

# **ORDINANCE 2007-02**

## **Burnett County Animal Waste / Livestock Facility Ordinance**

### **Subchapter 1. General Provisions**

#### **A) AUTHORITY**

This chapter is adopted under Wis. stat., ss 59.02, 59.03, 59.7(20), 92.10, 92.15, 92.15, 93.90 and 281.16.

#### **B) TITLE**

This chapter shall be referred to as the **Burnett County Animal Waste / Livestock Facility Ordinance**, and is hereinafter referred to as the chapter.

#### **C) DECLARATION OF POLICY**

- 1) Findings. The Burnett County Board of Supervisors recognizes the importance of our quality ground and surface water resources and the need to maintain these resources for our future generations. The board also recognizes that the proper management of animal waste, cropland, and livestock facilities contributes to the protection of ground and surface water, public health, other animals, and aquatic life.
- 2) Purpose. The purpose of this ordinance is to comply with requirements of Sec. 93.90 of Wis. Statutes and ch. ATCP 51, Wis. Adm. Code (ATCP 51), and to establish standards and authority to protect the public health and safety of the people of the Burnett County. This ordinance sets forth the procedures for obtaining permits for the siting of new and expanded livestock facilities in Burnett County and for animal waste storage facilities.

#### **D) APPLICABILITY**

This chapter applies to the unincorporated areas of Burnett County for livestock facilities proposed to have 500 or more animal units (Class A facilities), animal waste storage for facilities with < 500 animal units, and violations of the agricultural performance standards of NR 151. Facilities existing prior to the effective date of this chapter shall be construed as being in compliance with this chapter until a site evaluation is made.

- 1) Interpretation. In its interpretation and application, the provisions of this chapter shall be minimum requirements, and shall be liberally construed in favor of Burnett County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statute.
- 2) Severability Clause.  
If any section, provision, or portion of the chapter is ruled invalid by a court, the remainder of the chapter shall not be rendered ineffective.

## E) DEFINITIONS

- 1) **County Conservationist** means the Department Head for the Land and Water Conservation Department.
- 2) **Land and Water Conservation Committee**, referred to as the LWCC, means the county board committee responsible for overseeing the Land and Water Conservation Department.
- 3) **Land and Water Conservation Department**, referred to as the LWCD, means the county staff responsible for enforcing and providing technical and administrative support for this chapter.
- 4) **Livestock** (for Class A facility) means domestic animals traditionally used in this state in the production of food, fiber, or other animal products. "Livestock" does not include equine animals, bison, farm-raised deer, fish, captive game birds, ratites, camelids or mink.
- 5) **Livestock** (for Class B facility and agricultural performance standards) means animals that are fed, confined, maintained or stabled.
- 6) **Water pollution** as referenced in Burnett County Health Ordinance no.91-1 section II sec. C is defined as allowing any discharge into the environment of toxic or noxious materials in such concentrations as to endanger the public health.

Additional definitions are incorporated by reference as described in subchapters.

## F) ACTIVITIES SUBJECT TO REGULATION

- 1) Class A livestock facilities: New livestock facilities proposed to have 500 or more animal units and expansion of a facility that will reach this threshold.
- 2) Class B facilities: Animal waste storage in unincorporated areas of the county for new facilities with < 500 animal units and expansion of a facility by at least 20 percent that will result in a need for animal waste storage. Animal waste would not be considered stored if there are at least two suitable acres of pasture per animal unit when animals are unconfined.
  - a) Unconfined Manure Pile (at least 175 cubic feet (6.5 cubic yards) of stored manure)
  - b) Waste Storage Structure
  - c) Closure of Animal Waste Impoundments
- 3) Violations of the NR151 agricultural performance standards.

**G) ADMINISTRATION**

The County Conservationist shall administer and enforce Class A facility permits and standards and Class B animal waste storage permits and standards in this chapter.

## **Subchapter 2. Class A Facility Permits and Standards**

A Class A permit is required for *new or expanded* livestock facilities that will have 500 or more animal units. Standards for these facilities are taken directly from Chapter ATCP 51 – Livestock Facility Siting Regulations for Wisconsin.

**A) DEFINITIONS**

Definitions from ATCP 51 are incorporated by reference.

**B) PERMITS FOR EXISTING LIVESTOCK FACILITIES**

- 1) A permit is required for the expansion of a pre-existing or previously approved livestock facility if the number of animal units kept at the expanded livestock facility will exceed the maximum number previously approved or, if no maximum number was previously approved, a number that is 20% higher than the number kept on the effective date of the permit requirement.
- 2) Prior approval of a single livestock structure, such as a waste storage structure, does not constitute prior approval of an entire livestock facility.

