CHAPTER 18

AGRICULTURAL PERFORMANCE STANDARDS AND ANIMAL WASTE MANAGEMENT ORDINANCE

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18.01 INTRODUCTION

(1) Authority. This chapter is adopted under authority granted by Chapters 59 and 92 of the Wisconsin State Statutes.

(2) Title. Marinette County Agricultural Performance Standards and Animal Waste Management Ordinance.

(3) Purpose. The purpose of this chapter is to regulate agricultural practices and the management of animal waste to:

(a) Ensure the proper location, design, installation, use and abandonment of animal feedlots and animal waste storage facilities.

(b) Protect the safety, welfare, environmental quality and aesthetic values of Marinette County.

(c) Prevent the deliberate mismanagement of manure.

(d) Establish a procedure for the permitting of animal feedlots and waste storage facilities.

(e) Achieve a soil erosion rate on all croplands equal to, or less than, the Tolerable (T) rate established for that soil.

(f) Minimize conflicts between agricultural operations and municipalities, non-farm landowners and visitors.

(g) Protect the future viability of agriculture in Marinette County.

(4) Applicability. This Chapter applies to the unincorporated areas of Marinette County, except as otherwise provided by law.

(5) Interpretation. In interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of Marinette County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

(6) Severability Clause. If any section, provision, or portion of this chapter is ruled invalid by a court, the remainder of the chapter shall not, for that reason, be rendered ineffective.

18.02 DEFINITIONS

(1) General. For the purpose of administering and enforcing this chapter, the terms or words used herein shall be interpreted as follows. Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word “shall” is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

(2) Specific Definitions. The following terms used in this chapter shall have the meanings indicated below:

(a) ABANDONED STORAGE FACILITY. An animal waste facility where manure has not been added or removed for five (5) years.

(b) ANIMAL FEED LOT. Specifically designed or designated livestock confinement area in which manure may accumulate or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. This excludes animal or machinery travel areas and areas containing ten (10) animals or less.

(c) ANIMAL UNIT. A unit of measure used to determine the total number of single animal types or combination of animal types, as specified in s. NR 243.11, which are fed, confined, or stabled and maintained in an animal feeding operation, as defined in s. NR 243.03.
(d) ANIMAL WASTE. Livestock excreta and other materials such as bedding, leftover feed, liquid, soil, hair, feathers, and debris normally included in animal waste handling operations.
(e) ANIMAL WASTE STORAGE. Anywhere animal waste is accumulated in a facility or stacked outside of buildings.
(f) APPLICANT. Any person who applies for a permit under this chapter.
(g) COMMITTEE. The Development Committee of the Marinette County Board of Supervisors which oversees the Land Information Department.
(h) DEPARTMENT. The staff employed by the Land Information Department.
(i) DIRECT RUNOFF. A visible flow or evidence of regular flow or discharge that reaches the Water Quality Management Area or site that is susceptible to groundwater contamination.
(j) FACILITY. Any concrete, steel, or otherwise fabricated structure, or an excavated or earthen impoundment used for temporary storage of animal waste or other organic waste. Installation of an animal waste reception structure, pump, and/or discharge pipe will be considered a facility for purposes of this chapter.
(k) KARST. An area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.
(l) LEACHATE. The liquid produced when water percolates through manure, stored livestock feed, or composted organic matter. It may contain dissolved or suspended material, or more usually both.
(m) LIVESTOCK OPERATION. Any facility where animals are fed, confined, maintained or stabled.
(n) MANURE. Material used for fertilizing soil, such as animal waste, as defined in 18.02(2)(d), or compost, as defined in NR 500.03.
(o) MARGIN OF SAFETY LEVEL. The level in a liquid storage or containment facility that is vertically one foot below the lowest point of the top of the facility or structure.
(p) MAXIMUM OPERATING LEVEL (MOL). The level in a liquid storage or containment facility, measured vertically from the lowest point of the top of the facility, that is a minimum of the combined distance of margin of safety level and the level necessary to contain the precipitation and runoff that will enter the facility as a result of a twenty-five (25)-year, twenty-four (24)-hour rainfall event for new operations. The MOL is determined by the Department using the Technical Guide and is included in the Animal Waste Storage Facility plan.
(q) MISMANAGED STORAGE FACILITY. An animal waste storage facility that is not functioning due to neglect or carelessness of the owner

or operator, and poses a current or potential threat to any person, the ground or surface waters, or any other component of the environment. A mismanaged storage facility includes, but is not limited to the following:

(1) A storage facility that is overflowing, leaking, or is being operated improperly or inconsistently with this chapter.
(2) A storage facility with absent or nonfunctional safety devices.
(3) A storage facility whose contents are not being spread following a nutrient management plan.
(4) Deliberate conveying of manure onto the ground without incorporating it into the ground or field spreading it according to a nutrient management plan. At no time shall the application rate exceed fifteen-thousand (15,000) gallons per acre within a Water Quality Management Area within the same cropping year.
(5) A facility filled above the MOL for facilities constructed after November of 2004.

