

ORDINANCE

Resolution 3-00
Effective March 1, 2000

POLK COUNTY MANURE AND WATER QUALITY MANAGEMENT ORDINANCE

The county board of supervisors of the County of Polk does ordain as follows:

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SEC. 8-4-1 INTRODUCTION.

- (a) **TITLE.** This Ordinance shall be referred to as the **Polk County Manure and Water Quality Management Ordinance**, and is hereinafter referred to as the Ordinance.
- (b) **AUTHORITY.** This Ordinance is adopted under Wis. Stat., ss 59.02, 59.03, 50.70(20), 92.10 and 92.15.
- (c) **DECLARATION OF POLICY.**
- (1) **Findings.** The Polk County Board of Supervisors recognizes the importance of protecting our ground and surface water resources and finds that proper management of animal waste contributes to the protection of ground and surface waters, public health, other animal, aquatic life, and consequently to the property tax base of Polk County.
- (2) **Purpose.** To enhance public health, prosperity, and welfare by protecting surface and ground water and erosion control.
- (d) **APPLICABILITY.** This Ordinance applies to the unincorporated areas of Polk County for animal waste storage facilities, and to Water Quality Management Areas within the unincorporated areas for feedlots, degraded pastures and unconfined stacks. Feedlots existing prior to the effective date of this ordinance shall be construed as being in compliance with this ordinance until a site evaluation is made.
- (1) **Interpretation.** In its interpretation and application, the provisions of this Ordinance shall be minimum requirements, and shall be liberally construed in favor of Polk 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 ordinance is ruled invalid by a court, the remainder of the ordinance shall not be rendered ineffective.

SEC. 8-4-2 DEFINITIONS.

(1) **Abandoned Animal Waste Storage Facility**- means an earthen lined animal waste impoundment not used for the storage of animals waste for three consecutive years or were the land use changes make the impoundment unusable.

(2) **Animal Waste**- means livestock manure or other materials such as bedding, (when added to storage facility) milk house waste , soil, hair, feathers, egg shells or debris normally included in animal waste handling operations.

(3)**Animal Unit**- means a unit of measure used to determine the total number of single animal types or combination of animal types which are fed, confined, maintained, or stabled in an animal feeding operation. For the purpose of this Ordinance, one animal unit is equivalent to 1000 pounds of livestock live weight.

(4) **Animal Waste Storage**- means any surface area where animal waste is accumulated over a volume of 2000 cubic feet to store animal waste and manure outside of buildings.

Note: Multiple stacks from one operation totaling more than 2000 cubic feet of animal waste and manure is considered Animal Waste Storage, unless stacks are temporarily placed on perspective fields prior to spreading.

(a) “Impoundment” means any earthen, concrete, wooden, steel or otherwise fabricated structure intended to hold an accumulation of animal waste, or

(b) “Stack” means a stored accumulation of mechanically placed animal waste.

(5) **Applicant**- means any person who applies for a permit or certificate of operation under this Ordinance.

(6) **Certificate of Operation** - certificate issued by the Department stating the landowner is in compliance with the Manure management plan requirements of this ordinance.

(7) **Certification of Noncompliance**- means an order under which an activity subject to regulation may continue to operate subject to a time frame for compliance.

(8) **Certified Crop Consultant**- A nutrient manager is considered qualified under Sub.(2) if he or she is at least one of the following: (1) Recognized as a certified professional crop consultant by the National Alliance of Independent Crop Consultants. (2) Recognized as a certified crop advisor by the American Society of Agronomy, Wisconsin Certified Crop Advisors Board. (3) Registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American Registry of Certified Professionals in Agronomy, Crops and Soils.

(9) **Degraded Pastures**- means those pastures within 1000 feet of the ordinary high-water mark of a lake, pond, or flowage, or within 300 feet from the ordinary high-water mark of navigable waters of a river or stream, where confinement of livestock for the

purpose of feeding, browsing or loafing prevents the maintenance of adequate sod cover causing stream bank erosion.

(10) **Department of Land & Water Resources** : (referred to as the “department”)- means the staff for enforcing and providing technical and administrative support for this ordinance.

(11) **Direct Runoff**- means a visible barnyard or storage flow or evidence of regular flow or discharge that reaches the Water Quality Management Area.

(12) **Director**- means the Director for the Department of Land & Water Resources.

