Polk County Board of Supervisors
Ordinance No. 39-17
Manure and Water Quality Management Ordinance

NOW THEREFORE, BE IT ORDAINED that the Polk County Board of Supervisors enacts Ordinance No. 39-17, Manure and Water Quality Management Ordinance, attached hereto and incorporated herein.

## SUBCHAPTER 12.1: MANURE AND WATER QUALITY MANAGEMENT ORDINANCE

Ordinance 39-17

### Section 1. Title, Statutory Authority, Declaration of Policy, Applicability, Definitions

1.01. Title. This ordinance shall be known as the Polk County Manure and Water Quality Management Ordinance, and is hereinafter referred to as the Ordinance.

1.02. Statutory Authorization. This ordinance is adopted pursuant to the authorization in Sections 59.02, 59.03, 59.70(20), 92.10, 92.15, 92.16, and Wisconsin Statutes and Administrative Rule ATCP 50.56.

1.03. Declaration of Policy

a. *Findings.* The Polk County Board of Supervisors recognizes the importance of protecting ground and surface water resources and finds that proper storage and management of animal waste contributes to the protection of ground and surface waters, public health, other animal and aquatic life health, and consequently to the property tax base of Polk County.

b. *Purpose*. The purpose of this Ordinance is to enhance public health, prosperity, and welfare by protecting ground and surface water quality.

1.04. 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 of Polk County for feedlots, degraded pastures and unconfined manure piles.

a. *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 Wisconsin Statute.

b. *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.

1.05. Definitions. The following definitions apply to the provisions of this ordinance:

a. *Abandoned Animal Waste Storage Facility* means an animal waste storage facility where animal waste has not been added or removed for twenty four consecutive months.

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

c. *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.

d. *Animal Waste Storage Facility* means an impoundment made by constructing an embankment or excavating a pit or dugout or by fabricating a structure to contain manure and other animal or agricultural wastes. Animal waste storage does not include a manure pack layer as dropped by animals on a feedlot or in a barn.

e. *Applicant* means any person who applies for a permit or certificate of compliance under this Ordinance.

f. *Certificate of Compliance* is a certificate issued by the Polk County Land and Water Resources Department stating the landowner is in compliance with the requirements of this ordinance.

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

h. *Degraded Pastures* means those pastures providing livestock access to waters of the state, where livestock activity prevents the maintenance of adequate sod or self-sustaining vegetative cover.

i. *Direct conduits to groundwater* means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non–metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

j. *Direct Runoff* means a visible feedlot runoff or storage overflow or evidence of regular flow or discharge that reaches waters of the state.

k. *Director* means the Director for the Land & Water Resources Department.

l. *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 and pens, mink ranches and domesticated animal zoos, shall be considered to be animal feedlots. Pasture that maintains permanent vegetative cover shall not be considered animal feedlots under these parts.

m. *Field Season* means either the usual and customary spring field planting season for Polk County, and the usual and customary fall harvest field season for Polk County.

n. *Impoundment* means see "Animal Waste Storage."

o. *Land Conservation Committee* (referred to as the "LCC") means the Environmental Services Committee of the Polk County Board which performs county-level functions outlined in Chapter 92 Wis. Stats.

p. *Land & Water Resources Department* (LWRD) means the staff for enforcing and providing technical and administrative support for this ordinance (referred to as the "department").

q. *Livestock* means domestic animals kept for use on a farm, or raised for sale and profit.

r. *Manure* means a material that consists primarily of excreta from livestock, poultry or other animals.

s. *Nutrient Management Plan* means a written plan and map, approved by the department detailing the amount, form, placement and timing of applied animal waste and other fertilizers.

