


Sweeney

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Date: January 5, 2022

To: Oneida County Conservation and UW Extension Committee
(CUW) and Public Hearing on January 5, 2022 3:30pm

From: John Sweeney 
Camp Four Farm

Re: WRITTEN COMMENTS - Preliminary Review - Proposed "Manure Storage Ordinance" by Oneida County Conservation and UW Extension Committee (CUW) and Public Hearing on January 5, 2022 3:30pm

The CUW only allowed us to speak for three (3) minutes. Therefore, I felt required to provide these brief written comments as permitted in the "Public Hearing Agenda".

Our family farm, the Lorbetske Farm, now the Camp Four Farm, is located in the Town of Sugar Camp in Oneida County. My wife Scarlet (Lorbetske) Sweeney, is the fifth generation of her Polish family settlers who have continuously farmed this land in Oneida County since 1903. We currently grow hay and use rotational grazing practices to raise beef cattle. Our farm also has about an acre of blueberries and apples that are grown with organic practices. We are beekeepers and have this local honey available. Lastly our farm grows Christmas trees and we make wreaths that are sold throughout our area. When our children were growing up at the farm, we used organic practices to operate a "roadside fruit and produce stand" on STH 17. The food we currently produce on our farm is sold to locals and tourists alike.

We are a farming family. I was born in Tomahawk in 1961 and I have continually resided in northern Wisconsin my entire life. I have enjoyed, used, and respected the natural resources of northern Wisconsin as I fished and hunted the rivers, lakes, and streams. Since 1982 I have jointly owned a "hunting shack" south of the Willow Flowage in the Town of Little Rice. I have graduated from UW Oshkosh with a BS in Criminal Justice and a Master of Public Administration (MPA). I retired in 2014 after a rewarding 29-year career in public service in law enforcement. For 15 of those years, I also farmed part time. Scarlet was born in 1966 and grew up on her grandparents then dairy farm, where they grew grains and hay for feed as well as for sale. They also sold beef and Christmas trees. As a young person growing up, she worked alongside her grandmother any chance she got until heading off to college. Five years later she graduated from the University of Wisconsin with a BS in Horticulture. Upon graduation she moved back to the Northwoods and continued on the same farm raising beef part time with her father. In 1999, I joined the farm team and my wife and I have been operating said farm ever since. Scarlet has also been working off the farm in agricultural research for 25 years where she works

with large and small farmers across the US and Canada. She previously served as an Oneida County Fair Board Member and 4-H leader. Scarlet's grandfather Anton Lorbetske, who ran the Lorbetske farm, served on the Oneida County Board for more than 40 years and was Chair of the board for many years. My son Michael Sweeney graduated from UW River Falls with a BS in Agricultural Business and an Accounting degree, and currently works as a CPA. My daughter Kaitlin Sweeney has a BS in Biology with a minor in Psychology from UM Duluth and is currently a 4th year student at the Veterinary College of the University of Wisconsin. Since we began operation of the farm, we have received hundreds of hours of continuing education related to water and soil management and best practices for the treatment of our animals that we are responsible for. We are members of several farming related associations as well as the Wisconsin Farm Bureau. Our family has used this collective knowledge, skills, and experience in farming to operate our farm. Based on our collective knowledge, skills, and experience I offer this information and incorporate this **memorandum to be considered as written comments to the public hearing.**

On January 20, 2020 (almost 2 years ago) I was contacted at our farm by Oneida County Board Supervisor Scott Holewinski and informed that Karl Jennrich would be at the Sugar Camp Town Hall that evening with a proposed ordinance related to manure storage. I went to the Town Hall and briefly reviewed the draft ordinance material that Karl supplied. I then stated to Karl and Scott that as a beef producer, I was familiar with the matters in the proposed manure ordinance and they were already being handled for farmers at the state level. The primary responsibility for manure regulation rests with two state agencies – the DATCP and the DNR. I also know that in some cases the DNR will regulate a large farm, such as a Confined Animal Feeding Operation (CAFO), under the U.S. Environmental Protection Act (EPA) Clean Water's Act pollutant discharge permit program known in Wisconsin as WPDES. The EPA is currently available to assist the DNR as may be needed. Several weeks later, in early 2020, I learned from Scott Holewinski that this draft ordinance was no longer being considered by Oneida County.

Fast forward to December 2021. As an owner of G4-Agricultural use property I received by US mail, just prior to Christmas, a memorandum regarding a public hearing and mailing, indicating completion of a manure storage ordinance by the Oneida County Conservation and UWEX education committee (CUW). This was the first knowledge we had that manure storage was again being discussed; this time by a different committee of the Oneida County Board. I have personally spoken to several farmers in Oneida County that I routinely work with and none of them were aware that a county ordinance related to manure was being considered. During the Christmas Holiday, I reached out to several government officials and industry contacts as well to gain knowledge and understanding of the county ordinance and this January 5, 2022, public hearing.

Our farm has operated, and will continue to operate within the standards, regulations and laws of the two Wisconsin state agencies previously mentioned – the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Wisconsin Department of Natural Resources (DNR). As early as 1956, our farm worked with experts of the United States Department of Agriculture (USDA) to design pasture grazing locations to protect land and water. Since 2000, Scarlet and I have worked and consulted with the USDA Natural Resources Conservation Service (NRCS) on technical farm projects, best farming practices, and improvement of pollinator

habitat. In September of 2020, our farm was highlighted in the USDA, NRCS farm bulletin, in a story titled, "Oneida County Success from the Field - Farming for Pollinators in the Northwoods". According to Michael Stinebrink, NRCS District Conservationist, "John and Scarlet didn't need NRCS to sell them on the importance of conservation—they came to us with a strong conservation ethic...the Sweeneys ran with those ideas; if it was good for conservation, they got it done." (See attachment #1 – 1 page -NRCS "Oneida County Success from the Field")

When Jean Hansen was employed by Oneida County, and worked as the Oneida County Conservationist, she contacted me and asked to visit our farm. I brought Jean for visits on several occasions. Jean was absolutely engaged in the understanding of our farm; no till and low till pasture plantings, farm related soil and water issues, and the humane treatment of all of our animals. With the exception of some recent discussion with the current Oneida County Conservationist on access to no-till drills for small farmers in Oneida County, there has been no engagement or outreach by CUW personnel with our farm.