**C) PERMIT STANDARDS**

The state livestock facility siting standards adopted under ATCP 51, Wis. Adm. Code, inclusive of all appendixes and worksheets and any future amendments to this chapter, except as may be noted in this section of the ordinance, are incorporated by reference in this ordinance, without reproducing them in full.

**D) PROPERTY SETBACKS**

Setbacks for livestock structures will be the maximum allowed under ATCP 51.12.

**E) PERMIT APPLICATION**

A livestock operator must complete the application form and worksheets prescribed by ATCP 51, including any authorized local modifications. The application form and worksheets demonstrate compliance with standards in ATCP 51 and this ordinance. The operator must file 4 duplicate copies of the application form including worksheets, maps and documents (other than engineering design specifications) included in the application.

**F) PERMIT APPLICATION FEE**

A non-refundable application fee of \$500 payable to Burnett County shall accompany an application for the purpose of offsetting the county costs to review and process the application.

**G) APPLICATION PROCEDURE**

Burnett County will follow the procedure found in ATCP 51.30(1, 5, 6), 51.32, and 51.34.

**H) CRITERIA FOR ISSUANCE OF A PERMIT**

A permit shall be issued if the application for the proposed livestock facility:

- Complies with this ordinance,
- Is complete, and
- Contains sufficient credible information to show that the proposed livestock facility meets the standards specified in this ordinance.

**I) RECORD OF DECISION**

A political subdivision must issue its decision in writing following the procedures in ATCP 51.36.

**J) EXPIRATION OF PERMIT**

A permit remains in effect except under conditions described in ATCP 51.08. These conditions include not beginning to use the facility within two years or not following the required standards.

**K) PERMIT TERMS AND MODIFICATIONS**

A permit and the privileges granted by a permit issued under this ordinance is conditioned on the livestock operator’s compliance with the standards in this ordinance, and with commitments made in the application for a permit. The operator may make reasonable changes that maintain compliance with the standards in this ordinance, and the political subdivision shall not withhold authorization for those changes. A violation of the permit or a failure to comply with the commitments made in the application may result in suspension and/or termination of the permit.

**L) APPEALS**

In addition to other appeal rights provided by law, Sec. 93.90 (5), Stats, provides that any “aggrieved person” may request that the Livestock Facility Siting Review Board review any Burnett County decision in connection with a permit application.

# Subchapter 3. Class B Animal Waste Storage Permits and Standards

## A) DEFINITIONS

Definitions from ATCP 50 are incorporated by reference for this section of this subchapter.

## B) PERMITS

Animal waste storage permits are issued by the Burnett County LWCD for animal waste storage facilities in unincorporated areas of the county for new facilities with < 500 animal units and expansion of an existing facility that will require manure storage. Storage includes unconfined manure piles (175 cubic feet of manure), a waste storage structure, or closure of an animal waste impoundment.

- 1) Before construction of an animal waste storage structure begins, an operator of a new or expanding animal waste storage structure must do all of the following:
  - a) Obtain a permit from the Burnett County LWCD that demonstrates standards, specifications, and policies of this chapter will be met.
  - b) Develop a nutrient management plan that complies with s. ATCP 50.04(3) except that nutrient management standard shall be the current NRCS 590 standard at the date the permit is issued.
  - c) Permit fees are \$100.00 for facilities with >75 animal units; \$50.00 for facilities with from 75 to 25 animal units and \$25 for facilities with less than 25 animal units or less and are non-refundable.
  
- 2) An owner of a manure storage facility no longer in use must do all of the following before abandoning the storage facility:
  - a) Obtain a permit to abandon the facility
  - b) Develop a plan to abandon the facility according to NRCS Closure of Waste Impoundments conservation practice standard 360.
  - c) No fee is required for an animal waste storage facility abandonment permit.

## C) STANDARDS, SPECIFICATIONS, AND POLICIES

Compliance with this chapter shall be through LWCC approved standards, specifications, and policies. Standards and specifications are minimums. Additional standards and specifications may be required in Water Quality Management Areas where shallow soil to bedrock, highly fractured bedrock, drainage to sinkholes or similar conditions exist.

### 1) The following specifications may apply:

- NRCS field office technical guide waste storage facility standard 313
- NRCS field office technical guide manure transfer standard 634
- NRCS field office technical guide nutrient management plan standard 590
- NRCS field office technical guide closure of animal waste impoundment standard 360
- Burnett County manure management plan
- Applicable DNR requirements under s 281.65(4)(g)5., Stats.

