

ORDINANCE NO. 794

AN ORDINANCE AMENDING CHAPTER 13, SECTION 13.02, ENVIRONMENT, CODE OF ORDINANCES, DODGE COUNTY, WISCONSIN.

WHEREAS, Section 92.16 of the Wisconsin Statutes permits a county to enact an ordinance requiring manure storage facilities constructed after July 2, 1983, to meet the technical standards of the county and rules of the Department of Agriculture, Trade and Consumer Protection; and,

WHEREAS, the Dodge County Land Conservation Committee has studied the current Dodge County Animal Waste Storage and Nutrient Utilization Ordinance, and has determined that the ordinance should be amended to secure the protection of the County's water resources and public health and safety;

SO, NOW, THEREFORE,

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF DODGE DOES ORDAIN AS FOLLOWS:

Section 1. Section 13.02 of the Code of Ordinances, Dodge County, Wisconsin, is hereby repealed and recreated as follows:

**(A) INTRODUCTION**

- (1) Authority. This section is adopted under authority granted by §§59.70(1) and 92.16 of the Wis. Stats.
- (2) Title. This ordinance shall be known as, referred to and may be cited as the Dodge County Manure Storage and Nutrient Utilization Ordinance and is hereinafter referred to as the ordinance.
- (3) Findings and Declaration. The Dodge County Board of Supervisors finds that storage of manure in storage facilities not meeting technical design and construction standards may cause pollution of the surface and groundwaters of Dodge 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 Dodge County. The Dodge County Board of Supervisors also finds that improper management of Manure Storage Facilities,

including improper land application of stored manure, may cause pollution of the ground and surface waters of Dodge County. The Dodge 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 appropriate technical standards and specifications. The Dodge County Board of Supervisors further finds that the technical standards developed by the U.S.D.A. Natural Resources Conservation Service and adopted by the Dodge County Land Conservation Committee provide effective, practical and environmentally safe methods of storing and managing manure.

- (4) Purpose. The purpose of this ordinance is to regulate the location, design, construction, alteration, closure and use of all manure storage facilities; the transfer of manure into storage facilities, and the proper utilization of manure from storage facilities covered by this ordinance; in order to prevent water pollution, and thereby 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 Dodge County. It is also intended to provide for the administration and enforcement of the ordinance and to provide penalties for its violation.
- (5) Applicability. This ordinance applies to all the unincorporated areas of Dodge County. Facilities constructed prior to adoption of this ordinance shall be exempt, except as indicated in Subsection (C) (3) of this ordinance.
- (6) 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 Dodge County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.
- (7) Severability Clause. If any section, provision or portion of this ordinance is ruled invalid by a court, the remainder shall not for that reason be rendered ineffective.

## **(B) DEFINITIONS**

Applicant. Any person who applies for a permit under this ordinance.

Certificate of Use. The written authorization issued by the Dodge County Land Conservation Department that allows a permittee to begin using, and continue using, a new or substantially altered manure storage facility. A Certificate of Use issued under this ordinance remains in effect for as long as a manure storage facility is being used and operated, unless revoked due to noncompliance with the Certificate of Use conditions.

DATCP. The Wisconsin Department of Agriculture, Trade & Consumer Protection.

Emergency Response Plan. A written plan that identifies action steps to be taken, including names and phone numbers of key persons or organizations to contact, in the event of a manure spill, discharge or other runoff event.

Land Conservation Committee. The committee made up of Dodge County Board members and others which, by authority of Chapter 92, Wisconsin Statutes, guide soil & water conservation activities of the Dodge County Land Conservation Department.

Land Conservation Department or LCD. The department of Dodge County government which is responsible for administering and enforcing this ordinance.

Livestock. Domestic animals, such as cattle, horses, sheep, hogs, poultry, etc.

Manure. Livestock excreta. Manure includes livestock bedding, water soil, hair, feathers and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

Manure Assessment Plan. A written plan, prepared by a person qualified under ATCP 50.48 to prepare nutrient management plans, which evaluates and determines if the amount and type of manure that will be produced on the permit applicant's farm can be properly and safely applied to available cropland so as to not cause surface water and/or ground water pollution.

Manure Storage Facility. One or more manure storage structures. Manure Storage 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. A manure storage facility does not include equipment used to apply manure to land.

Manure Storage Structure. A manure storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure to contain manure and other animal or agricultural wastes. A manure storage structure does not include equipment used to apply manure to land.

Manure Storage Facility Closure. The removal and proper disposal of accumulated manure and proper abandonment of a manure storage facility in accordance with Technical Standard 360.