Wisconsin Statute 823.08, more commonly known as the *Wisconsin Right to Farm Law* was initially passed by the legislature in 1982, with significant changes to strengthen the law in 1995. Included in this law regarding 'Agriculture use' is 'keeping livestock' (91.01(2) (a)(2) Stats. It is important to note that our farm is properly zoned to permit farming and keeping of livestock.

For the reasons stated, I have now taken an opportunity to complete a very preliminary review of the contents of the memorandum from CUW, the proposed ordinance, and the related material referenced in the proposed ordinance. Because the proposed ordinance makes reference to numerous Wisconsin statutes, DATCP and DNR administrative rules, and the technical standards of the NRCS and due to the short notice given, a complete and thorough review of the proposed ordinance has not yet been completed.

In reviewing the ordinance and in preparation for the public hearing I learned that the USDA Farm Service Agency (FSA) Representative on the CUW voted against the proposed ordinance.

I would offer some initial preliminary comments and suggestions on the proposed ordinance and moving forward to support farmers in Oneida County -

1. Our family farm is committed to land and water conservation and animal health and well-being.
2. Oneida County has demonstrated no need to pass a county ordinance related to manure management. Oneida County does have significant state mandated duties and responsibilities. Currently Oneida County has no expertise or personnel assigned to regulate manure storage and management and there currently no county funds expended. Please allow the DNR and DATCP to continue to provide the personnel, technical assistance, guidance, and enforcement as needed to producers of manure and farmers in Oneida County. When citizens, farmers, County government employees, CUW or County Board members need assistance, they will and should contact the DNR and DATCP for the needed assistance as it relates to manure storage and management.

3. Wisconsin's Right to Farm law (823.08, Stats.) includes the crop and forage production, keeping of livestock, beekeeping, and Christmas Tree production. At a minimum Oneida County should understand, recognize, acknowledge, and reference the support of this law when drafting ordinances related to farming. (attachment #2 -8 pages)
4. The proposed ordinance, in its current form, had the farmer representative on the CUW vote against the proposed ordinance. In the future, meaningful discussion, understanding, and collaboration with affected farmers during the drafting process, may provide consensus and agreement on proposed future policy.
5. Should a place of vulnerability or conflict with farmers be identified in the future, I would respectfully request that Oneida County CUW formulate and execute an outreach plan for farmers. Farmers and affected parties can work together to identify a path forward in support and encouragement of the production of food in Oneida County.
6. "Localizing state authority". In the event that the CUW or Oneida County Board believes that current state law or administrative rules related to manure storage and farming are inadequate, the County should seek a discussion with the state legislature. Proposed changes in state law or administrative rules related to farming have established engagement opportunities for farmers, interested parties, farm industry representatives (such as the Wisconsin Farm Bureau), and citizens.
7. Section 28.07 (3) of the proposed ordinance refers to authorizing inspection under 92.07 (14) of the Wisconsin Statute for authority to "each land conservation committee may enter upon lands within the county to examine the land and make surveys or plans for soil and water conservation without being liable for trespass in the reasonable performance of these duties. This authorization applies to land conservation committee members and their agents". In 2011 Wisconsin adopted the "Castle Doctrine" (939.48 (1m) Stats.) that should be considered when drafting ordinances related to trespassing by government officials. The County has a responsibility to draft ordinances that ensure the safety of public employees who are requested to enforce ordinances.
8. The proposed ordinance, in its current form, has some clear omissions, conflicts with existing state law and administrative law. Even though I do not support this proposed ordinance, I have attached a copy of the proposed ordinance and highlighted some areas of significant concern. (attachment #3-24 pages)

I respectfully thank you for your time and attention and your consideration. I can be reached at the farm at (715)272-1781.

cc: Camp Four Farm LLC file

Oneida County Success from the Field

Farming for Pollinators in the Northwoods



Background

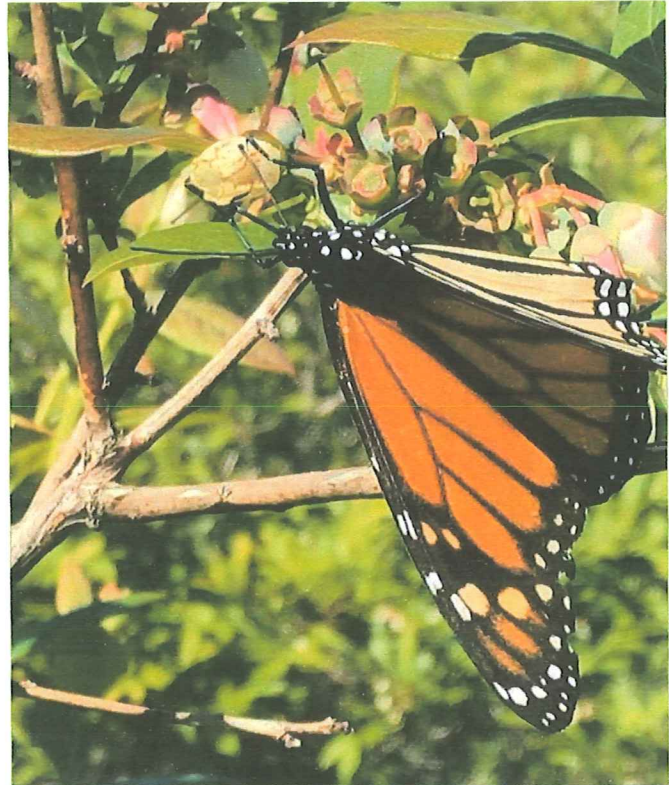
Scarlet and John Sweeney own Camp Four Farm, a diversified operation near Sugar Camp, Wisconsin. The Sweeneys raise beef and honeybees, sell pick-your-own blueberries, aronia, apples, grapes and other fruits and vegetables. The family also uses organic practices on the farm. Camp Four Farm is named after a historic lumber camp; the fourth of several camps linked to Rhinelander by the narrow-gauge, Thunder Lake Logging Railroad, which operated from 1893 to 1941. Scarlet, who has a degree in horticulture from the University of Wisconsin-Madison, is the one with the green-thumb, and works full-time, off the farm, in agricultural research. John is recently retired, as Chief Deputy Sheriff for Oneida County, and has settled in as a full-time cattleman and part-time hockey player.