(r) NUTRIENT MANAGEMENT/PLAN. Balancing the nutrient needs of a crop with the nutrients available from legume crops, manure, fertilizer, or other sources. The requirements for a nutrient management plan are as established in ATCP 50.04 (3).

(s) OPERATOR. Person responsible for the oversight or management of equipment, facilities, or livestock at a livestock operation or is responsible for the land management in the production of crops.

(t) OWNER. Person who owns the equipment, facilities, or livestock at a livestock operation or the land in the production of crops.

(u) PERMIT. The signed, written statement issued by the Department authorizing the applicant to construct, install, reconstruct, enlarge, substantially alter, or abandon an animal waste storage facility or feedlot.

(v) PERMITTEE. Any person to whom a permit is issued under this chapter.

(w) PERSON. Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the federal government, or any combination thereof.

(x) SITE THAT IS SUSCEPTIBLE TO GROUNDWATER CONTAMINATION. Any one of the following, as set out in Chapter NR151.015(18) of the Wisconsin Administrative Code:

(1) An area within two hundred fifty (250) feet of a private well.
(2) An area within one thousand (1,000) feet of a municipal well.
(3) An area within three hundred (300) feet up slope or one hundred (100) feet down slope of karst features.
(4) A channel with a cross-sectional area equal to or greater than three (3) square feet that flows to a karst feature.
(5) An area where the soil depth to groundwater or bedrock is less than two (2) feet.
(6) An area where the soil does not exhibit one of the following soil characteristics:
    (a) At least a two (2) foot soil layer, with forty (40%) percent fines or greater, above groundwater and bedrock.

(b) At least a three (3) foot soil layer, with twenty (20%) percent fines or greater, above groundwater and bedrock.
(c) At least a five (5) foot soil layer, with ten (10%) percent fines or greater, above groundwater and bedrock.

(y) SOLID MANURE. Manure with a solids content of sixteen (16) percent or more that is able to maintain its shape with minimal sloughing such that an angle of repose of forty-five (45) degrees or greater is maintained when the manure is not frozen.

(z) STACK. Any accumulation of deliberately placed animal waste that is at least 175 cubic ft 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 storm water access and direct runoff to surface water or leaching of pollutants to groundwater. See 18.04 (1)(c) & (d).

(aa) SUBSTANTIALLY ALTERED. A change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, or depth of a structure or facility including:
(1) Replacement of a liner in a manure storage structure.
(2) An increase in the volumetric capacity or area of a feedlot, manure storage structure or manure storage facility by more than twenty (20%) percent.

(bb) TECHNICAL GUIDE. The current revision of written standards and specifications for best management practices developed by the United States Department of Agriculture (USDA) Natural Resources Conservation Service, hereinafter referred to as the Technical Guide.

(cc) TEMPORARY MANURE STACK. Solid manure only, piled for no more than one hundred fifty (150) days within any one (1) year period.

(dd) TOLERABLE SOIL LOSS or T. The maximum erosion rate, in tons per acre per year, allowable for particular soils and site conditions that will maintain soil productivity. Soil loss will be calculated according to the Revised Universal Soil Loss Equation (RUSLE) II as referenced in ch. ATCP 50 and appropriate wind loss equations as referenced in ch. ATCP 50.

(ee) WATERS OF THE STATE. 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 jurisdiction.

(ff) WATER POLLUTION. Contaminating or rendering unclean or impure the ground or surface waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(gg) WATER QUALITY MANAGEMENT AREA. The area within one thousand (1,000) feet from the ordinary high water mark of navigable waters that consist of a lake, pond, or flowage; the area within three

hundred (300) feet from the ordinary high water mark of navigable waters that consist of a river or stream; a site that is susceptible to groundwater contamination, or that has the potential to be a direct conduit for the contamination to reach groundwater.

18.03 ACTIVITIES SUBJECT TO REGULATION

(1) General Requirement. Any person who manages animal waste, grows crops or feed, or who employs another person to do the same, on land subject to this chapter, shall be subject to the provisions of this chapter. The following activities shall be regulated by this chapter.

(2) Animal Waste.

(a) ANIMAL WASTE STORAGE FACILITY OR ANIMAL FEEDLOT CONSTRUCTION. No Animal Waste Storage Facility or Animal Feedlot shall be constructed or substantially altered unless in compliance with the provisions of this chapter and the appropriate Technical Guide Standards, as determined by the Department.