t. *Navigable Waters* means all natural inland lakes, streams, ponds, 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)

u. *Navigable* means all lakes, ponds, flowages, rivers, streams in Polk County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources' publication *Surface Waters Resources of Polk County,* or are shown on the United States Geological Survey Quadrangle Maps. Lakes, ponds, flowages, rivers and streams not included in these documents may also be determined to be navigable. Also, Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages, and other waters within the territorial limits of this State, including the Wisconsin portion of boundary waters, which are navigable under the laws of this State. Under Section 281.31(2)(d), Wisconsin Statutes, notwithstanding any other provision of law or administrative rule promulgated there under, shoreland

ordinates required under Section 59.692, Wisconsin Statutes, and Chapter NR 115, Wisconsin Administrative Code do not apply to lands adjacent to farm drainage ditches if:

1. Such lands are not adjacent to a natural navigable stream or river;
2. The drainage ditch was not a navigable stream before ditching; and
3. Such lands are maintained in agricultural use.

v. *NRCS* means Natural Resources Conservation Service of the U. S. Department of Agriculture.

w. *Ordinary High-Water Mark* (OHWM) 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.

x. *Permit* means a permit issued for all other requirements of this ordinance other than those requirements covered by the Certificate of Compliance and the Certificate of Noncompliance.

y. *Permittee* means a person to whom a permit is issued under this Ordinance.

z. *Person* means any individual, corporation, firm, partnership, joint venture, agency, unincorporated association, or unit of government.

aa. *Qualified Nutrient Management Planner* means a nutrient management planner meeting the qualifications outlined in ATCP 50.48 (1) (2) Wis. Admin. Code.

bb. *Site that is susceptible to groundwater contamination* under s. 281.16 (1) (g), Stats., means any one of the following:
(a) An area within 250 feet of a private well.
(b) An area within 1000 feet of a municipal well.
(c) An area within 300 feet upslope or 100 feet downslope of a direct conduit to groundwater.
(d) A channel that flows to a direct conduit to groundwater.
(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 soil characteristics:
1. At least a 2–foot soil layer with 40% fines or greater above groundwater and bedrock.
2. At least a 3–foot soil layer with 20% fines or greater above groundwater and bedrock.
3. At least a 5–foot soil layer with 10% fines, or greater above groundwater and bedrock.
Note: See s. NR 151.002 (32) for definition of percent fines.

cc. *Stop Work Order* means an order to cease any activity in the operation of, or construction of an activity subject to regulation.

dd. *Stormwater* means rainfall and runoff from rainfall.

ee. *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 of the transfer system.

ff. *Unconfined Manure Pile* reference NR151.015(22), Wis. Admin. Code means a quantity of manure that is at least 175 cubic feet in volume and which covers the ground surface to a depth of at least 2 inches and is not confined within a manure storage facility,

livestock housing facility or barnyard runoff control facility or covered or contained in a manner that prevents stormwater access and direct runoff to surface water or leaching of pollutants to groundwater.

gg. *Waste Transfer System* means components such as pipes, conduits, valves, and other structures installed to convey manure and milking center wastes from buildings and animal feeding operations to a storage structure, loading area or treatment area.

hh. *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.

ii. *"Water quality management area"* or "*WQMA*" means the area within 1,000 feet from the ordinary high water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, the term means the area within 1,000 feet from the high water mark of the lake; the area within 300 feet from the ordinary high water mark of navigable waters that consist of a river or stream; and a site that is susceptible to groundwater contamination, or that has the potential to be a direct conduit for contamination to reach groundwater.

## Section 2: Activities Subject to Regulation

2.01. Animal Waste Storage.

a. Construction, substantial alteration, or closure of any animal waste storage structure or waste transfer system. Such construction, alteration, or closure will require a permit from Polk County LWRD. Permit requirements include design, construction and as-built plans approved by a professional engineer or engineer practitioner and meeting requirements of NRCS standards and specifications. Permit requirements also include an approved nutrient management plan and an updated checklist submitted annually, with the updated plan available to the Polk County LWRD upon request.

b. There shall be no overflow of an animal waste storage facility.

c. There shall be no leaking or failing manure storage facility.