NRCS. The Natural Resources Conservation Service, an agency of the United States Department of Agriculture.

Nutrient Management Plan. A written plan detailing the amount, form, placement and timing of application of plant nutrients, including manure to optimize crop uptake of available nutrients and to minimize the movement of nutrients to surface and groundwater.

Nutrients. Plant nutrients derived from commercial fertilizers, manure, organic wastes, soil reserves, legumes or other sources.

Permit. The signed, written statement issued by the Dodge County Land Conservation Department under this ordinance authorizing the applicant to construct a new manure storage facility, substantially alter an existing manure storage facility, or close an idled or abandoned manure

storage facility.

Permittee. Any person to whom a permit is issued under this ordinance.

Person. Any individual, corporation, partnership, cooperative association, joint venture, trust, limited liability corporation, agency, unincorporated association, municipal corporation, county or state agency within Wisconsin, the federal government, or other legal organization or entity, or any combination thereof that owns, rents, leases, or has other interest in land being regulated under this ordinance.

Substantially Alters. A change initiated by an owner or operator that results in a relocation of an existing manure storage facility or significant changes to the size, depth, or configuration of a manure storage facility including but not limited to:

- (a) Replacement of a manure storage facility liner.
- (b) Removal, relocation, and replacement of the nature and size of the retaining walls of the manure storage facility.
- (c) An increase in the volumetric capacity or area of a manure storage facility by greater than 10%.
- (d) 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.

Technical Guide. The current Wisconsin version of the United States Department of Agriculture (USDA) Natural Resources Conservation Service Technical Guide as adopted by the Dodge County Land Conservation Committee. The Technical Guide can be accessed through the USDA-NRCS website.

Technical Standard. A numbered section in the Technical Guide.

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.

Working Day. A calendar day, except Saturdays, Sundays and County, State and Federal recognized legal holidays.

## **(C) ACTIVITIES SUBJECT TO REGULATION**

- (1) General Requirement Any person who constructs a new manure storage facility or substantially alters an existing manure storage facility, including the installation of any manure storage facility associated with a solid/liquid waste separation system and/or a waste treatment system; possesses an idle manure storage facility or closes a manure storage facility; and removes and

land applies manure stored in a manure storage facility or any portion of a manure storage facility that was constructed after the effective date of this ordinance; or who employs another person to do the same on land subject to this ordinance shall be subject to the provisions of this ordinance.

- (2) **Manure Storage Facility Closure.** A manure storage facility must be closed if manure has not been added to the facility for a period of 24 months. The closure must comply with the requirements of Technical Standard 360. The Land Conservation Department may exempt a manure storage facility from the closure requirement if the owner or operator can produce engineering designs or construction data to prove that the facility meets current Technical Standards, appropriate safety devices are installed, the owner has demonstrated an anticipated future use for the facility, and the owner agrees that all waste and waste-saturated soils will be removed from the facility within 36 months following the last date on which any manure was added to the facility.
- (3) **Compliance.** A person is in compliance with this ordinance if he or she follows the procedures of this ordinance, receives a permit from the Dodge County Land Conservation Department before beginning activities subject to regulation under this ordinance, complies with the requirements of the permit, receives a Certificate of Use prior to operating or using a new or substantially altered manure storage facility permitted under this ordinance, and complies with the requirements of the Certificate of Use. For those manure storage facilities being designed, constructed, or substantially altered under a permit issued under the Dodge County Animal Waste Storage and Nutrient Utilization Ordinance as adopted on May 20, 1997 construction may proceed to completion without needing a new permit under this ordinance. If construction is not substantially completed within the two (2) year time frame allowed under an existing permit, a new permit will be required to comply with the provisions of this ordinance to continue construction.

#### **(D) STANDARDS**

- (1) Dodge County adopts the conservation practice technical standards promulgated by the United States Department of Agriculture, Natural Resources Conservation Service, Wisconsin Field Office Technical Guide and by the Wisconsin Department of Natural Resources. Technical standards and specifications for design, construction and management of manure storage facilities are those in Technical Standard 313 (Waste Storage Facility), Technical Standard 634 (Manure Transfer), Technical Standard 632 (Solid/Liquid Waste Separation Facility), Technical Standard 629 (Waste Treatment), and Technical Standard 382 (Fence) of the Technical Guide. Technical standards and specifications for design and construction for closure of manure storage facilities are those in Technical Standard 360 (Closure of Waste Impoundments) of the Technical Guide. Technical standards and specifications for the preparation and implementation of Nutrient Management Plans are those in Technical Standard 590 (Nutrient Management) of the Technical Guide. Construction specifications referenced within the above listed standards shall also be adhered to.

