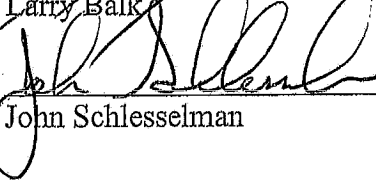
Land Conservation Committee


Allen Carothers


Brach Seitz


Larry Balk

absent
David Bauer


John Schlesselman