

ORDINANCE 23-02

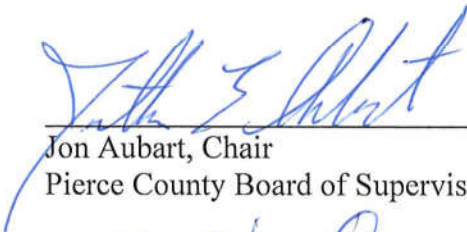
Amend Chapter 101 Animals, Article IV Waste Storage, of the Pierce County Code

PIERCE COUNTY BOARD OF SUPERVISORS DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1: That Chapter 101, Article IV of the Pierce County code is hereby amended as shown in the attached Exhibit "A".

SECTION 2: That the revised ordinance shall become effective upon its adoption and publication as required by law.

Dated this 25th day of July, 2023.



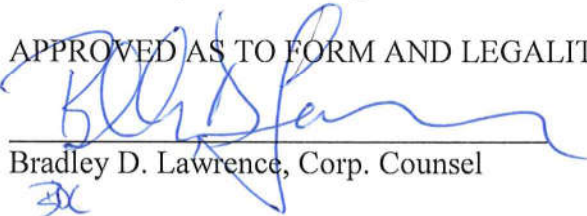
Jon Aubart, Chair
Pierce County Board of Supervisors

ATTESTED TO BY:



Jamie Feuerhelm, County Clerk

APPROVED AS TO FORM AND LEGALITY BY:



Bradley D. Lawrence, Corp. Counsel

Adopted: 1 AUG 22 2023

EXHIBIT A

Proposed amendment to Chapter 101 Animals, Article IV Waste Storage

§ 101-25 Authority.

The ordinance codified in this article is adopted under authority granted by §§ 59.02, 59.03, 59.69, 59.70, 92.15 and 92.16, Wis. Stats.

§ 101-26 Title.

This article shall be known as, referred to and may be cited as the "Pierce County Waste Storage Ordinance" and is hereinafter referred to as "this article."

§ 101-27 Findings and declaration of policy.

- A. The Pierce County Board of Supervisors finds that storage of waste, which includes manure, milking center waste and other organic waste generated by a livestock facility, in storage facilities not meeting sufficient technical design and construction standards may cause pollution of the surface and ground waters of Pierce County and may result in harm to the health of County residents, to livestock, aquatic life and other animals and plants and to the property tax base of Pierce County.
- B. The Pierce County Board of Supervisors also finds that improper management of waste storage facilities and utilization of stored waste may cause pollution of the ground and surface waters of Pierce County. The Pierce County Board of Supervisors further finds that the technical standards developed by the United States Department of Agriculture, Natural Resources Conservation Service, and adopted by the Pierce County Land Conservation Committee provide effective, practical and environmentally safe methods of storing and utilizing waste.

§ 101-28 Purpose.

The purpose of this article is to regulate the location, design, construction, installation, alteration and use of waste storage facilities and the application of waste from these facilities in order to prevent water pollution and thereby protect the health and welfare of Pierce County residents, animals and plants and the economy. It is also intended to provide for the administration and enforcement of this article and to provide penalties for its violation.

§ 101-29 Applicability.

This article applies to the entire geographic area of Pierce County

§ 101-30 Interpretation.

The provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of Pierce County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

§ 101-31 Severability.

If any section, provision or portion of this article is ruled invalid by a court, the remainder of the article shall not be rendered ineffective by the court's ruling.

§ 101-32 When effective.

This article shall become effective upon its adoption and publication by the Pierce County Board of Supervisors.

§ 101-33 **Definitions.**

As used in this article, the following terms shall have the meanings indicated:

ABANDONED STORAGE FACILITY

~~A facility,~~A facility permitted under this article, where waste has not been added or removed for a period of 24 months.

ADEQUATE SOD, OR SELF-SUSTAINING VEGETATIVE COVER

Maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

APPLICANT

Any person who applies for a permit under this article.

BEDROCK

The top of the shallowest layer of a soil profile that consists of consolidated rock material or weathered-in-place material, more than 50% of the volume of which will be retained on a 2 mm soil sieve.

CERTIFIED AGRICULTURAL ENGINEERING PRACTITIONER

An agricultural engineering practitioner who is certified under Section ATCP 50.46, Wisconsin Administrative Code, with a rating under Section ATCP 50.46(5), Wisconsin Administrative Code, that authorizes the practitioner to certify every matter that the practitioner certifies under this chapter.

CLOSED WASTE STORAGE FACILITY

A waste storage facility that has been closed in compliance with this article and NRCS Technical Guide, Standard 360.

DEPARTMENT

The Pierce County Department of Land Conservation.

DIRECT CONDUIT TO GROUNDWATER

Wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, cenotes, or depressional groundwater recharge areas over shallow fractured bedrock.