Program Successes

Camp Four Farm was farming for pollinators before working with NRCS, but redoubled their efforts through the Environmental Quality Incentives Program (EQIP). They inter-seeded old hay fields with honeybee-friendly Ladino clover and implemented a rotational grazing plan that deferred haying and grazing to maximize food and habitat for honeybees.

“John and Scarlet didn’t need NRCS to sell them on the importance of conservation—they came to us with a strong conservation ethic,” according to Michael Stinebrink, NRCS District Conservationist. “Our job was to help them achieve their conservation objectives, by offering technical and financial assistance, and to encourage additional steps by floating new ideas. The Sweeneys ran with those ideas; if it was good for conservation, they got it done.”

The Sweeneys voluntarily set aside lands adjacent to their pastures and farmstead to allow milkweed and other native forbs to flower and remain undisturbed through winter. They also fenced cattle out of an alder swamp to protect habitat and improve water quality. Though the Conservation Stewardship Program (CSP), Camp Four Farm began to use a flush-bar on their haying equipment and retrofitted their stock water tanks with escape ladders for birds and other animals. They also installed roof gutters on their barn to intercept clean water and divert it away from their barnyard.



Hundreds of Monarchs may be found on any given summer day at Camp Four Farm, including this one, on blueberry blossoms. More information about the farm, its wildlife, and its berry- and fruit-picking seasons may be found on their Facebook page.

Future Plans

Through CSP, Camp Four Farm will soon have a bat box and additional bluebird nesting boxes. John and Scarlet will also be controlling a patch of black locust that established on an adjacent homestead. They’ve settled on a herd size of approximately 45 black and red angus on 100 acres of pasture with room to expand the herd.





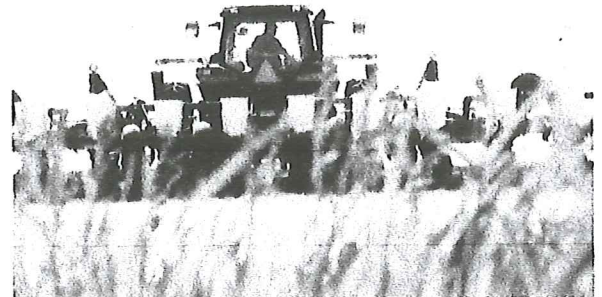
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Wisconsin's Right to Farm Law

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Overview

Wisconsin's Right to Farm law provides farmers with protections from frivolous nuisance lawsuits, allowing them to practice agriculture without fear of legal action as long as they follow good production practices. The law has been applied in one case, *State of Wisconsin et al. vs. Zawistowski*, in which the court found that William Zawistowski's cranberry farming practices were not unreasonable and awarded him legal costs needed for his defense following the conclusion of the case.



Background

Wisconsin Statutes 823.08, more commonly known as Wisconsin's Right to Farm law, was first passed by the Wisconsin legislature in 1982, with significant changes to strengthen the law made in 1995.

The Right to Farm law was passed in order to protect law-abiding farmers following industry best management practices from lawsuits that allege nuisance due to normal farming activities. Examples of cases that have been brought in other states allege odors, noise, dust, or pollution as a result of farming activities. The statute does not create a "right" to conduct agricultural activity or pollute.

The legislature noted in a statement of public purpose that local units of government are best equipped to manage land use conflict through zoning and other permitting. The legislature, in passing the bill, urges local governments to exercise this authority appropriately.

The Right to Farm law is intended to reduce the threat of nuisance lawsuits to producers, especially in areas where farming activities sometimes conflict with residential development. Further, the Right to Farm law enables farmers who desire to stay on their land to do so with less fear of legal rebuke from these non-farm neighbors.

The state statute says that if agricultural use meets criteria defined in the law, the court cannot find the actions of the producer to be a nuisance if two conditions are met. Those conditions are that the plaintiff bringing the suit cannot have "come into" the nuisance; if the agriculture in question has been continuously occurring for longer, it holds standing according to statute. The second condition is that the agricultural use does not pose a "substantial threat to public health or safety."

The Right to Farm law also limits the court's ability to remedy damages against a defendant. If the court finds that the agricultural use is indeed a threat to public health and safety, they may order the farmer to mitigate the hazards, but they must consult with DATCP and DNR about appropriate mitigation and offer the farmer adequate time (at least a year) to do so.

Perhaps most importantly, the statute authorizes the courts to award compensation for legal fees to the defendant (the farmer) if the farmer successfully proves that, under the law, their farming practice is not a nuisance.

Wisconsin's Right to Farm law has been tested and implemented in one Wisconsin court case. In 2004, then-Wisconsin Attorney General Peg Lautenschlager and 14 out-of-state landowners sued Sawyer County cranberry grower William Zawistowski, alleging that water pumped from and later returned to Musky Bay used to flood cranberry beds had deteriorated in quality as a result of his farming operation. The plaintiffs argued that the cranberry farm's actions had infringed upon the public's ability to use the waters for recreational use. Zawistowski had not been previously cited by any state or federal agency for any violations. His family had farmed near Musky Bay since 1939.

In a 2006 bench trial, the court found that Zawistowski's farming practices were not unreasonable and did not substantially impact the water in the bay. Appeals persisted by the state, and in 2008 Governor Jim Doyle elected to drop the case after an appellate court upheld the circuit court's decision.

Following the ruling on the appeal, the out-of-state landowners were required by the court to pay legal fees incurred by Zawistowski as stated in the law. The Right to Farm law provides this stipulation to ensure the ability of farmers who must defend an invalid nuisance suit to remain in business.

Wisconsin Farm Bureau supports the Right to Farm law.

Current Issues & Status

The Zawistowski case represented the first instance in which Wisconsin's Right to Farm law has come into play. Significantly, the Right to Farm law has been fully applied and held up in court, including compensation for legal fees incurred by Zawistowski.