(b) LEAKING OR MISMANAGED STORAGE FACILITIES. A storage facility found to be leaking shall be repaired to a condition meeting the NRCS 313 Standards and Animal Waste Prohibitions within two (2) years of the date that the facility is found to be leaking and appropriate notification sent. The Committee may extend this time once for good cause, such extension not to exceed six (6) months. A storage facility found to be mismanaged is in violation of this ordinance and shall be brought into compliance.

(c) ABANDONED STORAGE FACILITIES. Removal of waste and restoration of an abandoned storage facility to a safe and sanitary condition, as determined by the Department, is required within five (5) years of the time the storage facility is found to be idle and appropriate notification sent. The Committee may extend this time once for good cause, such extension not to exceed one (1) year.

(d) STACKED MANURE. Manure found to be improperly stacked is in violation of this ordinance and shall be brought into compliance.

(e) ANIMAL FEED LOTS. Direct runoff from animal feedlots within a Water Quality Management Area shall be brought into compliance within one (1) year of the date that direct runoff is documented by the Department and appropriate notification sent. The Committee may extend this time once for good cause, such extension not to exceed one (1) year.

(3) Croplands.

(a) SHEET, RILL, AND WIND EROSION. Fields found to have soil erosion rates greater than “T” shall be brought into compliance within two (2) years after appropriate notification is sent. The Committee may extend this time once for good cause, such extension not to exceed one (1) year.

(b) DIVERSIONS. Clean water contacting feedlots, manure storage areas, or barnyard areas within a water quality management area shall be brought into compliance within one (1) year after appropriate notification is sent.

The Committee may extend this time once for good cause, such extension not to exceed one (1) year.

(c) NUTRIENT MANAGEMENT. A nutrient management plan shall be implemented within (1) year of completion of a permitted animal waste storage facility or within (1) year of receiving a bonafide offer of cost sharing.
(Ord #305 12/19/06)

18.04 STANDARDS

(1) Animal Waste Performance Standards and Prohibitions.

(a) ANIMAL WASTE STORAGE FACILITIES. Proper design, installation, maintenance, and abandonment of facilities shall conform to the standards in the current revision of the Technical Guide. The Department may require additional design and construction specifications if the site has very shallow soils to bedrock or ground water, highly creviced bedrock, drainage to sinkholes or similar conditions.

(b) ANIMAL FEEDLOTS. The standards and specifications for design, construction, operation and maintenance of animal feedlots shall conform to the appropriate Standards in the Technical Guide.

(c) ANIMAL WASTE PROHIBITIONS. The following four prohibitions are incorporated into this chapter:

(1) A livestock operation shall have no overflow of manure storage structures.

(2) A livestock operation shall have no unconfined manure stack in a water quality management area.

(3) A livestock operation shall have no direct runoff from a feedlot or stored manure to waters of the state.

(4) A livestock operation shall 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, as defined in NR151.002(1). This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

(d) ANIMAL WASTE STACKING. Stacking of animal waste must:

(1) Comply with 18.04(1)(c) Animal Waste Prohibitions.

(2) Be set back a minimum of fifty (50) feet from property lines.

(3) Not allow manure or contaminated leachate to enter adjoining properties.

(4) Not occur at a site susceptible to groundwater contamination, as defined in section 18.02 (2)(x) of this chapter.

(2) Cropland Performance Standards and Prohibitions.

(a) ANIMAL WASTE MANAGEMENT AND UTILIZATION. Permittees shall develop and implement a nutrient management plan to utilize stored animal waste in an environmentally safe manner.

(b) SHEET, RILL, AND WIND EROSION. All land where crops or feed are grown shall be cropped to achieve a soil erosion rate, equal to or less than, the "tolerable" or "T" rate established for that soil.

(c) CLEAN WATER DIVERSIONS.

(1) Clean runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within water quality management areas except that a diversion to protect a private well within two-hundred fifty (250) feet is only required when the feedlot, manure storage area, or barnyard is located upslope from the private well.

18.05 COST-SHARING

(1) Requirements. An owner or operator of an agricultural facility or practice that is in existence as defined in 18.06(2)(b) or 18.07(2)(b), may not be required to comply with the performance standards, prohibitions, conservation practices or technical standards under this chapter unless cost-sharing is available from any source, to the landowner or operator.

(2) Cost-sharing Availability. A determination that cost-sharing is available to meet performance standards, prohibitions, conservation practices or technical standards under this section will be found in accordance with NR151.09(4)(d) or NR151.095(5)(d) when funding is provided under s. 281.65, Stats., and in accordance with ATCP 50 when funds are from any other source. Cost sharing under this section is only required for the minimum practice(s) necessary to meet the performance standards and prohibitions.