(13) **Feedlot**- means a lot or building, or combination of contiguous lots and buildings, intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which animal waste may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for feeding and rearing of poultry (poultry ranges) and barns, dairy facilities, swine facilities, beef lots and barns, horse stalls, mink ranches and domesticated animal zoos, shall be considered to be animal feedlots. Pasture shall not be considered animal feedlots under these parts.

(14) **Impoundment**- means see “Animal Waste Storage.”

(15) **Land Conservation Committee**: (referred to as the “LCC”) - means the committee of the Polk County Board which oversees the Department of Land & Water Resources

(16) **Livestock Operations of Greater Than 300 Animal Units**- means any livestock operation of greater than 300 animal units that is active within Polk County.

(17) **Manure Management Plan**- means a written plan and map, approved by the department detailing the amount, form, placement, and timing of applied animal waste based on the Land & Water Resource Department Policy Manual.

(18) **Navigable Waters**- means all natural inland lakes, streams, pond, flowages, and the Wisconsin portion of the St. Croix River and other waters within the corporate limits of Polk County which are navigable under the laws of the State of Wisconsin. Note: The Department of Natural Resources defines a navigable waterway as having a bed and sides or banks, and that a water craft which is the smallest common to the region may be paddled through the water. Navigability may be established if a stream or lake can be navigated on some regularly occurring basis. (Based on United States Geographical Survey quadrangle maps)

(19) **Ordinary High-Water Mark**- means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristics.

(20) **Permit**- means a permit issued for all other requirements of this ordinance other than those requirements covered by the Certificate of Operation and the Certificate of Noncompliance.

- (21) **Permittee**- means a person to whom a permit or certificate of operation is issued under this Ordinance.
- (22) **Person**- means any individual, corporation, firm, partnership, joint venture, agency, unincorporated association, or unit of government.
- (23) **Pre-Existing Animal Waste Storage Facility or Feedlot**- means any animal waste storage facility or feedlot existing prior to and after the effective date of this ordinance.
- (24) **Stack**- means see Animal Waste Storage.
- (25) **Stop Work Order**- means an order to cease any activity in the operation of, or construction of an activity subject to regulation.
- (26) **Substantial Alteration**- means any modification to an animal waste storage facility that alters the integrity of the structure or its liner; or the integrity, capacity, and design requirements on the transfer system of a feedlot.
- (27) **Unconfined Stack**- means a stack from which runoff leaves its perimeter, or is not confined to its immediate area.
- (28) **Water Pollution**: means contaminating or rendering unclean or impure ground or surface waters, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.
- (29) **Water Quality Management Area**: means
- (a) Areas within 1,000 feet of the ordinary high water mark of navigable waters that consist of a lake, pond, wetlands, or flowage.
 - (b) Areas within 300 feet of the ordinary high water mark of navigable waters that consist of a river or stream or blue line in United States Geographical Survey Topographic Maps.
 - (c) Areas with potential to be direct conduits for groundwater contamination.
 - (d) Areas of direct runoff from animal waste to surface water.

SEC. 8-4-3 ACTIVITIES SUBJECT TO REGULATION.

(1) **Animal Waste Storage**

- (a) **Unconfined Stacks**: Prohibited within Water Quality Management Areas, or in areas of direct concentrated flow where the drainage area is one acre or greater unless a stack location dimension and runoff plan has been approved and is on file with the department.
- (b) **Impoundments**.
 - 1. Siting, design and construction.
 - 2. Substantial alterations.

3. Breeches or overflows from pre-existing impoundments.
4. Re-use of abandoned pre-existing impoundments after effective date of this ordinance.

(2) Feedlots. There shall be no direct runoff from feedlots within Water Quality Management Areas.

(3) Degraded Pastures. Prohibited within Water Quality Management Areas.

(4) Any livestock operations under control of one person that is greater than 300 animal units that is active in Polk County.

SEC 8-4-4 **STANDARDS, SPECIFICATIONS AND POLICIES.** Compliance with this ordinance shall be through LCC 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. The standards or specifications for this ordinance are listed in the Appendix.

(1) Modifications of Standards and Specifications. Amendments to standards or specifications are part of this Ordinance and may be modified by the Land Conservation Committee.