Resources for More Information:

823.08 Actions against agricultural uses.

- (1) **LEGISLATIVE PURPOSE.** The legislature finds that development in rural areas and changes in agricultural technology, practices and scale of operation have increasingly tended to create conflicts between agricultural and other uses of land. The legislature believes that, to the extent possible consistent with good public policy, the law should not hamper agricultural production or the use of modern agricultural technology. The legislature therefore deems it in the best interest of the state to establish limits on the remedies available in those conflicts which reach the judicial system. The legislature further asserts its belief that local units of government, through the exercise of their zoning power, can best prevent such conflicts from arising in the future, and the legislature urges local units of government to use their zoning power accordingly.
- (2) **DEFINITIONS.** In this section:
- (a) "Agricultural practice" means any activity associated with an agricultural use.
- (b) "Agricultural use" has the meaning given in s. 91.01 (2).
- (3) **NUISANCE ACTIONS.**
- (a) An agricultural use or an agricultural practice may not be found to be a nuisance if all of the following apply:
1. The agricultural use or agricultural practice alleged to be a nuisance is conducted on, or on a public right-of-way adjacent to, land that was in agricultural use without substantial interruption before the plaintiff began the use of property that the plaintiff alleges was interfered with by the agricultural use or agricultural practice.
 2. The agricultural use or agricultural practice does not present a substantial threat to public health or safety.
- (am) Paragraph (a) applies without regard to whether a change in agricultural use or agricultural practice is alleged to have contributed to the nuisance.
- (b) In an action in which an agricultural use or an agricultural practice is found to be a nuisance, the following conditions apply:
1. The relief granted may not substantially restrict or regulate the agricultural use or agricultural practice, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.
 2. If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court shall do all of the following:
 - a. Request public agencies having expertise in agricultural matters to furnish the court with suggestions for practices suitable to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance.
 - b. Provide the defendant with a reasonable time to take the action directed in the court's order. The time allowed for the defendant to take the action may not be less than one year after the date of the order unless the agricultural use or agricultural practice is a substantial threat to public health or safety.
 3. If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court may not order the defendant to take any action that substantially and adversely affects the economic viability of the agricultural use, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.
- (c)
1. Subject to subd. 2., if a court requests the department of agriculture, trade and consumer protection or the department of natural resources for suggestions under par. (b) 2. a., the department of agriculture, trade and consumer protection or the department of natural resources shall advise the court concerning the relevant provisions of the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3).
 2. If the agricultural use or agricultural practice alleged to be a nuisance was begun before October 14, 1997, a department may advise the court under subd. 1. only if the department determines that cost-sharing is available to the defendant under s. 92.14 or 281.65 or from any other source.
- (4) **COSTS.**
- (a) In this subsection, "litigation expenses" means the sum of the costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees necessary to prepare for or participate in an action in which an agricultural use or agricultural practice is alleged to be a nuisance.

(b) Notwithstanding s. 814.04 (1) and (2), the court shall award litigation expenses to the defendant in any action in which an agricultural use or agricultural practice is alleged to be a nuisance if the agricultural use or agricultural practice is not found to be a nuisance.

History: 1981 c. 123; 1995 a. 149; 1997 a. 27; 1999 a. 9; 2009 a. 28.

Sub. (4) unequivocally mandates the recovery of reasonable attorney fees. *Zink v. Khwaja*, 2000 WI App 58, 233 Wis. 2d 691, 608 N.W.2d 394, 99-0149.

Protecting the right to farm: Statutory limits on nuisance actions against the farmer. *Grossman and Fischer*. 1983 WLR 95.

Brewing Land Use Conflicts: Wisconsin's Right to Farm Law. *Hanson*. Wis. Law. Dec. 2002.

- 91.48 Rezoning of land out of a farmland preservation zoning district.
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SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

91.01 Definitions. In this chapter:

- (1) "Accessory use" means any of the following land uses on a farm:
 - (a) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.
 - (b) An activity or business operation that is an integral part of, or incidental to, an agricultural use.
 - (c) A farm residence.
 - (d) A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in par. (a) or (c), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.
 - (e) Any other use that the department, by rule, identifies as an accessory use.

(1m) "Agricultural enterprise area" means an area designated in accordance with s. 91.84.

(2) "Agricultural use" means any of the following:

- (a) Any of the following activities conducted for the purpose of producing an income or livelihood:
 - 1. Crop or forage production.
 - 2. Keeping livestock.
 - 3. Beekeeping.
 - 4. Nursery, sod, or Christmas tree production.
 - 4m. Floriculture.
 - 5. Aquaculture.
 - 6. Fur farming.
 - 7. Forest management.

7 All apply at our farm!

8. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

(b) Any other use that the department, by rule, identifies as an agricultural use.

(3) "Agriculture-related use" means any of the following:

(a) An agricultural equipment dealership, facility providing agricultural supplies, facility for storing or processing agricultural products, or facility for processing agricultural wastes.

(b) Any other use that the department, by rule, identifies as an agriculture-related use.

(5) "Base farm tract" means one of the following:

(a) All land, whether one parcel or 2 or more contiguous parcels, that is in a farmland preservation zoning district and that is part of a single farm on the date that the department under s. 91.36 (1) first certifies the farmland preservation zoning ordinance covering the land or on an earlier date specified in the farmland preservation zoning ordinance, regardless of any subsequent changes in the size of the farm.

(b) Any other tract that the department by rule defines as a base farm tract.

(6) "Certified farmland preservation plan" means a farmland preservation plan that is certified as determined under s. 91.12.

(7) "Certified farmland preservation zoning ordinance" means a zoning ordinance that is certified as determined under s. 91.32.

(8) "Chief elected official" means the mayor of a city or, if the city is organized under subch. I of ch. 64, the president of the council of that city, the village president of a village, the town board chairperson of a town, or the county executive of a county, or, if the county does not have a county executive, the chairperson of the county board of supervisors.

(9) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

(10) "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a political subdivision.

(11) "County land conservation committee" means a committee created under s. 92.06 (1).

(12) "Department" means the department of agriculture, trade and consumer protection.

(13) "Farm" means all land under common ownership that is primarily devoted to agricultural use.

(14) "Farm acreage" means size of a farm in acres.

(15) "Farmland preservation agreement" means any of the following agreements between an owner of land and the department under which the owner agrees to restrict the use of land in return for tax credits:

(a) A farmland preservation agreement or transition area agreement entered into under s. 91.13, 2007 stats., or s. 91.14, 2007 stats.

(b) An agreement entered into under s. 91.60 (1).

(16) "Farmland preservation area" means an area that is planned primarily for agricultural use or agriculture-related use, or both, and that is one of the following:

(a) Identified as an agricultural preservation area or transition area in a farmland preservation plan described in s. 91.12 (1).

(b) Identified under s. 91.10 (1) (d) in a farmland preservation plan described in s. 91.12 (2).

(17) "Farmland preservation plan" means a plan for the preservation of farmland in a county, including an agricultural preservation plan under subch. IV of ch. 91, 2007 stats.