FINE SOIL PARTICLES

Soil particles that pass through a No. 200 soil sieve.

KARST FEATURE

An area or superficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, including caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

LIVESTOCK

Domestic animals traditionally used in this state in the production of food, fiber, or other animal products, including cattle, swine, poultry, sheep and goats. Does not include equine animals, bison, farm-raised deer, fish, captive game birds, ratites, camelids or mink.

LIVESTOCK STRUCTURE

A building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility. Includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or waste storage facility. Does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

MANURE

Excreta from livestock and other materials such as livestock bedding, water, soil, hair, feathers and other debris normally included in animal manure operations.

MINOR ALTERATION

A repair or improvement in the construction of an existing livestock structure that does not result in a substantially altered livestock structure.

NEW WASTE STORAGE FACILITY

A facility that will be used as a livestock facility for the first time or for the first time in the last five years. Does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding five years.

ORDINARY HIGH-WATER MARK

The point on a bank or shore up to which the presence and action of surface water is so continuous as to leave a distinct mark such as erosion, destruction or prevention of terrestrial vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

PERMIT

The signed, written statement issued by the Pierce County Land Conservation Department under this article authorizing the applicant to construct, install, reconstruct, enlarge or substantially alter a waste storage facility and to use or dispose of waste from the facility.

PERMITTEE

Any person to whom a permit is issued under this article.

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.

PHOSPHORUS INDEX

The state's agricultural land management planning tool for assessing the potential of a cropped or grazed field to contribute phosphorus to surface waters.

PROCESS WASTEWATER

Wastewater from the production area directly or indirectly used in the operation of animal feeding operation that results from any or all of the following:

- A. Spillage or overflow from animal or poultry watering systems.
- B. Washing, cleaning or flushing pens, barns, manure pits or other animal feeding operation facilities.
- C. Direct contact swimming, washing or spray cooling of animals or dust control.
- D. Water that comes in contact with any raw materials or animal byproducts including manure, feed, milk, eggs or bedding.

REGISTERED PROFESSIONAL ENGINEER

A professional engineer registered under Chapter 443, Wis. Stats.

SUBSTANTIALLY ALTER

Waste storage structure that undergoes a material change in construction or use, including any of the following material changes:

- A. An increase in the capacity of a waste storage facility.
- B. The addition of a liner to a waste storage facility.

SUSCEPTIBLE TO GROUNDWATER CONTAMINATION

Any one of the following [See Section NR 151.015(18), Wisconsin Administrative Code]:

- A. An area within 250 feet of a private well.
- B. An area within 1,000 feet of a municipal well.
- C. An area within 300 feet upslope or 100 feet downslope of karst features.
- D. A channel with a cross-sectional area equal to or greater than three square feet that flows to a karst feature.
- E. An area where the soil depth to groundwater or bedrock is less than two feet.
- F. An area where the soil does not exhibit one of the following soil characteristics:
 - (1) At least a two-foot soil layer with forty-percent fines or greater above groundwater and bedrock.
 - (2) At least a three-foot soil layer with twenty-percent fines or greater above groundwater and bedrock.
 - (3) At least a five-foot soil layer with ten-percent fines or greater above groundwater and bedrock.

TECHNICAL GUIDE

The United States Department of Agriculture (USDA) Natural Resources Conservation Service Technical Guide for the State of Wisconsin and amendments.

UNCONFINED MANURE PILE

A quantity of manure at least 175 cubic feet in volume that covers the ground surface to a depth of at least two inches, but does not include any of the following:

- A. Manure that is confined within a manure storage facility, livestock housing structure or barnyard runoff control facility.
- B. Manure that is covered or contained in a manner that prevents stormwater access and direct runoff to surface water or leaching of pollutants to groundwater.

WATER QUALITY MANAGEMENT AREA (“WQMA”).

Land that includes any of the following: an area within 1,000 feet of the ordinary high-water mark of a navigable lake, pond, or flowage; an area within 300 feet of the high-water mark of a navigable river or stream; an area that is susceptible to groundwater contamination or has the potential to be a direct conduit for contamination to reach groundwater.

WASTE

Manure, milking center waste and other organic waste generated by a livestock facility.

WASTE STORAGE FACILITY

One or more waste storage structures, including stationary equipment and piping used to load or unload a waste storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. Does not include equipment used to apply waste to land.

WASTE STORAGE STRUCTURE

A waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. Does not include equipment to apply manure to land:

[Amended 9-27-2011 by Ord. No. 11-07]

WASTE STORAGE SYSTEM

A waste storage facility and related practices needed for the environmentally safe storage of manure at that facility. Does not include any of the following:

[Added 9-27-2011 by Ord. No. 11-07]

- A. A milking center waste control system.
- B. Nutrient management as defined in § ATCP 50.78(1) of the Wisconsin Administrative Code.
- C. A barnyard runoff control system as defined in § ATCP 50.64(1) of the Wisconsin Administrative Code.
- D. Equipment used to apply manure to land.