18.06 IMPLEMENTATION AND ENFORCEMENT PROCEDURES FOR CROPLAND PERFORMANCE STANDARDS

(1) Landowner and Operator Requirements.

(a) INTRODUCTION. This section identifies compliance requirements for landowners and operators based on whether the cropland is existing or new and whether cost sharing is required and made available to the landowner or operator. This section will also identify circumstances under which an owner or operator of cropland is required to comply with the cropland performance standards.

(b) GENERAL REQUIREMENTS. If any cropland is meeting a cropland performance standard on or after October 1, 2002, the cropland performance standard shall continue to be met by the existing landowner or operator, heirs or subsequent owners or operators of the cropland. If a landowner or operator alters or changes the management of the cropland in a manner that results in noncompliance with the performance standard, the landowner or operator shall bring the cropland back into compliance, regardless of whether cost-sharing is made available. This paragraph does not apply to croplands determined to be existing under the conservation

reserve or conservation reserve enhancement program administered by the United States Department of Agriculture.

(c) EXISTING CROPLAND REQUIREMENTS.

(1) A landowner or operator of an existing cropland, defined under Section 18.06 (2)(b) of this chapter, shall comply with a cropland performance standard if all of the following have been done by the Department:

a. Except as provided in Section 18.06 (2) and (3) of this chapter, a determination is made that cost sharing has been made available in accordance with Section 18.05 (2) of this chapter on or after October 1, 2002.

b. The landowner or operator has been notified in accordance with Section 18.06 (3) or (4) of this chapter.

(2) A landowner or operator of existing cropland, defined under Section 18.06 (2)(b) of this chapter, shall comply with a cropland performance standard, regardless of whether cost sharing is available, in situations where the best management practices and other corrective measures needed to meet the performance standards do not involve eligible costs.

(3) A landowner or operator of an existing cropland that voluntarily proposes to construct or reconstruct a manure storage system shall comply with Section 18.04 (2)(a) of this chapter, regardless of whether cost sharing is made available, if the nutrient management plan is required pursuant to a local permit for the manure storage system.

(d) NEW CROPLAND REQUIREMENTS. A landowner or operator of a new cropland, defined under Section 18.06 (2)(b) of this chapter, shall comply with the cropland performance standards, regardless of whether cost sharing is available.

(2) Department Determinations.

(a) SCOPE OF DETERMINATIONS. If croplands are not in compliance with a cropland performance standard, the Department shall make determinations in accordance with the procedures and criteria in this subsection.

(b) CROPLAND STATUS. The Department shall classify non-complying croplands to be either new or existing for purposes of administering this chapter. In making the determination, the Department shall base the decision on the following:

(1) An existing cropland is one that meets all of the following criteria:

a. The cropland was being cropped as of October 1, 2002.

b. The cropland is not in compliance with a cropland performance standard in this subchapter as of October 1, 2002. The reason for non-compliance of the cropland may not be failure of the landowner or operator to maintain an installed best management practice in accordance with a cost-share agreement or contract.

(2) An existing cropland also includes land enrolled on October 1, 2002, in the conservation reserve program administered by the United States Department of Agriculture.

(3) A new cropland is one that does not meet the definition under Section 18.06 (2)(b)(1 or 2) of this chapter, including:
   (a) Land without a previous history of cropping that is converted to cropland October 1, 2002, or after. "Without a previous history of cropping" means land where crops have not been grown and harvested for agricultural purposes within the last ten (10) years prior to the conversion to cropland.
   (b) Cropland that is in existence and in compliance with a performance standard on or after October 1, 2002 and that undergoes a change in a cropland practice that results in noncompliance with the performance standards.
(4) Change in ownership may not be used as the sole basis for determining whether a cropland is existing or new for purposes of administering this subsection.

(c) ELIGIBLE COSTS. If cost sharing is required to be made available under Section 18.06 (1)(c) of this chapter, the Department shall determine the total cost of best management practices and corrective measures needed to bring a cropland into compliance with performance standards.

(3) Notification Requirements for Existing Croplands When Cost-Sharing is Required.

(a) NOTIFICATION.
(1) The Department shall notify a landowner or operator in writing of the determination made under Section 18.06 (2) of this chapter, and implementation requirements for existing croplands where cost sharing is required for compliance.
(2) The notice shall be sent certified mail, return receipt requested or personal delivery.
(3) The following information shall be included in the notice:
   (a) A description of the cropland performance standard being violated.
   (b) The cropland status determination made in accordance with Section 18.06 (2)(b) of this chapter.
   (c) The determination made in accordance with Section 18.06 (2)(c) of this chapter, as to which best management practices or other corrective measures that are needed to comply with cropland performance standards are eligible for cost sharing.
   (d) The determination made in accordance with section 18.05 (2) of this chapter that cost sharing is available for eligible costs to achieve compliance with cropland performance standards, including a written offer of cost sharing.
   (e) An offer to provide or coordinate the provision of technical assistance.
   (f) A compliance period for meeting the cropland performance standard.
   (g) An explanation of the possible consequences if the landowner and/or operator fails to comply with provisions of the notice, including enforcement or loss of cost sharing, or both.