SEC. 8-4-5 **PERMIT AND CERTIFICATION REQUIREMENTS AND PERMIT AND CERTIFICATION APPLICATION PROCEDURES FOR ANIMAL WASTE STORAGE FACILITIES, FEEDLOTS AND LIVESTOCK OPERATIONS GREATER THAN 300 ANIMAL UNITS.** Permits are required for feedlots if, after an evaluation by the department, it is determined that the operation directly drains to a water management area to include: new feedlots or existing feedlots within Water Quality Management Areas that are 150 animal units or greater and that expand their total animal units by 20% or more. No permit is required for a pre-existing feedlot until after a site evaluation and determination of compliance is made. A site evaluation must be requested of or by the department prior to use of any animal waste storage facility or feedlot located within a Water Quality Management Area when that feedlot or animal waste storage facility is being transferred through change in ownership. Requirements of the Ordinance shall be in addition to any other rules or provisions regulating animal waste. In the case of conflict, the most stringent provisions shall apply.

(2) Feedlots

(a) Feedlots. Required for new and pre-existing feedlots. Pre-existing feed lots are as follows:

1. Any person or the department may initiate an application. Permit required when animal units are 150 or more and increase by more than 20% from adoption of ordinance and will be considered as new.

2. An application for a permit is required and any person or the department may initiate an application.
3. A permit application shall include a Manure Management Plan, as well as a construction plan if applicable. The Manure Management Plan shall be certified as meeting the requirements of this ordinance by a Certified Crop Advisor or plan approved by the department. The construction plan shall be certified as meeting the requirements of this ordinance by an agricultural or civil engineer registered in the State of Wisconsin, or a Department of Agriculture Trade and Consumer Protection or Natural Resource Conservation Service engineering practitioner.
4. Within forty five (45) days of receiving an application, fee, and site plan, the department shall inform the applicant in writing whether the application is approved or denied. If additional information is required, the department, within thirty (30) days from the receipt of additional information, must approve or reject the application. And it is the duty of the Department to advise applicant farmers of additional information needed to complete the application and incorporate deadlines, under the position to bring quick resolution of either permit or enforcement.

(b) Permit Requirements

1. Pre-existing. Permit conditions:
 - a. An application is on file with the department.
 - b. The site has been evaluated by the department.
 - c. The feedlot complies with this ordinance.
 - d. A Certificate of Noncompliance issued, and compliance achieved.
2. New. Permit conditions:
 - a. An approved application is on file with the department.
 - b. The site has been evaluated by the department.
 - c. No construction has begun prior to the issuance of a permit
 - d. No construction has begun prior to the issuance of a Certificate of Noncompliance when warranted, and where new ownership occurs.
 - e. The feedlot complies with this ordinance.
3. Permit and Construction Plan Contents:
 - a. Existing and anticipated numbers and types of animals, and animal units.
 - b. Site maps drawn at a scale of not less than one (1) inch equals one hundred (100) feet of the feedlot location including identification of all buildings, navigable and intermittent streams, and wetlands or water bodies within one thousand (1000) feet of the proposed feedlots.
 - c. Structural details, including if applicable but not limited to dimensions, cross sections, concrete thickness, reinforcement schedules, thickness, and elevations.
 - d. Well locations within one hundred and fifty (150) feet of the

- feedlot.
- e. Soil test pits, soil depth boring locations, and soil descriptions to a depth of at least three (3) feet, or to bedrock if at a lesser depth.
- f. Groundwater or bedrock elevations if encountered in the soil profile, and the date of such determinations.
- g. Provisions for drainage and control of runoff to prevent pollution of surface and groundwater and the location and distance to water bodies.
- h. Drawing scale and associated keys.
- i. Timetable for construction, if applicable.
- j. A LCC approved Manure Management Plan.
- k. Other additional information necessary to comply with this ordinance.

(2) Animal Waste Storage Facility.

(a) Animal Waste Storage Facility permits:

1. An application for a permit is required.
2. The application shall include a fee and all required plans.
3. The construction plan and Manure Management Plan shall each be certified and approved in Sec. 8-4-5(1)(a)(2) and shall be certified as meeting the requirements of this ordinance by an agricultural or civil engineer registered in the State of Wisconsin, or a Department of Agriculture Trade and Consumer Protection or Natural Resource Conservation Service engineering practitioner.
4. The Manure Management Plan shall be certified as meeting the requirements of this ordinance by a Certified Crop Advisor or a plan approved by the department.
5. Within forty five (45) days of receiving an application, plan and fee, the department shall inform the applicant in writing whether the application is approved or denied. If additional information is required, the department, within forty five (45) days from the receipt of the additional information, must approve or reject the application.