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.

§ 101-34 General requirement.

Any person who designs, constructs, installs, reconstructs, enlarges, substantially alters, or closes a waste storage facility or who employs another person to do the same on land subject to this article shall be subject to the provisions of this article.

A. General design, construction and maintenance.

- (1) New or substantially altered waste storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure and to minimize the potential for waste discharge to surface water or groundwater. A waste storage facility may not lack structural integrity or have significant leakage. An unlined earthen waste storage facility may not be located on a site that is susceptible to groundwater contamination.
- (2) Storage capacity
 - (a) The liquid waste storage capacity shall be a minimum of 180 days-adequate for reasonably foreseeable storage needs based on the operator's waste and nutrient management strategy.
 - (b) An operator shall at all times maintain, in every open waste storage facility, unused storage capacity equal to the greater of the following volumes:
 - [1] One foot multiplied by the top area of the storage facility.
 - [2] The volume of rain that would accumulate in the waste storage facility from a twenty-five-year twenty-four-hour storm.

B. Existing facilities. An existing waste storage facility is presumed to comply with Subsection **A(1)** if a registered professional engineer or certified agricultural engineering practitioner certifies one of the following:

- (1) The facility is constructed of concrete or steel or both, was constructed within the last 10 years according to then existing NRCS standards and shows no apparent signs of structural failure or significant leakage.
- (2) The facility was constructed within the last three years according to then existing NRCS standards and shows no apparent signs of structural failure or significant leakage.
- (3) The facility was constructed according to NRCS standards that existed at the time of construction, is in good condition and repair, and shows no apparent signs of structural failure or significant leakage.
- (4) The facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, and is located on a site at which the soils and separation distances to groundwater comply with NRCS technical guide Manure Storage Facility, Standard 313, Table 1 (June 2009). [**Amended 9-27-2011 by Ord. No. 11-07**]
- (5) The facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, is located entirely aboveground, and is located on a site at which the soils comply with NRCS technical guide Manure Storage Facility, Standard 313, Table 5 (June 2009). [**Amended 9-27-2011 by Ord. No. 11-07**]

C. Closure.

- (1) Closure of a waste storage facility permitted under this article shall occur when an operation where the facility is located ceases operation or waste has not been added or removed from the facility for a period of 24 months. Waste facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters.

Compliance with NRCS Technical Guide, Standard 360, Closure of Waste Impoundments, and this article, is required.

- (2) The owner or operator may retain the facility for a longer period of time by demonstrating to the Department that all of the following conditions are met:
 - (a) The facility is designed, constructed and maintained in accordance with Subdivision (2) of Section NR 151.05, Wisconsin Administrative Code.
 - (b) The facility is designed to store waste for a period of time longer than 24 months.
 - (c) Retention of the facility is warranted based on anticipated future use.

D. Failing and leaking facilities. Waste storage facilities that may pose an imminent threat to public health or fish and aquatic life or are causing a violation of groundwater standards shall be upgraded, replaced or closed in accordance with this section.

E. ~~Manure management prohibitions~~ Agricultural Performance Standards and Prohibitions. All permit holders shall comply with NR 151.02 – 151.07, 151.088. [Added 9-27-2011 by Ord. No. 11-07]

NR 151.02 Sheet, rill and wind erosion performance standard.

(1) All land where crops or feed are grown, including pastures, shall be managed to achieve a soil erosion rate equal to, or less than, the "tolerable" (T) rate established for that soil.

(2) This standard first applies to pastures beginning July 1, 2012.

Note: Soil loss will be calculated according to the revised universal soil loss equation II as referenced in ch. ATCP 50 and appropriate wind loss equations as referenced in ch. ATCP 50.

History: CR 00-027: cr. Register September 2002 No. 561, eff. 10-1-02; CR 09-112: am. Register December 2010 No. 660, eff. 1-1-11.

NR 151.03 Tillage setback performance standard. The purpose of this standard is to prevent tillage operations from destroying stream banks and depositing soil directly in surface waters. In this section, "surface water" has the meaning given in s. NR 102.03 (7).

(1) No crop producer may conduct a tillage operation that negatively impacts stream bank integrity or deposits soil directly in surface waters.

(2) No tillage operations may be conducted within 5 feet of the top of the channel of surface waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be required to meet this standard.

(3) Crop producers shall maintain the area within the tillage setback required under sub. (2) in adequate sod or self-sustaining vegetative cover that provides a minimum of 70% coverage.

(4) This section does not apply to grassed waterways installed as conservation practices.

History: CR 09-112: cr. Register December 2010 No. 660, eff. 1-1-11; correction to (intro.) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660.

NR 151.04 Phosphorus index performance standard.

(1) All crop and livestock producers shall comply with this section.