(h) An explanation of local appeals procedures.

(4) A landowner or operator that receives the notice under par. (a) shall install or implement best management practices and corrective measures to meet the performance standards in the time period specified in the notice, if cost sharing is available in accordance with section 18.04 (2) of this chapter.

(4) Notification Requirements for Existing Croplands in Situations When No Eligible Costs are Involved.

(a) NOTIFICATION.

(1) The Department shall notify a non-complying landowner or operator of existing croplands of the determinations made under Section 18.06 (2) of this chapter.

(2) The notice shall be sent certified mail, return receipt requested, or via personal delivery.

(3) The following information shall be included in the notice:

(a) A description of the cropland performance standard that is being violated and the determination that corrective measures do not involve eligible costs under Section 18.06 (2)(c) of this chapter.

(b) The cropland status determination made in accordance with Section 18.06 (2)(b) of this chapter.

(c) A compliance period for achieving the cropland performance standard. The compliance period may not exceed the time limits in Section 18.08 (1) of this chapter.

(d) An explanation of the consequences if the landowner or operator fails to comply with provisions of the notice.

(e) An explanation of local appeals procedures.

(b) COMBINED NOTICES. The Department may meet multiple notification requirements under sections 18.06 (4)(a) and 18.11 (4) of this chapter within any single notice issued to a landowner or operator.

18.07 IMPLEMENTATION AND ENFORCEMENT PROCEDURES FOR LIVESTOCK PERFORMANCE STANDARDS AND PROHIBITIONS.

(1) Livestock Owner and Operator Requirements.

(a) INTRODUCTION. This section identifies compliance requirements for a livestock owner or operator based on whether a livestock facility is existing or new and whether cost sharing is required to be made available to a livestock owner or operator. 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.

(b) GENERAL REQUIREMENTS. If any livestock facility is meeting a livestock performance standard or prohibition on or after October 1, 2002, the livestock performance standard or prohibition shall continue to be met by the existing owner or operator, heirs or subsequent owners or operators of the facility. If an owner or operator alters or changes the management of the livestock facility in a manner that results in noncompliance with a livestock performance standard or prohibition, the owner or operator shall

bring the livestock facility back into compliance regardless of cost-share availability.

(c) EXISTING LIVESTOCK FACILITY REQUIREMENTS.

(1) An owner or operator of an existing livestock facility, defined under Section 18.07 (2)(b) of this chapter, shall comply with a livestock performance standard or prohibition if all of the following have been done by the Department;

(a) Except as provided in Section 18.07 (2) of this chapter, a determination is made that cost sharing has been made available in accordance with Section 18.05 (2) of this chapter on or after October 1, 2002.

(b) The owner or operator of the livestock facility has been notified in accordance with Section 18.07 (3) or (4) of this chapter.

(2) An owner or operator of an existing livestock facility, defined under Section 18.07 (2)(b) of this chapter, shall comply with the livestock performance standards and prohibitions, regardless of whether cost sharing is available, in situations where best management practices and other corrective measures needed to meet the performance standards do not involve eligible costs.

(d) NEW LIVESTOCK FACILITY REQUIREMENTS. An owner or operator of a new livestock facility, defined under Section 18.07 (2)(b) of this chapter, shall comply with the livestock performance standards and prohibitions, regardless of whether cost sharing is available.

(2) Department Determinations.

(a) SCOPE OF DETERMINATIONS. If a livestock facility is not in compliance with a livestock performance standard or prohibition, the Department shall make determinations in accordance with the procedures and criteria in this subsection.

(b) LIVESTOCK FACILITY STATUS. The Department shall classify a non-complying livestock facility as an operation to be either new or existing for purposes of administering this chapter. In making the determination, the Department shall base the decision on the following:

(1) An existing livestock facility is one that meets all of the following criteria:

(a) The facility is in existence as of October 1, 2002.

(b) The facility is not in compliance with a livestock performance standard or prohibition in this section as of October 1, 2002. The reason for noncompliance of the livestock facility may not be failure of the owner or operator to maintain an installed best management practice in accordance with a cost-share agreement or contract.