(18) "Farmland preservation zoning district" means any of the following:

(a) An area zoned for exclusive agricultural use under an ordinance described in s. 91.32 (1).

(b) A farmland preservation zoning district designated under s. 91.38 (1) (c) in an ordinance described in s. 91.32 (2).

(19) "Farm residence" means any of the following structures that is located on a farm:

(a) A single-family or duplex residence that is the only residential structure on the farm or is occupied by any of the following:

1. An owner or operator of the farm.

2. A parent or child of an owner or operator of the farm.

3. An individual who earns more than 50 percent of his or her gross income from the farm.

(b) A migrant labor camp that is certified under s. 103.92.

- (20) "Gross farm revenues" has the meaning given in s. 71.613 (1) (g).
- (20m) "Livestock" means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.
- (21) "Nonfarm residence" means a single-family or multi-family residence other than a farm residence.
- (22) "Nonfarm residential acreage" means the total number of acres of all parcels on which nonfarm residences are located.
- (22m) "Overlay district" means a zoning district that is superimposed on one or more other zoning districts and imposes additional restrictions on the underlying districts.
- (23) "Owner" means a person who has an ownership interest in land.
- (23m) "Permitted use" means a use that is allowed without a conditional use permit, special exception, or other special zoning permission.
- (24) "Political subdivision" means a city, village, town, or county.
- (25) "Prime farmland" means any of the following:
- (a) An area with a class I or class II land capability classification as identified by the natural resources conservation service of the federal department of agriculture.
 - (b) Land, other than land described in par. (a), that is identified as prime farmland in a certified farmland preservation plan.
- (26) "Prior nonconforming use" means a land use that does not conform with a farmland preservation zoning ordinance, but that existed lawfully before the farmland preservation zoning ordinance was enacted.
- (27) "Protected farmland" means land that is located in a farmland preservation zoning district, is covered by a farmland preservation agreement, or is otherwise legally protected from nonagricultural development.
- (28) "Taxable year" has the meaning given in s. 71.01 (12).

History: 2009 a. 28.

Wisconsin's Working Lands: Securing Our Future. Matson. Wis. Law. Dec. 2009.

91.02 Rule making.

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CHAPTER 28
ONEIDA COUNTY, WISCONSIN
MANURE STORAGE AND MANAGEMENT ORDINANCE

- 28.01 General Provisions
- 28.02 Definitions
- 28.03 Activities Subject to Regulation
- 28.04 Manure Storage Facilities Prohibitions and Restrictions
- 28.05 Manure Storage Permits
- 28.06 Certificate of Use
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28.01 GENERAL PROVISIONS

- (1) Authority. This Ordinance is adopted under authority granted by Sections 59.01, 59.02, 59.03, 59.04, 59.64, 59.69, 59.70, 92.07, 92.09, 66.0113, 92.15, and 92.16, Wisconsin Statutes (Stats.), and § ATCP 50.56, and NR 151.05, Wisconsin Administrative Code ("Wis. Admin. Code") *"Right to Farm Law"*
County needs to recognize 823.08 and 91.01 Agriculture Uses
- (2) Title. This Ordinance shall be known as, referred to, and may be cited as the Oneida County, Wisconsin Manure Storage and Management Ordinance and is hereinafter known as the Ordinance.
- (3) Findings and Declaration of Policy. The Oneida County, Wisconsin Board of Supervisors finds that the following conditions may threaten the County's natural resources, may pollute groundwater and surface water within the County, may cause harm to the health, safety and welfare of people within the County, and may adversely impact the property tax base of the County:
 - (a) New and substantially altered manure storage facilities that fail to meet performance and Technical Standards for proper design, construction and operation.
 - (b) Existing manure storage facilities that are not properly functioning and pose unreasonable risks related to structural failure and leakage.
 - (c) Existing manure storage facilities that overtop or are operated in a manner that creates an unreasonable risk of discharge to waters of the state.

to provide penalties for its violation.

(5) **Applicability.** The permit and other requirements in this Ordinance apply to all of the unincorporated areas of Oneida County, Wisconsin.

(6) **Interpretation.** In its interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Oneida County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes (Stats.). Unless a specific provision in this Ordinance seeks to apply requirements that are more stringent than state law, this Ordinance shall be interpreted to be consistent with Chap. 92 and 281.16, Stats. and Chap. ATCP 50 and NR 151, Wis. Admin. Code.

(7) **Abrogation, Greater Restrictions, Severability and Repeal Clause.**

(a) **Abrogation and Greater Restrictions.** This Ordinance is not intended to repeal, annul, abrogate, impair or interfere with any existing covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or issued pursuant to law. However, wherever this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

(b) **Severability.** Each section, paragraph, sentence, clause, word and provision of this Ordinance is severable and if any portion shall be deemed unconstitutional or invalid for any reason, such decision shall not affect the remainder of the Ordinance nor any part thereof other than the portion affected by such decision.

(8) **Effective Date.** This Ordinance shall become effective upon its adoption by the Oneida County, Wisconsin Board of Supervisors and publication.

28.02 DEFINITIONS

(1) **"Adequate sod or self-sustaining vegetative cover"** means the installation and maintenance of vegetation types and densities as measured by 70% cover (primarily leaf and stem area) in a 1.0 meter square area (quadrat). No less than 5 quadrats shall be sampled. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers.

*INCONSISTENT WITH
STATE LAW (FARM
REGS)*

- (2) "Agricultural Waste Management Field Handbook (AWMFH)" is a manual that provides specific guidance for planning, designing, and managing systems where agricultural wastes are involved, as published by the United States Department of Agriculture (USDA) Natural Resources Conservation Service.
- (3) "Applicant" means any person who applies for a permit under this Ordinance.
- (4) "Conservation and UW-Extension Education Committee (CUW)" is a committee made up of members of the Oneida County, Wisconsin Board of Supervisors and others who, by authority from Chap. 92, Wis. Stats., determine policy and give direction for soil and water conservation activities, and provides direction for the Land and Water Conservation Department.
- (5) "Compost" means a material that has been decomposed by composting to the extent that all the material will not significantly reheat due to action of microorganisms subjected to optimum oxygen, moisture, nutrients, and thermal conditions.
- (6) "Covered Temporary Manure Stack" means manure stacks of any size covered in a manner that prevents storm water access, direct runoff to surface water, or leaching of pollutants to groundwater. Stacks should be field spread and incorporated during the next field season following placement and under no circumstances shall a covered temporary manure stack, including composted manure, remain longer than 180 days.
- (7) "DATCP" means Wisconsin Department of Agriculture, Trade and Consumer Protection.
- (8) "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.
- (9) "Direct Runoff" has the meaning in § NR 151.015(7), Wis. Admin. Code, which includes any of the following:
- (a) Runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.