(2) (a) Croplands, pastures, and winter grazing areas shall average a phosphorus index of 6 or less over the accounting period and may not exceed a phosphorus index of 12 in any individual year within the accounting period.

(b) Except as provided under sub. (3), for purposes of compliance with this section the phosphorus index shall be calculated using the version of the Wisconsin Phosphorus Index available as of January 1, 2011.

Note: The Wisconsin Phosphorus Index is maintained by the University of Wisconsin department of soil science and can be found at <http://wpindex.soils.wisc.edu/>.

Note: Soil test phosphorus concentration may be used to help identify fields that are high priority for evaluation with the Wisconsin Phosphorus Index. For example, croplands with

soil test phosphorus concentrations of 35 parts per million or greater should be given higher priority for evaluation.

Note: Best management practices developed by the department of agriculture, trade and consumer protection may be used alone or in combination to meet the requirements of this section.

(c) The accounting period required under par. (a) shall meet the following conditions:

1. The accounting period shall begin once a nutrient management plan meeting the requirements of s. NR 151.07 and s. ATCP 50.04 (3) is completed.

2. During the first 8 years of implementation of this standard by a producer, computation of the phosphorus index may be based on a combination of planned crop management and historic data. Planned crop management data is based on projected management and crop rotations. Historic data is based on management and crop rotations that have actually occurred.

3. Once the nutrient management plan under s. NR 151.07 and s. ATCP 50.04 (3) is developed, historic data shall be used for each year as it becomes available.

(3) If the phosphorus index is not applicable to a particular crop or situation, an equivalent calculation approved by the department shall be used to meet the requirements of this section.

Note: The requirement provides for alternative methods to calculate a phosphorus index. Some strategies for assessing and reducing phosphorus index values, algorithms, and software can be found at <http://wpindex.soils.wisc.edu/>.

(4) Producers may not apply nutrients or manure directly, through mechanical means, to surface waters as defined in s. NR 102.03 (7).

(5) The phosphorus index requirement under sub. (2) (a) first takes effect for pastures beginning July 1, 2012.

History: CR 09-112: cr. Register December 2010 No. 660, eff. 1-1-11; correction to (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660.

NR 151.05 Manure storage facilities performance standards.

(1) APPLICABILITY. All livestock producers building new manure storage facilities, substantially altering manure storage facilities, or choosing to abandon their manure storage facilities shall comply with this section.

(2) NEW CONSTRUCTION AND ALTERATIONS. (a) New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility and minimize leakage of the facility in order to comply with groundwater standards. The levels of materials in the storage facility may not exceed the margin of safety level.

(am) Storage facilities that are constructed or significantly altered on or after January 1, 2011, shall be designed and operated to contain the additional volume of runoff and direct precipitation entering the facility as a result of a 25-year, 24-hour storm.

(b) A new manure storage facility means a facility constructed after October 1, 2002.

(c) A substantially altered manure storage facility is a manure storage facility that is substantially altered after October 1, 2002.

(3) CLOSURE. (a) Closure of a manure storage facility shall occur when an operation where the facility is located ceases operations, or manure has not been added or removed from the facility for a period of 24 months. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters.

(b) The owner or operator may retain the facility for a longer period of time by demonstrating to the department that all of the following conditions are met:

1. The facility is designed, constructed and maintained in accordance with sub. (2).

2. The facility is designed to store manure for a period of time longer than 24 months.

3. Retention of the facility is warranted based on anticipated future use.

(4) EXISTING FACILITIES. (a) Manure storage facilities in existence as of October 1, 2002, that pose an imminent threat to public health, fish and aquatic life, or groundwater shall be upgraded, replaced, or abandoned in accordance with this section.

(b) Levels of materials in storage facilities may not exceed the margin of safety level.

Note: Manure storage facilities are sometimes used to store non-agricultural wastes, such as septage or organic food wastes. These facilities may be subject to additional regulatory and cost-sharing requirements.

History: CR 00-027: cr. Register September 2002 No. 561, eff. 10-1-02; CR 09-112: am. (title), (2) (a), (4), cr. (2) (am) Register December 2010 No. 660, eff. 1-1-11.

NR 151.055 Process wastewater handling performance standard

- (1) All livestock producers shall comply with this section.
- (2) There may be no significant discharge of process wastewater to waters of the state.
- (3) The department shall consider all of the following factors when determining whether a discharge of process wastewater is a significant discharge to waters of the state:
 - (a) Volume and frequency of the discharge.
 - (b) Location of the source relative to receiving waters.
 - (c) Means of process wastewater conveyance to waters of the state.
 - (d) Slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of process wastewater discharge to waters of the state.
 - (e) Available evidence of discharge to a surface water of the state or to a direct conduit to groundwater as defined under s. NR 151.002 (11m).
 - (f) Whether the process wastewater discharge is to a site that is defined as a site susceptible to groundwater contamination under s. NR 151.015 (18).
 - (g) Other factors relevant to the impact of the discharge on water quality standards of the receiving water or to groundwater standards.