(b) Animal Waste Storage Facility. Permit conditions:

1. An approved application is on file with the department.
2. An animal waste storage facility plan which shall include:

(a) Existing and anticipated numbers, and types of animals and animal units.

(b) Site maps drawn at a scale of not less than one (1) inch equals one hundred (100) feet of the animal waste storage facility's location including identification of all buildings, navigable streams, and wetlands or water bodies within one thousand (1000) feet of the proposed animal waste storage facility.

(c) Structural details, including but not limited to dimensions, cross sections, concrete thickness, reinforcement schedules, thickness and placement of groundwater protection liners and elevations.

(d) Well locations within three hundred (300) feet of the animal waste storage facility.

(e) Soil test pits, soil depth boring locations, and soil descriptions to a depth of at least five (5) feet below the planned bottom of the animal waste storage facility, or to bedrock if at a lesser depth.

(f) Groundwater or bedrock elevations if encountered in the soil profile, and the date of such determinations.

(g) Provisions for drainage and control of runoff to prevent pollution of surface and groundwater and the location and distance to water bodies.

(h) Drawing scale and associated keys.

(i) Timetable for construction.

(j) Description of methods for transferring animal waste.

(k) Plans for abandonment.

(l) A LCC approved Manure Management Plan.

(m) Other additional information necessary to describe the construction and maintenance of structures.

3. No construction has begun prior to the issuance of a permit.

4. No operation has begun prior to the issuance of a Certificate of Noncompliance where new ownership occurs.

5. Five (5) days notice is given to the department prior to any construction activity.

6. Permits are void if construction is not completed within eighteen (18) months of the permit issue date.

7. Extensions of up to one (1) year may be granted by the department upon written request from the permittee.

8. Prior to use, an agricultural or civil engineer registered in the state of Wisconsin, or DATCP, or NRCS certified engineering practitioner shall certify on forms provided by the department that the animal waste storage facility was installed as planned, including as-built dimensions and design changes made during construction.

(3) Livestock Operations of Greater Than 300 Animal Units

(a) Livestock Operations of Greater Than 300 Animal Units Certificates.

1. An application for a certificate is required.

2. An application shall include a Manure Management Plan, as well as a construction plan if applicable. The construction plan shall be certified as meeting the requirements of this ordinance by an agricultural or civil engineer registered in the State of Wisconsin, or a Department of Agriculture Trade and Consumer Protection or Natural Resource Conservation Service engineering practitioner.

3. The Manure Management Plan shall be certified as meeting the requirements of this ordinance by a Certified Crop Advisor or plan approved by the department.

4. Within forty five (45) days of receiving an application, plan and fee, the department shall inform the applicant in writing whether the application is approved or denied. If additional information is required, the department, within forty five (45) days from the receipt of the additional information, must approve or reject the application.

(b) Livestock Operations Greater Than 300 Animal Units Requirements:

1. Manure Management Plan covering all acres where animal waste is applied.

2. Plan contents shall include:

(a) Existing and anticipated numbers and types of animals and animal units.

(b) Must conform to all requirements as stated in Ordinance III of the Land & Water Resources Policy Manual.

(4) Permit Exceptions for Animal Waste Storage Facilities.

a. Pre-existing animal waste storage facilities without change in ownership, except where a breach or overflow occurs.

b. Routine maintenance.

c. Emergency equipment repairs.

d. Abandonment/closure of existing facility with a plan approved by the Department.

(5) Permit Fees. Fees shall be required for new animal waste storage facilities and new feedlots. Fees shall be established and modified and incorporated in the Polk County Land & Water Resources Department policy by motion of the LCC. Fees are non-refundable.

SEC. 8-4-6 ADMINISTRATION. The Land and Water Resources Director shall administer this Ordinance.

(1) Administrative Duties. The department shall:

- (a) Keep accurate records of all official actions.
- (b) Review plans and insure compliance with this Ordinance.
- (c) Investigate complaints relating to compliance with this ordinance.
- (d) Provide technical and financial assistance to the extent available.
- (e) Monitor permitted activities for compliance with this ordinance.