2.02 Unconfined manure pile

a. A livestock operation shall have no unconfined manure pile in a water quality management area.

b. In areas where unconfined manure piles are allowed, the piles shall be field spread and incorporated during the next field season following placement and under no circumstances shall an unconfined manure pile remain longer than 18 months.

2.03. Feedlots. There shall be no direct runoff from feedlots to waters of the state.

2.04. Degraded Pastures. Degraded pastures are prohibited where livestock access waters of the state.

## Section 3: Standards, Specifications and Policies

3.01. Standards, Specifications and Policies. Compliance with this ordinance shall be administered by the Polk County Land and Water Resources Department and shall follow standards, specifications and policies as adopted by the USDA-NRCS including standards 313, 590, 634, 632, 629, and 360, the Wisconsin Department of Natural Resources Administrative Rule NR 151 and the Wisconsin Department of Agriculture, Trade and Consumer Protection Administrative Rule ATCP 50. 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 exists.

## Section 4: Permits and Certification Requirements

4.01. Animal Waste Storage Facility Permits:

a. An application for a permit is required.

b. The application shall include a completed application, fee, construction plans and nutrient management plan.

c. The construction plans shall be certified and approved 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.

d. The Nutrient Management Plan shall be certified as meeting the requirements of this ordinance by a Qualified Nutrient Management Planner.

e. Within forty-five (45) days of receiving an application, plans 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.

4.02. Animal Waste Storage Facility Permit conditions:

a. An approved application is on file with the department.

b. An approved animal waste storage facility plan which shall include:

1. Existing and anticipated numbers and types of animals and animal units.
2. Site map drawn at a scale of not less than one (1) inch equals forty (40) 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.
3. Structural details, including but not limited to dimensions, cross sections, concrete thickness, reinforcement schedules, thickness and placement of groundwater protection liners and elevations.
4. Well locations within three hundred (300) feet of the animal waste storage facility.
5. Soil test pits, soil depth boring locations, and soil descriptions using the Unified Soil Classification System 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.
6. Groundwater or bedrock elevation if encountered in the soil profile, and the date of such determination.
7. Provisions for drainage and control of runoff to prevent pollution of surface and groundwater and the location and distance of water bodies.
8. Drawing scale and associated keys.
9. Timetable for construction.
10. Description and details of methods for transferring animal waste.
11. Plans signed by a P.E. with a statement that they meet NRCS standards and specifications.
12. A Nutrient Management Plan signed and approved by a Qualified Nutrient Management Planner.
13. Other additional information necessary to describe the construction, operation and maintenance of structures.

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

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

e. Permits are void if construction is not completed within eighteen (18) months of the permit issue date.
f. Extensions of up to one (1) year may be granted by the department upon written request from the permittee.
g. Prior to use of the manure storage facility, the department must issue a Certificate of Compliance, which requires:
   1. Red lined as-built construction plans signed and certified by an agricultural or civil engineer registered in the state of Wisconsin, or DATCP or NRCS certified engineering practitioner, that the animal waste storage facility and transfer system was installed as planned, including as-built dimensions and design changes made during construction, and that final construction meets NRCS standards and specifications.
   2. An approved Nutrient Management Plan on file with the department, as well as in subsequent years a checklist must be submitted to the department and a copy of the Nutrient Management Plan provided to the department upon request.

4.03. Permit Exceptions for Animal Waste Storage Facilities
a. *Routine maintenance*
b. *Emergency repairs*

4.04. Permit Fees. Fees shall be required for new and substantially altered animal waste storage facilities. Fees shall be established and modified and incorporated in the Polk County Land & Water Resources Department fee schedule by motion of the Polk County Board. Fees are non-refundable. Fees shall be waived for animal waste storage closure, but a permit is still required.

## Section 5: Administration

5.01. Administration Duties. The Land and Water Resources Department shall administer this Ordinance. Administrative duties include:
a. Keep accurate records of all official actions.
b. Review plans and ensure 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.

5.02. Inspection Authority. Pursuant to Chapter 92.07(14), Wisconsin Statute, 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.