#### **D) APPEALS PROCEDURE**

The LWCC shall act as the initial appeal authority pursuant to Wis. Stat., s.68.09 (2). Any person having a substantial interest, which is adversely affected by the order, requirement, decision or determination made by the LWCD may appeal to the LWCC. A written appeal shall be submitted to the LWCC on forms provided within 30 days of the determination. The request to appeal shall specify written evidence and the reasons for the appeal, including which requirements from this chapter are involved. The LWCC will hear any such appeal. The provisions of the Wis. Stat., ss. 68.11 and 68.12 shall govern any hearing and decisions to occur under this subsection. A written decision shall be mailed to the appellant within 30 days of the appeal. The decision will affirm, deny, or modify the initial determination.

- 1) Conditions for granting an appeal:
  - a) Be consistent with the spirit and purpose of this chapter.
  - b) Not grant a request that may lead to failure of a waste storage structure, or cause significant water pollution or offsite impacts.
  - c) Be due to unique circumstances, not to the general conditions of the area.
  - d) Not be granted for a self-created hardship.
  - e) Not be granted solely on economic gain or loss.
  - f) Not be granted solely because certain conditions existed prior to the effective date of this chapter.

#### **E) ANIMAL WASTE PROVISIONS**

Requirements of the chapter shall be in addition to any other rules or provisions regulating animal waste. In the case of conflict, the most stringent provisions shall apply.

## **Subchapter 4. Compliance Monitoring for Class A and Class B Livestock Facilities and Animal Waste**

#### **A) COMPLIANCE MONITORING**

- 1) Upon notice to the livestock facility or the animal waste storage facility owner, the County Conservationist may request the right to personally view the premises at a reasonable time and date to insure that all commitments of the approved application are being met.
- 2) If the owner refuses the County Conservationist the right to view the premises, the County Conservationist may request the assistance of the Sheriff or a deputy Sheriff to obtain an inspection warrant from the circuit court to inspect the premises for the purpose of protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.
- 3) If a premises is found to be out of compliance with the commitments made in the approved application, the County Conservationist shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that compliance of the commitments of the approved application and permit be in compliance in a reasonable amount of time stated in this written notice.

- 4) If non-compliance of the permit conditions as described in the written notice given by the County Conservationist continue past the stated reasonable time to comply, the County Conservationist may take further action as provided in this ordinance, including but not limited to issuance of a citation or seeking of injunctive relief.
- 5) If the owner disputes that the conditions of the permit are out of compliance, the owner may request a hearing in writing within five days of receipt of the notice of non-compliance. The LWCC shall schedule a hearing within five days to determine if the conditions of the permit are being met.

## **Subchapter 5. Agricultural Performance Standards**

### **A) DEFINITIONS**

Definitions from Chapter NR151 – Runoff Management are incorporated by reference in this section

### **B) ACTIVITIES SUBJECT TO AGRICULTURAL PERFORMANCE STANDARDS AND PROHIBITIONS**

- 1) Cropped Lands. All land where crops or feed are grown shall be subject to Agricultural Performance Standards and Prohibitions.
- 2) Livestock Operation. All livestock producers (Class A and Class B and smaller) shall be subject to Agricultural Performance Standards and Prohibitions. Livestock producers and operations within water quality management areas (WQMA's) have more comprehensive requirements.
- 3) Manure Handling, Storage and Application. All manure shall be handled, stored and applied to lands in accordance with Agricultural Performance Standards and Prohibitions.
- 4) Applications of manure, commercial fertilizers and other nutrients to agricultural lands. All crop producers and livestock producers that apply manure or other nutrients directly or through contract to agricultural fields shall be applied in conformance with a nutrient management plan criteria established in NR 151.07.

### **C) PERFORMANCE STANDARDS AND PROHIBITION**

Performance standards and prohibitions for facilities subject to regulation under this section are described in NR151 (151.02, 151.05, 151.06, 151.07, and 151.08).

### **D) COST-SHARING REQUIRED**

An owner or operator of an agricultural facility or practice that is in existence before October 1, 2002 may not be required to comply with the performance standards, prohibitions, conservation practices or technical standards under this ordinance unless cost-sharing is available from any source, to the owner or operator. A determination that cost-sharing is available to meet the performance standards, prohibitions, conservation practices or technical standards under this subsection will be determined in accordance with NR 151.09 (4) (d) or NR 151.095 (5) (d) when funding is provided under s. 281.65, Stats., and will be determined in accordance with ATCP 50 when funds are from any other source. Cost-sharing under this

section is only required for the minimum practice(s) necessary to meet the performance standards and prohibitions.

**E) IMPLEMENTATION AND ENFORCEMENT PROCEDURES FOR CROPLAND PERFORMANCE STANDARDS**

- 1) Landowner and operator requirements are found in NR151.09 (3).
- 2) LWCD Determinations. NR151.09(4) describes criteria the LWCD will use to define new and existing cropland and eligible costs for required cost sharing of installation of best management practices.
- 3) Notification requirements and compliance periods for existing croplands when cost-sharing is required are found in NR 151.09(5).
- 4) Notification requirements and compliance periods for existing croplands when no eligible costs are involved are found in NR 151.09 (6).