Note: Existing technical standards contained in the U.S. department of agriculture natural resources conservation service field office technical guide may be used for managing process wastewater. When such standards are not applicable, the landowner or operator is expected to take reasonable steps to reduce the significance of the discharge in accordance with the agricultural performance standard and prohibition compliance requirements of this chapter. The Wisconsin department of agriculture, trade and consumer protection is responsible under s. 281.16 (3) (c), Stats., for developing additional management practices if needed.

History: CR 09-112: cr. Register December 2010 No. 660, eff. 1-1-11.

NR 151.06 Clean water diversion performance standard.

- (1) All livestock producers within a water quality management area shall comply with this section.
- (2) 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 under s. NR 151.015 (18) (a) is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well.

History: CR 00-027: cr. Register September 2002 No. 561, eff. 10-1-02; CR 09-112: am. (title) Register December 2010 No. 660, eff. 1-1-11.

NR 151.07 Nutrient management.

- (1) All crop producers and livestock producers that apply manure or other nutrients directly or through contract to agricultural fields shall comply with this section.

Note: Manure management requirements for concentrated animal feeding operations covered under a WPDES permit are contained in ch. NR 243.

- (2) This performance standard does not apply to the application of industrial waste and byproducts regulated under ch. NR 214, municipal sludge regulated under ch. NR 204, and septage regulated under ch. NR 113, provided the material is not commingled with manure prior to application.

Note: In accordance with ss. ATCP 50.04, 50.48 and 50.50, nutrient management planners, Wisconsin certified soil testing laboratories and dealers of commercial fertilizer are advised to make nutrient management recommendations based on the performance standard for nutrient management, s. NR 151.07, to ensure that their customers comply with this performance standard.

Note: If an application of material to cropland is regulated under ch. NR 113, 204, or 214, the management practices, loading limitations, and other restrictions specified in the applicable regulation apply to that application. However, nutrient management plans developed in accordance with this performance standard must account for all nutrient sources, including industrial waste and byproducts, municipal sludge, and septage. This means that the future application of manure and commercial fertilizer may be restricted by this performance standard due to

other applications of industrial waste and byproducts, municipal sludge, and septage. In addition, it means that if industrial waste and byproducts, municipal sludge, or septage are placed in a manure storage structure and mixed with manure, the commingled material is also covered by this standard and must be accounted for by the producer when preparing and implementing a nutrient management plan.

(3) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan.

(a) The nutrient management plan shall be designed to limit or reduce the discharge of nutrients to waters of the state for the purpose of complying with state water quality standards and groundwater standards.

(b) Nutrient management plans for croplands in watersheds that contain impaired surface waters or in watersheds that contain outstanding or exceptional resource waters shall meet the following criteria:

1. Unless otherwise provided in this paragraph, the plan shall be designed to manage soil nutrient concentrations so as to maintain or reduce delivery of nutrients contributing to the impairment of impaired surface waters and to outstanding or exceptional resource waters.

2. The plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.

3. For lands in watersheds containing exceptional or outstanding resource waters, the plan may allow an increase in soil nutrient concentrations if the plan documents that any potential nutrient delivery to the exceptional or outstanding resource waters will not alter the background water quality of the exceptional or outstanding resource waters. For lands in watersheds containing impaired waters, the plan may allow an increase in soil nutrient concentrations if a low risk of delivery of nutrients from the land to the impaired water can be demonstrated.

(c) In this standard, impaired surface waters are waters identified as impaired pursuant to 33 USC 1313 (d) (1) (A) and 40 CFR 130.7. Outstanding or exceptional resource waters are identified in ch. NR 102.

(4) This section is in effect on January 1, 2005 for existing croplands under s. NR 151.09

(4) that are located within any of the following:

(a) Watersheds containing outstanding or exceptional resource waters.

(b) Watersheds containing impaired waters.

(c) Source water protection areas defined in s. NR 243.03 (61).

(5) This section is in effect on January 1, 2008 for all other existing croplands under s. NR 151.09

(6) This section is in effect for all new croplands under s. NR 151.09 (4) on October 1, 2003.

Note: The purpose of the phased implementation of this standard is to allow the department sufficient time to work with the Department of Agriculture, Trade and Consumer Protection and local governmental units to develop and implement an information, education and training program on nutrient management for affected stakeholders.

History: CR 00-027: cr. Register September 2002 No. 561, eff. 10-1-02; CR 09-112: am. (2) Register December 2010 No. 660, eff. 1-1-11; correction to (4) (c) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660.

NR 151.08 Manure management prohibitions.

(1) All livestock producers shall comply with this section.

(2) A livestock operation shall have no overflow of manure storage facilities.