INCONSISTENT WITH STATE LAW AND FARMER PRACTICES WOULD BE UNLAWFULLY INTERFERED WITH.

such as conduits, pumps, valves, and other structures or devices to transfer manure and waste from buildings and yards and other sources to storage, loading areas, crop fields and other destinations. The standard establishes the minimum acceptable requirements for design, construction, and operation of waste transfer system components.

- (37) "Unconfined Manure Stack" 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 not covered nor contained in a manner that prevents storm water access and direct runoff to surface water or leaching pollutants to groundwater.
- (38) "Unpermitted manure storage facility" means a manure storage facility constructed, modified, or placed in use without first obtaining a permit, including facilities constructed before the first date of the adoption this Ordinance, and may include an earthen structure or impoundment made with a concrete liner which fully or partially covers the bottom and/or the sidewalls of the impoundment.
- (39) "Waste Transfer System" means components such as pumps, pipes, conduits, valves, and other mechanisms installed to convey manure, leachate and contaminated runoff, and milking center wastes from livestock structures to a storage structure, loading area, or treatment area.
- (40) "Water Pollution" means contaminating or rendering unclean or impure the ground or surface waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.
- (41) "Water Quality Management Area" or "WQMA" has the meaning in § NR 151.015(24), Wis. Admin. Code, which 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, such as a wetland.

*IN
Conflict
with 28.04
(3)(b)*

*added by Oneida
County to definition
CHAPTER 28-9*

*Any reference to setback's that
are in conflict w/NR151 -
interfering with farmers
attempting to farm.*

- (42) "Waters of the State" is the meaning specified under § 281.01(18), Stats, which includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

28.03 ACTIVITIES SUBJECT TO REGULATION

- (1) Permit Requirements. Any person who constructs, substantially alters, changes use of or closes a manure storage facility and related transfer systems, or who employs another person to do the same, shall be subject to the permit requirements of this Ordinance in 28.05.
- (2) Safety Devices. All manure storage facilities shall be equipped with safety devices including fences and warning signs intended to protect humans and livestock from the hazards associated with such facilities. Safety devices shall be designed and installed as required by Technical Standard 313.

28.04 ^{MANAGEMENT AND MANURE} MANURE STORAGE FACILITIES PROHIBITIONS AND RESTRICTIONS

(1) Manure Management Prohibitions:

- (a) A livestock operation shall have no overflow of manure storage facilities.
- (b) A livestock operation shall have no unconfined manure stack in a water quality management area.
- (c) A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state.
- (d) A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover. Properly designed, installed and maintained livestock or farm equipment crossings are exempt.

- (2) Well, Road, and Property Line Setbacks. ^{-NOT LEGAL} Manure storage facilities or manure stacks of any size, may not be located within 100 feet of any property line, within 100 feet of the nearest point of any public road right-of-way, or within 250 feet of

a well. The setback measurement shall be taken from the nearest point of the structure, including any embankment, to the nearest point of a property line, public road right-of-way, or well. The setback to a property line may be reduced if the affected neighboring landowner is in agreement and signs an affidavit stating the agreement and reduced setback distance. The affidavit must be recorded with the Register of Deeds. Manure storage facilities may be exempt from these conditions if one of the following applies:

IN EXCESS of state law and would interfere with legal farming activity.

Added to ZONING CODE? This is inconsistent with state law & interferes with farmer's legally farming.

(a) The manure storage facility lawfully existed prior to the adoption of this Ordinance. This paragraph does not authorize an expansion, toward a property line, public road right-of-way, or well of a manure storage facility that is located within 100 feet of that property line or public road right-of-way or 250 feet of that well.

(b) The manure storage facility is a single new facility constructed no closer to the relevant property line, public road right-of-way or well than a manure storage facility that lawfully existed on the same lot or parcel prior to the adoption of this Ordinance, provided the new facility is no larger than the existing facility and is located within 50 feet of the existing facility.

Inconsistent with state law

(3) Navigable Water, Wetlands, and Other Setbacks.

(a) A manure storage facility may not be located within 1000 feet of the OHWM of a navigable inland lake, flowage or a wetland that is adjoining and in contact with the inland lake as part of the lake's basin or direct watershed. A facility may not be located within 300 feet from a navigable stream or river. A facility may not be located within 300 feet of a wetland that is independent of, or not in contact with, a navigable inland lake or flowage. A manure storage facility may not be located within 300 feet of an intermittent stream, or the wetlands that are a part of the intermittent stream's course.

(b) Manure stacks (of any size) may not be located within 250 feet from a navigable inland lake, flowage, or navigable stream, or within 100 feet of a wetland.

ERROR IN DRAFTING OR A FLAGRANT ATTEMPT TO RESTRICT

This Section → In conflict with definition in 28.02 (41)

** farmer may have as many 175 cubic feet manure as they desire! altogether eliminate legal farming activity. One "cup" of manure would be a violation?*

28.05 MANURE STORAGE PERMITS

(1) Permit Required.

- (a) No person may do any of the following without obtaining a permit in accordance with this section.
1. Construct a new manure storage facility or substantially alter an existing manure storage facility, including the construction or substantial alteration of waste transfer systems connected to a manure storage facility.
 2. Upgrade, repair or replace a manure storage facility that has been identified as posing an imminent threat to public health, fish and aquatic life, or groundwater.
 3. Close an existing manure storage facility, including conversion of its use.
- (b) Requirements of this Ordinance shall be in addition to any other legal requirements regulating animal waste. Specific exemptions to cost share requirements apply to the issuance of permits. See § NR 151.095(5)(b)2. and ATPC 50.54(2)(b), Wis. Admin. Code. In the case of conflict, the most stringent provisions shall apply.
- (c) A person is in compliance with this section if he or she follows the application and other procedures specified in this section, receives a permit and approval from the County before beginning activities subject to regulation under this section, complies with the requirements of the permit and receives any required approvals or certifications from the County. The Permitting Authority may establish a timetable for the applicant to complete required activities to ensure compliance with requirements of this Ordinance.