- (2) Future amendments to Standards 313, 360, 382, 590, 629, 632 and 634 of the Technical Guide are incorporated by reference as if fully set forth herein and made part of this ordinance, unless otherwise acted upon by the Dodge County Board of Supervisors.
- (3) Variances. Variances from these standards can only be granted through an appeal by the applicant in accordance with Section H of this ordinance unless otherwise acted upon by the Land Conservation Committee.
- (4) Human wastewater shall not be discharged into manure storage facilities.

**(E) APPLICATION FOR AND ISSUANCE OF PERMITS**

- (1) Permit Required. Except as hereinafter provided, no person shall undertake an activity subject to this ordinance without first obtaining a MANURE STORAGE FACILITY PERMIT, a CERTIFICATE OF USE, or a MANURE STORAGE FACILITY CLOSURE PERMIT from the Dodge County Land Conservation Department. The requirement of this Ordinance 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 restrictive provision shall apply.
- (2) Exception to Permit Requirements. Emergency repairs for broken pipes or equipment, leaking dikes or removal of obstructions may be performed without a Manure Storage Facility Permit. Emergency repairs shall not result in increased capacity to the manure storage facility. If repairs will significantly alter the original design and construction of the storage facility, a report shall be made to the Land Conservation Department for determination as to whether a permit will be required for any additional alteration or repair to the facility. The responsible person shall contact the Dodge County Land Conservation Department within 3 days of the start of any emergency repairs for a determination by the department on whether a permit will be required for any additional alteration or repair to the facility.
- (3) Fees. Two separate fees may be necessary. All applicants shall be required to pay a non-refundable fee at the time of permit application. An additional fee will be required if the applicant uses the technical services of staff from the Land Conservation Department for the purposes of preparing detailed construction plans and construction inspection. The amount of these fees shall initially be set at \$200.00 for the non-refundable fee and \$500.00 for the technical services fee. These fees will be evaluated and be established on an annual basis by the Land Conservation Committee at the January meeting of the Land Conservation Committee commencing with the January Land Conservation Committee meeting following the first full calendar year after enactment of this ordinance. The technical services fee will be assessed at the time that the Land Conservation Department staff completes a topographic survey of the project site for preparing detailed construction plans, and will be refunded to the applicant only upon completion of project construction and certification. If available, technical services of staff from the Land Conservation Department will be on a first come, first served basis. The fees specified above are doubled if any excavation, construction, or any other activity that

requires a permit under this ordinance is started before the permit is issued, and other penalties may be imposed for any excavation, construction, or other activity that takes place in violation of any provision of this ordinance. There is no fee for a permit to close a manure storage facility.

- (4) Permit Application. An application for a Manure Storage Facility Permit and/or a Manure Storage Facility Closure Permit shall be filed with the Land Conservation Department on forms supplied by the Land Conservation Department. A copy of the approved permit application(s) shall be mailed to the appropriate Town Board by the Land Conservation Department. In addition the Land Conservation Department may mail a copy of the approved permit to other agencies or units of government that may have jurisdiction over the proposed activity.

Each application for a permit under this ordinance to construct a new manure storage facility, or to substantially alter an existing manure storage facility, or to close a manure storage facility shall include a Manure Storage Facility Construction Plan and/or a Manure Storage Facility Closure Plan.

a. All Manure Storage Facility Construction Plans shall include the following:

1. A complete set of detailed construction plans, including but not limited to facility dimensions, cross-section views, profile views, storage pit liners, concrete thickness of floors and/or walls, steel reinforcement plans, water stops and expansion joints, material specifications, and fencing. A Manure Storage Facility Construction Plan must be certified as meeting all applicable technical standards as specified in Section (D) (1) by an agricultural or civil engineer registered in the state of Wisconsin, or by a DATCP, NRCS, or LCD engineering practitioner. This certification may be obtained by hiring a registered professional engineer, or if available, obtaining the services of staff from the Dodge County Land Conservation Department. Services from Land Conservation Department staff will be on a first come, first served basis.
2. The number and kinds of animals for which storage is to be provided.
3. Planned duration of storage, expressed in days and/or months, and volume of storage, expressed in cubic feet or gallons.
4. A manure assessment plan that demonstrates that suitable area is available for safe land application and reasonable crop uptake of land applied manure.
5. A plan map showing location of the facility with regard to buildings, roads and homes within three hundred (300) feet of the proposed facility. The map shall be drawn to scale no smaller than one (1) inch equals one hundred (100) feet. The plan map shall include a north arrow.
6. The location of any wells within three hundred (300) feet of the facility.