(2) Inspection Authority. Pursuant to Sec. 92.07(14), Wis. Statutes, the department is authorized to enter upon lands affected by this Ordinance to ensure compliance. Refusing department staff access to any site may be grounds for permit denial, revocation, or other enforcement action.

SEC 8-4-7 ENFORCEMENT.

(1) Enforcement Authority.

- (a) The department is authorized to issue Certificate of Noncompliance, Stop Work Orders, revoke permits and seek penalties or injunctions against any person who violates this Ordinance. The department shall provide written notification as to the reasons for the revocation.
- (b) A permit revocation or stop work order shall remain in effect until retracted by the department, LCC, or court of general jurisdiction.
- (c) The department director is authorized to refer violations or enforcement actions to the Corporate Counsel. The department may request the Corporate Counsel to obtain a cease and desist order, or any other form of injunctive relief as needed.
- (d) The department shall retract a Stop Work Order, a Certificate of Noncompliance, or the revocation of a permit upon compliance with this ordinance.

(2) Certificate of Noncompliance. Conditions:

- (a) Issued after a site evaluation by the department
- (b) Issued after a determination that a violation of this ordinance exists
- (c) Certificate will allow activities subject to regulation to exist or continue, but recipients are subject to compliance prior to time frames specified on the notice.
- (d) Certificate will specify portions of this ordinance under which the violation occurs.
- (e) Certificate may be extended to allow for compliance with this ordinance.
Note: Certificates of noncompliance allow site evaluations to be based on available technical assistance or funding. Landowners with pre-existing regulated activities would not be subject to enforcement until after a site is evaluated, a certificate of noncompliance issued, and the timetable for compliance expired. A certificate would not commit the landowner or department to unreasonable timetables, administration and enforcement could proceed as grants and staff are available.

(3) Stop Work Orders. Conditions:

- (a) A Certificate of Noncompliance has expired.
- (b) Only actions related to an activity subject to regulation shall be ceased.
- (c) Activities regulated by this ordinance that are being carried out without a permit or certificate.
- (d) Forty eight (48) hours after posting a stop work order where conditions threaten public health, safety or welfare, or where the potential for severe offsite damage warrants immediate attention, the department may notify the violator of the county's intent to perform work necessary to comply with this ordinance.

(4) Citations. Any person who violates or resists enforcement of this ordinance is subject to a citation for forfeiture of not less than \$10.00 or more than \$500.00, plus costs of prosecution for each violation. Each day that a violation exists shall be a separate offense.

(5) Injunctions. As a substitute for, or in addition to forfeiture actions, Polk County may seek enforcement of any part of this Ordinance by court actions seeking injunctions or restraining orders.

SEC 8-4-8 APPEALS

(1) Procedure

- (a) The procedures under Ordinance 68 of the Wisconsin Statutes shall apply. The department director shall act as the initial appeal authority pursuant to Wis. Stat., 68.09 (2). Any person having a substantial interest, which is adversely affected by the order, requirement, decision or determination made by the department may appeal to the Director of the Land & Water Resources Department. A written appeal shall be submitted to the department director on provided forms. The appeal must be submitted within 30 days of the noncompliance determination.

The request shall specify written evidence and the reasons for the request, including which requirements from this ordinance are involved. 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.

(b) If a person wishes to appeal the decision of the department director, a written appeal must be made within 30 days of the date of the decision. Any such appeal will be heard by the LCC according to the policy set forth in the Polk county Land & Water Resources Department Manual. The provisions of the Wis. Stat., ss. 68.11 and 68.12 shall govern any hearing and decisions to occur under this subsection.

(c) The granting of an appeal shall:

1. Be consistent with the spirit and purpose of this ordinance.
2. Not consider a request that may lead to failure of an animal waste storage facility or feedlot, or cause significant water pollution or offsite impacts.
3. Be due to unique circumstances, unusual natural conditions, not to the general conditions of the area.
4. Not be granted for a self-created hardship
5. Not be granted solely on economic gain or loss.
6. Not be granted solely because certain conditions existed prior to the effective date of this Ordinance.

EFFECTIVE DATE. This ordinance shall take effect upon passage and publication, but in no event earlier than March 1, 2000.

Approved as to form:/s/ Jeffrey B. Fuge, Assistant Corporation Counsel

Date Submitted to County Board: **January 26, 2000**
County Board Action: **Adopted As Amended**

SUBMITTED BY: Richard Coen
Gerald Newville