(2) Exception to Permit Requirement. A permit is not required for:

- (a) Manure Stacks Located Outside of a Water Quality Management Area. The temporary stacking of manure on the ground surface located outside of a water quality management area does not require a permit, however, setbacks per 28.04(2) and 28.04(3) still apply. Stacks should be field spread and incorporated during the next field season following placement and under no circumstances shall an unconfined manure stack, or covered

In consistent with State law. This would interfere with a farming trying to legally farm.

temporary manure stack remain longer than 180 days. Stacks of any size in violation of this subsection shall be removed upon order of the Department, which shall include cleanup or other remediation as determined by the Department.

Inconsistent with state law

This would interfere with farmers attempting to legally farm

(b) Covered Temporary Manure Stacks. Covered temporary manure stacks do not need a permit; however, setbacks per 28.04(2) and 28.04(3) still apply. Stacks should be field spread and incorporated during the next field season following placement and under no circumstances shall a covered temporary manure stack remain longer than 180 days. Stacks of any size in violation of this subsection shall be removed upon order of the Department, which shall include cleanup or other remediation as determined by the Department.

most likely the County "refusing to allow legal farming."

(c) Compost. Compost piles do not require a permit.

(d) Manure Stacks Less Than 175 cu. ft. Manure stacks less than 175 cu. ft. do not need a permit, however setbacks per 28.04(2) and 28.04(3) still apply.

(e) Routine maintenance of a manure storage facility, not including activities with listed under section 28.05(1)(a) of this Ordinance.

This is inconsistent with state law and interferes

(f) Emergency equipment repairs of a manure storage facility, if the following conditions are met:

farmers attempting to farm

1. All emergency repairs on a manure storage facility or transfer system which cause any disruption of the original construction of the storage facility shall be done so as to restore the storage facility to the original state, as determined by the Technical Standards set forth in sub. (6).
2. Such repairs shall be further reported to the Permitting Authority within one (1) working day of the emergency for a determination on whether a permit will be required for any additional alteration or repair to the facility.
3. The Permitting Authority determination shall be rendered within three (3) working days of reporting.

(3) Fee. All fees associated with this Ordinance shall be established by County Board resolution. Any structure intended for storage of manure erected, constructed, placed, moved, or structurally altered without obtaining all permits and approvals prior to commencing the above stated activities, shall result in a triple fee.

(4) Manure Storage Facility Construction Plan and Nutrient Management Plan Required. Each application for a permit under par. 28.05(1)(a) shall be on a form provided by the County and include plans for the storage facility (including transfer system) and the management of manure prepared in accordance with following requirements:

(a) A narrative of the general criteria required within Technical Standard 313, and of other applicable Technical Standards including management and site assessments. The narrative should include, but is not limited to:

1. The number and type of animals for which storage is provided, the duration for which storage is to be provided, daily gallons and/or cubic feet of waste and manure produced, bedding type, and manure handling practices.
2. A description and construction plan of the method of transferring animal waste into and from the facility.
3. Soil test pit or boring logs and their locations with soil descriptions and test results. Soil test pit or boring criteria should follow Technical Standard 313 and characterize the subsurface (soils, saturation, and bedrock). This includes the elevation of redoximorphic features (mottling), gleyed soil and moisture condition.

Bad Policy or drafting - what else needs to be defined or the process would be an attempt to stop legal farming. - what is the limit?

(b) A general location map drawing of the site which shall include:

1. The location of structures in relation to buildings, homes, property lines, roads, wells, karst features, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand (1000) feet of the proposed facility or system.
2. The scale of the drawing and the north arrow with the date the general location map was prepared.
3. The location of any floodplains.

(c) Engineering design drawings of the manure storage facility or transfer system which shall include:

1. Specific design components that shall comply with Technical Standard 313, and additional applicable Technical Standards such as 634.
2. A recoverable benchmark(s) including elevation(s) expressed in feet and tenths.

(1) Delegation of Authority. The Oneida County, Wisconsin Board of Supervisors hereby designates the Land and Water Conservation and Planning & Zoning Departments with the authority to administer and enforce this Ordinance.

(2) Administrative Duties. The administration and enforcement of this Ordinance, shall entail:

(a) Keeping an accurate record of all permit applications, animal waste facility plans, nutrient management plans, permits issued, inspections made, and other official actions.

(b) Reviewing permit applications and issue permits in accordance with 28.05 of this Ordinance.

(c) Conducting, or cause to conduct, inspections of manure storage facilities to determine if the facility construction, closure, or operation meet the requirements of this Ordinance and Technical Standard 313 including the Margin of Safety defined in § NR 243.03(37), Wis. Admin. Code.

(d) Conducting, or cause to conduct, reviews of the nutrient management plans.

Criteria used? If inconsistent with state law would interfere with legal farming.

(e) Implementing the prohibitions and restrictions in accordance with 28.04 of this Ordinance.

(f) Reviewing certificate applications and issuing Certificates of Use in accordance with 28.06 of this Ordinance.

(g) Investigating complaints relating to compliance with the requirements of this Ordinance and act upon the findings in accordance with provisions of this Ordinance.

(h) Performing other duties as specified in this Ordinance.

(3) Inspection Authority. The Permitting Authority or its representative, is authorized to enter upon any lands affected by this Ordinance to inspect the land, and request records to determine compliance with this Ordinance including inspection of sites prior to or after the issuance of a permit or certificate, and sites with unpermitted manure storage facilities. See § 92.07(14), Stats. If permission cannot be received from the applicant or permittee, entry by the Permitting Authority or its representative may proceed in

Any area inconsistent w/ state law may be an attempt to interfere with legal farming.

92.07 authorizes trespass - no consideration given to "Castle Doctrine"

- see 939.48 (1m) Stats. My guess is that no one has considered this law in drafting a "trespass"

Michele Sadauskas

Sweeney

From: John M Sweeney <sjsweeney@frontiernet.net>
Sent: Thursday, January 6, 2022 12:02 PM
To: LWCD
Subject: Manure Storage Ordinance

ADDITIONAL

Good morning, John Sweeney, I live in Sugar Camp in Oneida County. Please add these comments to the records previously supplied. This morning I spoke to Terry Kafka the DNR Regional Non-Point Source Coordinator who is responsible for manure enforcement. I asked for any manure related complaints to the DNR. The only records Terry had available to him go back three (3) years. Terry told me that there have been no manure complaints to investigate in the last three years in Oneida County. I was told by Terri that if someone made a complaint related to manure, he would investigate the complaint.