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

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

(5) (a) 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.

(b) This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

History: CR 00-027: cr. Register September 2002 No. 561, eff. 10-1-02.

- ~~(1) A livestock operation shall have no overflow of manure storage facilities.~~
- ~~(2) A livestock operation shall have no unconfined manure pile in a water quality management area.~~
- ~~(3) A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state.~~
- ~~(4) 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 vegetable cover. The prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.~~

F. Cost Sharing Required. A determination that cost-sharing is available to meet the performance standards, prohibitions, conservation practices or technical standards under this subsection will be determined in accordance with Wis. Admin. Code §§ NR 151.09(4)(d) or NR 151.095(5)(d) when funding is provided under Wis. Stat. § 281.65, and will be determined in accordance with Wis. Admin. Code ch. ATCP 50 when funds are from any other source. Cost sharing under this section is only required for the minimum practice necessary to meet the performance standards and prohibitions. An owner or operator of an agricultural facility or practice that is in existence before October 1, 2002, may not be required to comply with the performance standards, prohibitions, conservation practices, or technical standards under this chapter unless cost-sharing is available from any source to the owner or operator.

§ 101-35 Compliance.

A person is in compliance with this article if he or she follows the procedures of this article, receives a permit from the Pierce County Land Conservation Department before beginning activities subject to regulation under this article and complies with the requirements of the permit.

§ 101-36 Standards.

- A. Standards for waste storage facilities. A registered professional engineer or certified agricultural engineer practitioner shall certify that the design specifications of waste storage facilities are the current standards found in the Technical Guide, Standard 313, Waste Storage Facility, and Standard 634, Manure Transfer, as they existed on the date of the adoption of this article, and any amendments.
- B. Standards for nutrient management plan. The standards for a nutrient management plan shall be as provided in the Technical Guide, Standard 590.
- C. Subsequent modification of standards. The standards of the Technical Guide are adopted and by reference made a part of this article as if fully set forth herein. Any future amendment, revision or modification of the standards incorporated herein are made a part of this article, unless otherwise acted upon by the Land Conservation Committee.
- D. Additional conditions. The Pierce County Land Conservation Department staff may impose additional conditions before issuing a permit if in the officer's or staff member's judgment such conditions are necessary to protect the groundwater because of shallow soils, creviced rock or other site conditions. Compliance with this article does not eliminate or change the

applicant's duty to comply with any other restrictions, rules or regulations imposed by other entities, including but not limited to town, state, city and village requirements.

§ 101-37 Siting requirements.

- A. A waste storage structure may not be located within 350 feet of any property line or within 350 feet of the nearest point of any public road right-of-way, unless one of the following applies:
 - (1) The waste storage structure existed prior to May 1, 2006. An existing waste storage structure located within 350 feet from a lot line or public road right-of-way may expand but shall not further encroach upon the setback.
 - (2) The waste storage structure is a single new waste storage structure constructed no closer to the relevant property line or public road than a waste storage structure that existed on the same tax parcel prior to May 1, 2006, provided that the new structure is no larger than the existing structure and is located within 50 feet of the existing structure.
- B. Exemption from siting requirement. The Land Conservation Committee may grant an exemption to, or modify, one or more siting requirements for a proposed waste storage facility if requested by the applicant or the Department, provided that:
 - (1) Unique property limitations exist and placement in adherence with siting requirements would not be reasonable and/or possible; or
 - (2) Adherence to siting requirements would increase the likelihood of future nuisance complaints; or
 - (3) The request is for the protection of water quality.
- C. A waste storage structure must comply with all applicable zoning, floodplain and shoreland and wetland ordinances.

§ 101-38 Permits required.

No person may undertake an activity subject to this article without obtaining a permit from the Department prior to beginning the proposed activity.

§ 101-39 Exceptions to permit requirement.

- A. Emergency repairs, such as repairing a broken pipe or equipment or leaking dikes or the removal of stoppages, may be performed without a permit. If repairs will alter the original design and construction of the facility, a report shall be made to the Department within two working days of the emergency for a determination by the Department on whether a permit will be required for any additional alteration or repair to the facility.
- B. Preexisting waste storage facilities, except where a breach or overflow occurs, are not required to obtain a permit under this article.
- C. Closure of an existing waste storage facility, with a plan approved by the Department, does not require a permit under this article.

§ 101-40 Permit fee.

A fee shall be charged for a permit under this article. The permit fee can be established or changed by a majority vote of the Land Conservation Committee. The new fee schedule shall be submitted

to the full County Board at its next regular meeting for information purposes. No approval action is necessary on the part of the full County Board.

§ 101-41 Waste storage facility plan required.