(2) A new livestock operation or facility is one that does not meet the definition under Section 18.07 (1) of this chapter including:

(a) A livestock operation or facility that is established or installed after October 1, 2002, including the placement of livestock structures on a site that did not previously have structures, or placement of

animals on lands that did not have animals as of October 1, 2002, unless the land is part of an existing rotational grazing or pasturing operation.

(b) For a livestock operation that is in existence as of October 1, 2002 that establishes or constructs or substantially alters a facility after October 1, 2002, the facilities constructed, established or substantially altered after October 1, 2002 are considered new, except as specified in Section 18.06 (3) of this chapter.

(c) A livestock facility that is in existence and in compliance with a livestock performance standard or prohibition on or after October 1, 2002 and that undergoes a change in the livestock facility that results in noncompliance with the livestock performance standard or prohibition.

(3) Pursuant to the implementation procedures in this section, if the Department directs an owner or operator of an existing livestock facility to construct a facility as a corrective measure to comply with a performance standard or prohibition on or after October 1, 2002, or directs the owner or operator to reconstruct the existing facility as a corrective measure on or after October 1, 2002, the constructed facilities are not considered new for purposes of installing or implementing the corrective measure.

(4) A livestock facility that meets the criteria in Section 18.07 (1) of this chapter, and has subsequently been abandoned shall retain its status as an existing livestock facility if livestock of similar species and number of animal units are reintroduced within five (5) years of abandonment.

(5) Change in ownership may not be used as the sole basis for determining whether a livestock facility is existing or new for purposes of administering this subsection.

(c) ELIGIBLE COSTS. If cost sharing is required to be made available under Section 18.07 (1)(c) of this chapter, the Department shall determine the total cost of best management practices and corrective measures needed to bring a livestock facility into compliance with a livestock performance standard or prohibition and shall determine which of those costs are eligible for cost sharing.

(3) Notification Requirements for Existing Livestock Facilities When Cost-Sharing is Required.

(a) NOTIFICATION.

(1) The Department shall notify an owner or operator in writing of the determination made under Section 18.07 (2) of this chapter, and implementation requirements for existing livestock facilities where cost sharing is required for compliance.

(2) The notice shall be sent certified mail, return receipt requested or personal delivery.

(3) The following information shall be included in the notice:

(a) A description of the livestock performance standard or prohibition being violated.

(b) The livestock facility status determination made in accordance with Section 18.07 (2)(b) of this chapter.
(c) The determination made in accordance with Section 18.07 (2)(c) of this chapter, as to which best management practices or other corrective measures needed to comply with a livestock performance standard or prohibition are eligible for cost sharing.
(d) The determination made in accordance with Section 18.05 (2) of this chapter that cost-sharing is available for eligible costs to achieve compliance with a livestock performance standard or prohibition, including a written offer of cost-sharing.
(e) An offer to provide or coordinate the provision of technical assistance.
(f) A compliance period for meeting the livestock performance standard or prohibition.
(g) An explanation of the possible consequences if the owner or operator fails to comply with provisions of the notice, including enforcement or loss of cost sharing, or both.
(h) An explanation of local appeals procedures.

(4) An owner or operator that receives the notice under par. (a) shall install or implement best management practices and corrective measures to meet a performance standard or prohibition in the time period specified in the notice, if cost sharing is available in accordance with Section 18.04 (2) of this chapter.

(4) Notification Requirements for Existing Livestock Facilities in Situations When No Eligible Costs are Involved.

(a) NOTIFICATION.

(1) The Department shall notify a non-complying owner or operator of an existing livestock facility of the determinations made under Section 18.07 (2) of this chapter.
(2) The notice shall be sent certified mail, return receipt requested or personal delivery.
(3) The following information shall be included in the notice:
(a) A description of the livestock performance standard or prohibition that is being violated and the determination that corrective measures do not involve eligible costs under Section 18.07 (2)(c) of this chapter.
(b) The livestock operation status determination made in accordance with Section 18.07 (2)(b) of this chapter.
(c) A compliance period for meeting the livestock performance standard or prohibition. The compliance period may not exceed the time limits in Section 18.08 (1) of this chapter.
(d) An explanation of the consequences if the owner or operator fails to comply with provisions of the notice.
(e) An explanation of local appeals procedures.

(b) COMBINED NOTICES.

(1) The Department may meet multiple notification requirements under Sections 18.07 (4) (a) and 18.11 (4) of this chapter within any single notice issued to the owner or operator.

18.08 COMPLIANCE PERIOD FOR LIVESTOCK AND CROPLAND PERFORMANCE STANDARDS

(1) Compliance. The compliance period shall be in accordance with the following:

(a) The compliance period shall begin on the postmark date of the notice or the date of personal delivery.

(b) The length of the compliance period shall be from sixty (60) days to two (2) years unless otherwise provided for in this subsection.