Sweeney additional 2

Michele Sadauskas

From: sjsweeney@frontiernet.net
Sent: Friday, January 7, 2022 10:45 AM
To: LWCD
Subject: manure storage ordinance

My name is John Sweeney and I live at 4146 Camp Four Road in Rhinelander, WI 54501 ; this is located in the Town of Sugar Camp in Oneida County.

Please add these comments to the records previously supplied..

Here is some specific language from the existing Wisconsin state law that is important to be considered by Oneida County. As an agriculture producer, I will request that all provisions of state law, in consideration of what authority the county has in relation to state law, be considered when adopting a local ordinance related to the storage of manure.

NR 151.096 Local livestock operation ordinances and regulations.

(1) Local regulations that exceed state standards; approval required.

(a) Except as provided in par. (b), a local governmental unit may not enact a livestock operation ordinance or regulation for water quality protection that exceeds the performance standards or prohibitions in ss. NR 151.05 to 151.08 or the related conservation practices or technical standards in ch. ATCP 50, unless the local governmental unit obtains approval from the department under sub.

(2), or receives approval from DATCP pursuant to s. ATCP 50.60.

(b) Paragraph (a) does not apply to any of the following:

1. Local ordinances or regulations that address cropping practices that are not directly related to the livestock operation.

2. Local ordinances or regulations enacted prior to October 1, 2002.

Note: See s. 92.15, Stats. A person adversely affected by a local livestock regulation may oppose its adoption at the local level. The person may also challenge a local regulation in court if the person believes that the local governmental unit has violated sub. (1) or s. 92.15, Stats. A local governmental unit is responsible for analyzing the legal adequacy of its regulations, and may exercise its own judgment in deciding whether to seek state approval under this section.

Note: Subsection (1) does not limit or expand the application of s. 92.15, Stats., to ordinances or regulations enacted prior to October 1, 2002.

(2) Department approval.

(a) To obtain department approval under sub. (1) for an existing or proposed regulation, the head of the local governmental unit or the chair of the local governmental unit's governing board shall do all of the following:

1. Submit a copy of the livestock operation ordinance or regulation or portion thereof to the department and to the department of agriculture, trade and consumer protection.

2. Identify the provisions of the regulation for which the local governmental unit seeks approval.

3. Submit supporting documentation explaining why the specific regulatory provisions that exceed the performance standards, prohibitions, conservation practices or technical standards are needed to achieve water quality standards, and why compliance cannot be achieved with a less restrictive standard.

(b) The department shall notify the local governmental unit in writing within 90 calendar days after the department receives the ordinance or regulation as to whether the ordinance or regulation, or portion thereof is approved or denied and shall state the reasons for its decision. Before the department makes its decision, the department shall solicit a recommendation from DATCP. If the department finds the regulatory provisions are needed to achieve water quality standards, the department may approve the ordinance or regulation or portion thereof.

NR 151.096(3)(3) Local permits. Local permits or permit conditions are not subject to the review and approval procedures in this section unless the permit conditions are codified in a local ordinance or regulation.

Note: A local permit requirement does not, in and of itself, violate sub. (1), but permit conditions codified in a local ordinance or regulation must comply with sub. (1). If a local governmental unit routinely requires permit holders to comply with uncodified water quality protection standards that exceed state standards, those uncodified requirements may be subject to court challenge for noncompliance with s. 92.15, Stats., and sub. (1) as de facto regulatory enactments. A local governmental unit may forestall a legal challenge by codifying standard permit conditions and obtaining any necessary state approval under this section. The department will review codified regulations, but will not review individual permits or uncodified permit conditions under sub. (2).

NR 151.095 Implementation and enforcement procedures for livestock performance standards and prohibitions.

(1) Purpose. The purpose of this section is to identify the procedures the department will follow in implementing and enforcing the livestock performance standards and prohibitions pursuant to ss. 281.16 (3) and 281.98, Stats. If a livestock performance standard is

also listed as a cropland performance standard under s. NR 151.09, the department may choose the procedures of either s. NR 151.09 or this section to obtain compliance with the standard. This section will also identify circumstances under which an owner or operator of a livestock facility is required to comply with livestock performance standards and prohibitions. In this section, "livestock performance standards and prohibitions" means the performance standards and prohibitions in ss. NR 151.005, 151.05, 151.055, 151.06, and 151.08.

Note: The nutrient management standard in s. NR 151.07 should be implemented through the procedures in s. NR 151.09.

(2) Role of municipalities. The department may rely on municipalities to implement the procedures and make determinations outlined in this section.

Note: In most cases, the department will rely on municipalities to fully implement the livestock performance standards and prohibitions. The department intends to utilize the procedures in this section in cases where a municipality has requested assistance in implementing and enforcing the performance standards or prohibitions or in cases where a municipality has failed to address an incident of noncompliance with the performance standards or prohibitions in a timely manner. The department recognizes that coordination between local municipalities, the department of agriculture, trade and consumer protection and other state agencies is needed to achieve statewide compliance with the performance standards and prohibitions. Accordingly, the department plans on working with counties, the department of agriculture, trade and consumer protection and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in land and water conservation plans.

Note: Additional implementation and enforcement procedures for livestock performance standards and prohibitions are in ch. NR 243, including the procedures for the issuance of a NOD.

(3) Exemptions. The department may follow the procedures in ch. NR 243 and is not obligated to follow the procedures and requirements of this section in the following situations:

(a) If the livestock operation holds a WPDES permit.

(b) If the department has determined that the issuance of a NOD to the owner or operator of the livestock operation is warranted.

Circumstances in which a NOD may be warranted include:

1. The department has determined that a livestock facility has a point source discharge under s. NR 243.24.

2. The department has determined that a discharge to waters of the state is occurring and the discharge is not related to noncompliance with the performance standards or prohibitions.

NR 151.095(3)(b)3.3. The department has determined that a municipality is not addressing a facility's noncompliance with the performance standards and prohibitions in a manner consistent with the procedures and timelines established in this section.

Thanks in advance for your consideration. Respectfully submitted ; John Sweeney