Each application for a permit under this article shall include a waste storage facility plan. The plan shall specify:

- A. Type(s) and numbers of livestock the facility is planned for, and maximum storage capacity, minimum of 180 days storage capacity of generated liquid waste from the livestock facility.
- B. A sketch drawn at a scale of not less than ~~one inch~~ one-inch equals 100 feet of the facility location, including all buildings, navigable and intermittent streams, wetlands or water bodies within 500 feet of the impoundment, and the location of wells within 300 feet of the facility.
- C. Structural details, including but not limited to all grades, dimensions, cross sections, concrete thickness, reinforcement schedules, and thickness and placement of groundwater protection liners.
- D. Soil test pits and soil depth boring locations and soil descriptions to a depth of at least five feet below the planned bottom of the facility or to bedrock if at a lesser depth.
- E. Elevations of groundwater or bedrock if encountered in the soil profile and the date of such determinations.
- F. Provisions for drainage and control of runoff to prevent pollution of surface water and groundwater and the locations and distance to water bodies.
- G. Drawing scale and the North arrow.
- H. Time schedules for construction and inspection by certifying engineer.
- I. Descriptions of the methods for transferring waste.
- J. Provisions for proper closure of facility.
- K. Provisions for complying with siting requirements, if applicable.
- L. Provisions required for safety of the facility, including but not limited to adequate signage, grating, and fencing.
- M. All companion documents from Technical Guide Standard 313.

§ 101-42 Nutrient management plan.

A. As part of an application for construction permit, a landowner must develop a nutrient management plan that complies with § ATCP 50.04. The nutrient management plan shall include the following:

- (1) Identification of every field on which the landowner mechanically applies nutrients.
- (2) Preparation by a nutrient management planner qualified under Section ATCP 50.48, Wisconsin Administrative Code.
- (3) Reliance on soil nutrient tests conducted at a laboratory certified under Section ATCP

50.50, Wisconsin Administrative Code.

- (4) Compliance with the Technical Guide Nutrient Management Standard 590.
- (5) Follow recommendations for nutrient applications in the University of Wisconsin-Extension Soil Test Recommendations for Field, Vegetable and Fruit Crops, UWEX publication A-2809 (1998), unless the nutrient management planner can show that circumstances justify more than the recommended application.

B. Updates. An operator ~~must~~ may update nutrient management plans annually and submit a copy of said plans by April 1st to the Land Conservation Department ~~and practices as necessary,~~ consistent with § **101-36B**.

§ 101-43 **Reuse of abandoned waste storage facility.**

Reuse of an abandoned facility may be allowed, provided that the owner or operator meets the requirements of § **101-34C(2)** of this article.

§ 101-44 **Review of application and plans.**

The Department shall receive and review all permit applications. The Department shall determine if the proposed facility meets required standards set forth in §§ **101-35** and **101-36** of this article. Within 45 days after the Department receives an application, the Department shall notify the applicant if the application is complete. If additional information is required, the notice shall specifically describe what else is needed. Within 14 days after the applicant has provided the additional information, the Department shall notify the applicant that the application is complete. Within 90 days after giving notice that the application is complete, the Department shall inform the applicant in writing whether the permit application is approved or disapproved. If the Department fails to approve or disapprove the permit application in writing within 90 days of the receipt of the permit application, as appropriate, the application shall be deemed approved, and the applicant may proceed as if the permit had been issued.

§ 101-45 **Permit conditions.**

All permits issued under this article shall be issued subject to the following conditions and requirements:

- A. Waste storage facility design, construction, management and utilization activities shall be carried out in accordance with the approved application and plans and applicable standards specified in this article.
- B. The permittee shall give no less than five 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 if the permit has been issued.
- D. The permittee and registered engineer or certified agricultural engineering practitioner shall certify in writing that the facility was installed as planned, or as-built plans shall be stamped by the registered engineer or certified agricultural engineering practitioner and submitted before use of the facility begins.
- E. Activities authorized by permit must be completed within two years from the date of issuance, after which such permit shall be voided, unless an extension is approved by the Department.