(c) The length of the compliance period may be less than sixty (60) days if the site is an imminent threat to public health, or fish and aquatic life.

(2) Compliance Maintenance. Once compliance with a cropland performance standard is attained, compliance with the standard shall be maintained by the existing landowner or operator and heirs or subsequent owners.

18.09 PERFORMANCE STANDARDS VARIANCES

(1) Requests. Requests for a variance to the chapter provisions and/or performance standards shall be made in writing and reviewed by the Department for appropriate action. All variance requests shall include:

(a) Clearly stated rationale and justification for requesting the variance.

(b) Any permit applications required by this chapter.

(c) Any facility or operational plans as required by this chapter.

(2) Economic Hardship. A variance shall not be granted solely on the basis of economic hardship.

(3) Conditions. The Department may recommend a variance to Department of Natural Resources only if all of the following conditions are met:

(a) Compliance with the performance standard or technical standard is not feasible due to site conditions. This condition does not apply to research activities conducted as part of a planned agricultural research and farming curriculum.

(b) The landowner or operator will implement best management practices or other corrective measures that ensure a level of pollution control that will achieve a level of water quality protection comparable to that afforded by the performance standards in this section.

(c) The conditions for which the variance is requested are not created by the landowner or operator or their agents or assigns. This condition does not apply to research activities conducted as part of a planned agricultural research and farming curriculum.

(4) Process. The Department shall use the following procedure when processing a variance request:

(a) The landowner or operator shall submit the variance request to the Department within sixty (60) days of receiving the notification of noncompliance.
(b) The Department shall forward any variance requests that it receives and any recommendations concerning acceptance of the variance request to the Department of Natural Resources within ten (10) working days of receiving the variance request.
(c) The role of the Department of Natural Resources in the variance process is delineated in Wisconsin Administrative Code Chapter NR151. Final determination of variance requests is made by the Department of Natural Resources, which will notify the Department and the landowner/operator.

18.10 APPLICATION FOR AND ISSUANCE OF PERMITS

(1) Permit Required. No person may undertake construction, substantial alteration, or abandonment of an animal waste storage facility or feedlot without obtaining a permit, as defined in 18.02(2)(u), from the Department prior to beginning the activity. The requirements of this chapter shall be in addition to any other chapter regulating facilities to store animal waste. In the case of conflict, the most stringent provisions shall apply.

(2) Exception to Permit Requirement. Emergency repairs to the manure storage facility or feedlot will be reported to the Department as soon as possible for a determination as to whether a permit will be required for any additional alteration or repair. A permit is not required for routine maintenance or repair of an existing animal waste storage facility or feedlot. A permit is not required for closure of an existing manure storage facility or feedlot as part of the construction of a new manure storage facility or feedlot.

(3) Fee. The Committee, with approval of the County Board, shall establish the fee schedule for a permit.

(4) Animal Waste Storage Facility Plan, or Feedlot Plan and Nutrient Management Plan Required. Each application for a permit under this section shall include an abandonment plan, animal waste storage facility plan, feedlot plan, and/or a nutrient management plan as applicable. The plan shall include the following:

(a) The number and kinds of animals for which storage and/or a feedlot is provided.
(b) A sketch of the facility and its location in relation to buildings within two hundred fifty (250) feet and homes within five hundred (500) feet of the proposed facility. The sketch shall be drawn to scale, with a scale no smaller than one hundred (100) feet per inch.
(c) The structural details including dimensions, cross sections, concrete thickness, and reinforcement.
(d) Description of the method for breaking up and/or piercing the liner of the abandoned facility.
(e) The location of the maximum operating level marker for an animal waste storage facility.
(f) The location of any wells within three hundred (300) feet of the facility.

(g) The soil test pit location and soil description to a depth of at least three (3) feet below the planned bottom of facility, or to bedrock if at a lesser depth.
(h) Results of soil borings and the amount of soil to be removed from the sides and bottom of the facility.
(i) The elevation of groundwater or bedrock if encountered in the soil profile and the date of any such determination.
(j) Provisions for adequate drainage and control of facility or feedlot runoff to prevent pollution of surface water and groundwater. If the storage facility or feedlot lies within the Water Quality Management Area, the location and distance to the body of water shall be shown.
(k) The scale of the drawing and the north arrow.
(l) A time schedule for construction or abandonment of the facility.
(m) A description of the method used to manage manure on the feedlot and to transfer animal waste into and from the storage facility.
(n) Description of the type of material used to fill the abandoned site.
(o) Any additional information required by the Department to determine compliance.
(p) A preliminary nutrient management assessment, verifying the ability of the permittee to comply with NRCS Standard 590.
(q) NRCS Standard 590 compliant plan for land spreading of abandoned facility contents and animal waste contaminated soils.