## Section 6. Enforcement

6.01. Enforcement Authority.
a. The department is authorized to issue Certificate of Noncompliance, Stop Work Orders, revoke permits, issue citations, and seek penalties or injunctions against any person who violates this Ordinance. The department shall provide written notification as to the reasons for the enforcement action.
b. A permit revocation or stop work order shall remain in effect until retracted by the department, 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.

6.02. 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.

6.03. Stop Work Orders. Conditions:

a. Activities regulated by this ordinance carried out without a permit or certificate.
b. A Certificate of Noncompliance has expired.
c. Only actions related to any activity subject to regulation shall be ceased.
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 and bill violator for costs incurred.

6.04. Citations. Under authority of Wisconsin Statute 66.0113 any person who violates or resists enforcement of this ordinance is subject to a citation for forfeiture of not less than $10 or more than $500, plus costs of prosecution for each violation. Each day that a violation exists may be a separate offense.

6.05. 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.

**Section 7. Appeals**

7.01. Procedure. The procedures under Chapter 68 of the Wisconsin Statutes shall apply. The department director shall act as the initial appeal authority pursuant to Wisconsin Statute 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 department director. The appeal must be submitted within 30 days of the noncompliance determination.

a. The request shall specify written evidence and the reason 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.

7.02. Appeals. 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 Polk County Environmental Services Committee. The provisions of Wisconsin Statute 68.11 and 68.12 shall govern any hearing and decisions to occur under this subsection.

## Section 8: Effective Date

This Polk County Manure Management Ordinance shall take effect upon passage and publication, effective XX, XX, 2017

Polk County Board of Supervisors
Ordinance No. 39-17
Manure and Water Quality Management Ordinance

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|---|---|
| Funding Source/ Funding Amount: | Not Applicable |
| Date Reviewed as to Appropriations: | Not Applicable |
| Committee Recommendation as To Appropriation: | Not Applicable |
| Effective Date: | Upon Passage and Publication |
| Dated Submitted To County Board | (Enter Date) |
| Submitted ~~and Recommendation of:~~ BY: | |

| Review by County Administrator: | Review By Corporation Counsel |
|---|---|
| ☒ Recommended<br>☐ Not Recommended<br>☐ Reviewed Only<br>Dana Frey, County Administrator | ☒ Approved as to Form<br>☒ Recommended<br>Jeffrey B. Fuge, Corporation Counsel |

County Board Action

At its regular business meeting on the Polk County Board of Supervisors enacted the above-entitled ordinance: Ordinance No. 39-17: Manure and Water Quality Management Ordinance (~~Name of Ordinance~~), by majority vote of the entire membership of a vote of ~~__ in favor and __ against. (or how vote was made-ballot, etc.)~~ unanimous voice vote

Dean Johansen Dated: 6/22/17
Dean Johansen, County Board Chairperson

Attest: Sharon E. Jorgenson Dated: 6-30-17
Sharon Jorgenson, Polk County

Certification of Publication

The above-enacted ordinance, Ordinance No. 39-17: Ordinance (~~Name of Ordinance~~) Manure and Water Quality Management Ordinance, was published in the Inter-County Leader on the 6 day of July, ~~2016~~ 2017.

Sharon E. Jorgenson Dated: 6-30-17
Sharon Jorgenson, County Clerk

Tracy LaBlanc - Yes
Kate Isakson - Y
Dale Wood - Y
Brad Olson Y
James A. Edgell

# CERTIFIED COPY OF POLK COUNTY ORDINANCE

STATE OF WISCONSIN

COUNTY OF POLK

I, Sharon E. Jorgenson, Polk County Clerk due hereby certify that the attached hereto and incorporated herein is a full, true and correct copy of the Polk County Ordinance 39-17 Manure and Water Quality Management Ordinance, as adopted by the Polk County Board of Supervisors on the 20th day of June, 2017.

Sharon E. Jorgenson 6/20/17

Sharon E. Jorgenson, Polk County Clerk Date