**F) IMPLEMENTATION AND ENFORCEMENT PROCEDURES FOR LIVESTOCK PERFORMANCE STANDARDS AND PROHIBITIONS.**

- 1) Livestock owner and operator requirements are found in NR 151.095(4)
- 2) LWCD Determinations.  
If a livestock facility is not in compliance with a livestock performance standard or prohibition, the LWCD shall make determinations in accordance with the procedures and criteria in NR 151.095(5). The facility will be classified as new or existing and eligible cost shall be determined under this section.
- 3) Notification requirements and compliance for existing livestock facilities when cost-sharing is involved are found in NR 151.095(6).
- 4) Notification requirements and compliance for existing livestock facilities when no eligible costs are involved are found in NR 151.095(7).

**G) VARIANCES**

Procedures and conditions for variances are found in NR 151.097. The LWCD will review variance requests before they are forwarded to the Department of Natural Resources.

- 1) Requests. Requests for a variance to the performance standards shall be made in writing to the LWCD. Requests shall be reviewed by the LWCD prior to submittal to Department of Natural Resources and shall include:
  - a) clearly-stated rationale and justification for requesting the variance.
  - b) any permit applications required by this ordinance.
  - c) any facility or operational plans as required by this ordinance.

## **Subchapter 6. Enforcement**

### **A) ENFORCEMENT AUTHORITY**

Under this chapter the County Conservationist and delegated LWCD staff have the authority to enforce this ordinance within State statutes (59.1). The LWCD will issue citations or other penalties when facilities are found to be in violation of the chapter.

### **B) PENALTIES**

Any person who violates any of the provisions of this chapter, or who fails, neglects or refuses to comply with the provisions of this chapter, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be subject to the following penalties:

- 1) Upon conviction by a court of law, pay a forfeiture of not less than \$50 nor more than \$500 plus the applicable surcharges, assessments and costs for each violation.
- 2) Each day a violation exists or continues shall be considered a separate offense under this ordinance.
- 3) In addition, the LWCC may seek injunctive relief from a court of record.
- 4) In addition, the LWCC may suspend or revoke the local approval of a permit under this chapter after due notice to the facility owner and a public hearing to determine whether the permit should be suspended or revoked. The County shall exercise sound judgment in deciding whether to suspend or revoke a permit. The County shall consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply. In addition to any other penalty imposed by this ordinance, the cost of abatement of any public nuisance on the premises by the county may be collected under this ordinance or Sec. 823.06 of Wis. Statutes against the owner of the real estate upon which the public nuisance exists. Such costs of abatement may be recovered against the real estate as a special charge under Sec. 66.0627 of Wis. Statutes unless paid earlier.

**EFFECTIVE DATE.** This chapter shall take effect June 21, 2007 upon adoption by the Burnett County Board of Supervisors.

# **Burnett County Animal Waste / Livestock Facility Ordinance**

## **ADDENDUM**

State statutes and administrative code and federal standards referenced in the ordinance are listed below. Copies are available at the Burnett County Land and Water Conservation Department Office: 7410 County Road K, Siren, WI.

### **Wisconsin Statutes ([www.legis.state.wi.us/rsb/stats.html](http://www.legis.state.wi.us/rsb/stats.html))**

Chapter 59 Counties

Chapter 68 Municipal Administrative Procedure

Chapter 92 Soil and Water Conservation and Animal Waste Management

Chapter 93 Department of Agriculture, Trade and Consumer Protection

### **Wisconsin Administrative Code ([www.legis.state.wi.us/rsb/code.htm](http://www.legis.state.wi.us/rsb/code.htm))**

#### **Department of Agriculture, Trade and Consumer Protection Regulations**

Chapter ATCP 50 Soil and Water Resource Management Program

Chapter ATCP 51 Livestock Facility Siting

#### **Department of Natural Resources Regulations**

Chapter NR 151 Runoff Management

### **United States Department of Agriculture – Natural Resources Conservation Service**

Field Office Technical Guide ([www.nrcs.usda.gov/technical/efotg](http://www.nrcs.usda.gov/technical/efotg))

State of Wisconsin,  
County of Burnett.

I, Wanda Hinrichs, the duly elected and qualified County Clerk in and for Burnett County, do hereby certify that the attached Ordinance 2007-02 “To Burnett County Animal Waste/Livestock Facility Ordinance” was adopted by the Burnett County Board of Supervisors at a legally assembled meeting at which a quorum was present and acted throughout. The date of passage was June 21, 2007.

Wanda Hinrichs  
County Clerk