F. Certificate of Use.

- (1) Certificate Purpose. The purpose of a certificate of use is to monitor and regulate the operation of a manure storage facility and adequacy of related nutrient management practices.
- (2) Certificate Requirement. No person may operate or use a manure storage facility permitted under this Ordinance unless the person has a valid certificate of use for the storage facility or portion of the storage facility that is being operated or used.
- (3) Issuance. The Department may issue a certificate of use upon the operator's compliance with conditions in 101-45 and the certificate shall remain in effect for as long as the manure storage facility is operated in compliance.
- (4) Operating Requirements. The operator of a manure storage facility is in compliance with the certificate of use if the person does all of the following:
 - a. Updates and follows an annual nutrient management plan that complies with requirements in this Ordinance and covers all manure land applied from the manure storage facility issued a certification of use.
 - b. At all times during the exercise of the permit, the applicant shall have ownership of acreage, or shall provide to the Land Conservation Director copies of agreements for the spreading of manure on acreage, sufficient to comply with the USDA-NRCS Nutrient Management Standard 590. If rental agreements do not include full cropping rights to the land, said agreements shall require a minimum of a two-year agreement allowing the applicant access to said acreage for the purpose of spreading manure. Agreements must be signed by the landowner or legal authorized representative.
 - c. Provides a nutrient management plan and DATCP checklist annually to the Department by April 1st to document compliance with ordinance requirements. The Department may ask the operator to submit the documentation to substantiate the planner's answer to one or more questions on the nutrient management checklist. The Department may take appropriate action authorized by this Ordinance if the submitted documentation does not reasonably substantiate a checklist answer.
 - d. Properly operates the storage facility in accordance with performance standards and prohibitions in 101-34 and consistent with the recommended operating methods as defined by the Technical Guide, AWMFH and EFH.
 - e. Maintains a minimum of 180 days storage capacity for all liquid waste generated by the livestock facility.
 - f. Properly maintains the storage facility free from visible and serious damage, erosion, or deformities that would impair the facility's safety or function as determined by the Technical Guide, AWMFH, and the EFH.
 - g. Properly maintains the safety devices for a manure storage facility.
 - h. Provides the Department proof of compliance with the requirements in 101-45 (4f) (d and e) upon request and submits to periodic inspections of the storage facility with advance notice from the Department.

- i. Develops and implements a plan for closure of the manure storage facility when the operator ceases use of the facility or closure is required based on conditions specified in this ordinance.

(5) Certificate Revocation. In addition to any other actions specified under this ordinance, the Department may revoke a certificate of use if there is a misrepresentation of any material fact in the documents submitted in connection with the certificate use, a misrepresentation of any material fact in the management plan, a failure to submit required documentation or allow inspection, a condition that immediately threatens public health and safety, or for multiple or repeat violations of this ordinance. The operator will be immediately provided written notice of the revocation and the reasons for the revocation. No manure be added or removed from a manure storage facility whose certificate has been revoked.

§ 101-46 Permit revocation.

The Department may revoke any permit issued under this article if the holder of the permit has misrepresented any material fact in the permit application or facility plans or if the holder of the permit violates any of the conditions of the permit.

§ 101-47 Administration.

In the administration and enforcement of this article, the Department shall:

- A. Keep an accurate record of all permit applications, waste storage facility plans, permits issued, inspections made and other official actions.
- B. Review permit applications and issue permits in accordance with §§ **101-38** to **101-46** of this article.
- C. Inspect waste storage facility construction to ensure that the facility is being constructed according to plan specifications.
- D. Investigate complaints relating to compliance with this article.
- E. Perform other duties as specified in this article.

§ 101-48 Inspections.

The Pierce County Land Conservation ~~Supervisor~~ Director or designee of the Pierce County Land Conservation Committee is authorized to enter upon any lands affected by this article to inspect the land prior to or after permit issuance to determine compliance with this article. If permission cannot be received from the applicant or permittee, entry by the Land Conservation Supervisor or designee shall be according to § 66.0119, Wis. Stats.

§ 101-49 Enforcement.

The Department is authorized to post an order stopping work upon land which has had a permit revoked or on land currently undergoing activity in violation of this article. Notice is given by mailing a copy of the order by certified mail to the owner of the land where the violation exists. The order shall specify that the activity must cease and be brought into compliance within 10 days. Any permit revocation or order stopping work shall remain in effect unless retracted by the Board of Adjustment, the Department or by a court of appropriate jurisdiction. The Department is authorized to refer any violation of this article to the Corporation Counsel for commencement of further legal proceedings.

§ 101-50 Violations and penalties.

Any person who violates, neglects or refuses to comply with or resists the enforcement of any of the provisions of this article shall be subject to a forfeiture of \$200 plus costs of prosecution for each violation. Any unlawful violation includes failure to comply with any standard of this article or with any condition or qualification attached to the permit. Penalties shall also be assessed if a person undertakes an activity, including but not limited to construction activities, subject to this article without obtaining a permit from the Department prior to beginning the proposed activity. Each day that a violation exists shall be a separate offense.

§ 101-51 Injunctions or restraining orders.

As substitute for or an addition to forfeiture actions, Pierce County may seek enforcement of any part of this article by court actions seeking injunctions or restraining orders.

§ 101-52 Appeals.

- A. Authority. Under authority of Chapter 68, Wis. Stats., the Pierce County Board of Adjustment, created under § 59.694, Wis. Stats., and under Chapter 240, Zoning, § 240-70, and acting as an appeal authority under § 59.694(7)(a), Wis. Stats., is authorized to hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination by the Department in administering this article.
- B. Procedure. The rules, procedures, duties and powers of the Pierce County Board of Adjustment and Chapter 68, Wis. Stats. shall apply to this article.
- C. Who may appeal. Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision or determination made by the Department.