(5) Review of Application. The Department shall receive and review all permit applications. The Department shall determine if the proposed facility meets the required standards set forth in Section 18.04 of this chapter. Within thirty (30) days after receiving the completed application and fee, the Department shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the Department shall so notify the permit applicant. The Department has thirty (30) days from the receipt of the additional information in which to approve or disapprove the permit application. If, in addition to the applicant's information, the Department requires comment from an outside agency, the Department has thirty (30) days from receipt of those comments to analyze and consider them. Department staff may conduct a site inspection prior to approving or disapproving the application. If the Department fails to approve or disapprove the permit application in writing within thirty (30) days of the receipt of the permit application, receipt of additional information, or receipt of referral agency comments, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.

(6) Permit Conditions. All permits issued under this chapter shall be issued subject to the following conditions and requirements.

(a) Design, construction, abandonment, and management shall be carried out in accordance with the plan and applicable standards specified in Section 18.04 of this chapter.
(b) The permittee shall give five (5) working days notice to the Department before starting any construction activity authorized by the permit.

(c) Approval in writing must be obtained from the Department prior to any modifications to the approved facility plan.
(d) The permittee and, if applicable, the contractor, shall certify in writing that the facility was installed or abandoned as planned and designed. A copy of the signed certification sheet shall be given to the Department within thirty (30) days of completion of installation. Department personnel may conduct site inspections during and following construction to determine that the facility was installed as planned and designed.
(e) Activities authorized by permit must be completed within two (2) years form the date of issuance after which such permit shall be void.

(7) Permit Revocation. The Department may revoke any permit issued under this chapter if the holder of the permit has misrepresented any material fact in the permit application, animal waste storage facility plan, feedlot plan, or nutrient management plan, or if the holder of the permit violates any of the conditions of the permit.

18.11 ADMINISTRATION

(1) Delegation of Authority. Marinette County hereby designates the Marinette County Conservationist or designee to administer and enforce this chapter.

(2) Powers and Duties. In the administration and enforcement of this chapter; the Department Staff shall have the following responsibilities and authority in the administration of this chapter.
(a) Supervision and delegation of work.
(b) Explain the provisions of the chapter.
(c) Keep an accurate record of all permit applications, animal waste storage facility plans, nutrient management plans, permits issued, inspections made, and other official actions.
(d) Review permit applications and issue permits in accordance with Section 18.10 of this chapter.
(e) Inspect facility construction to insure the facility is being constructed according to plan specifications.
(f) Investigate complaints relating to compliance with the chapter.
(g) Perform other duties as specified in this chapter.

(3) Inspection Authority. Department staff members are authorized to enter upon any lands affected by this chapter to inspect the land prior to or after permit issuance to determine compliance with this chapter pursuant to §92.07 (14), Wis. Stats and §66.0119, Wis. Stats. Refusal to grant permission to enter lands affected by this chapter for purposes of inspection may be grounds for denial or revocation of a permit.

(4) Enforcement Authority. Department staff are authorized to post a “stop work order” upon land which has had a permit revoked or on land currently undergoing activity in violation of this chapter. Notice is given by both posting upon the land where the violation occurs one (1) or more copies of a poster stating the violation, and by mailing a copy of the order by certified mail to the person whose activity is in violation of this chapter. The order shall specify that the activity must cease or be brought into compliance within

a specified period. Any permit revocation or order stopping work shall remain in effect unless retracted by the committee, Department Staff, or by a court of general jurisdiction. The Departmental Staff are authorized to refer any violation of this chapter, or of an order stopping work issued pursuant to this chapter, to the Corporation Counsel or District Attorney for commencement of further legal proceedings. The Corporation Counsel or District Attorney shall expeditiously prosecute all such violators.

18.12 VIOLATIONS

(1) Forfeitures. Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be subject to a forfeiture as provided in Section 25.04 of this General Code.

(2) Enforcement of Injunction. As a substitute for or an addition to forfeiture actions, Marinette County may seek enforcement of any section of this chapter by court action seeking injunctive relief or any other remedy available at law.

18.13 APPEALS

(1) Authority. Under authority of Chapter 68, Wisconsin Statutes, the Committee created under Chapter 59, Wisconsin Statutes, and under Section 2.08(1) (i) of the Marinette County Code of Ordinances is authorized to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination by the Department, or designated authority, in administering this chapter.

(2) Procedures. The rules, procedures, duties and powers of the committee and Chapter 68, Wisconsin Statutes, shall apply to this chapter.

(3) Who May Appeal. Appeals may be taken by any person having a substantial interest which is adversely affected by any order, requirement, decision, or determination made by the Department.

(Ord #302 5/30/06)