

IV. SAMPLE PERFORMANCE STANDARDS

A. General Setbacks

1. Any existing, new or expanding animal feeding operation or concentrated animal feeding operation, including its animal confinement buildings and animal waste storage facility(ies) shall be located according to the setback distances in Table 1 below:

Table 1. Facility Siting Setbacks.

Use	Setback Distance
Private or municipal well	300 feet
20% downward slope	50 feet
Ordinary high water mark of navigable waters	500 feet
Ordinary high water mark of a lake	1,000 feet
Public or private drainage ditch	100 feet
Wetland	100 feet

2. Any existing animal feeding operation or concentrated animal feeding operation that is in noncompliance with the setback requirements in section IV.A.1 shall constitute a legally nonconforming structure.
3. Setbacks from non-farm dwellings, other than those owned by the animal feeding operation owner, and/or the owner's successors, heirs or assigns shall be in accord with Table 2.

Table 2.²⁶ Odor and Air Pollution Setbacks.

CATEGORY	150 – 499 AUs	500 – 999 Aus	1,000 or more AUs
Public Parks	500 feet	750 feet	_ mile
Residential Dwellings	500 feet	1000 feet	_ mile

²⁶ The distances in Tables 1, 2, and 3 should be altered to reflect the local government's specific needs and priorities.

4. Setbacks for the application of manure shall be established in accord with Table 3.

Table 3. Manure Application Setbacks.

Physical Feature or Structure	Spreading without incorporation	Injection within 72 hours of application
Streams and rivers	200 feet	35 feet
Drainage ditches connected to streams and rivers	100 feet	35 feet
Lakes	200 feet	35 feet
Water wells	200 feet	50 feet

B. Variances from the General Setbacks

1. The local government may grant a variance from any setback requirements;
2. The burden is upon the applicant to prove the need for a variance by demonstrating that the property will have no feasible use as an animal feeding operation if the variance is not granted;²⁷
3. Pecuniary hardships, loss of profit, self-imposed hardships, such as that caused by ignorance, deed restrictions, proceeding without a permit, or illegal sales, are not sufficient reasons for granting a variance;
4. The plight of the applicant must be unique, such as a shallow or steep parcel of land, or situation caused by other than his or her own action;
5. The hardship justifying the variance must apply to individual applicant's own parcel and not generally to other properties in the same district.²⁸

C. Runoff Control

1. Owners and operators of animal feeding operations shall control point sources of contaminated runoff in accordance with the maximum of rainfall generated by a 25-year, 24-hour rainfall event for the location of the point source.²⁹ This design standard shall be achieved by installing permanent runoff control structures which include, but are not limited to, filter strips, grassed waterways, diversions, or terraces.³⁰
2. An animal feeding operation shall have no overflow of animal waste storage facilities.³¹
3. An animal feeding operation shall have no unconfined manure pile in a water quality management area, defined in WIS. STAT. 281.16(1)(g).³²
4. An animal feeding operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent

²⁷ See *State v. Kenosha County*, 218 Wis.2d 396, 413 (1998).

²⁸ Shawano County Zoning Ordinance No. 102, §29.03 (1999). Subparagraphs 1, 3, 4, and 5 are taken from the Shawano County Zoning Ordinance, §29.03.

²⁹ WIS. ADMIN. CODE, §243.12.

³⁰ *Id.*, §243.13.

³¹ WIS STAT. §281.16(3)(a).

³² *Id.*

the maintenance of adequate sod or self-sustaining vegetative cover. Adequate sod or self-sustaining vegetative cover refers to the maintenance of sufficient types and density of vegetation such that the physical integrity of the stream bank or lakeshore is preserved.³³

5. An animal feeding operation may have no direct runoff from animal confinement buildings or animal waste storage facilities or any other area of the animal feeding operation to waters of the state.³⁴

D. Maintenance of Animal Waste Storage Facilities

1. No animal waste storage facility or parts thereof shall hereafter be located, installed, moved, reconstructed, extended, enlarged, converted, substantially altered or its use changed without an animal feeding operation permit under this ordinance and without full compliance with the provisions of this ordinance.³⁵
2. All animal waste storage facilities must be designed to contain the runoff from a twenty-five (25) year, twenty-four (24) hour storm event, in addition to all animal waste produced at the animal feeding operation and all runoff, which must be collected and drained into the animal waste storage facility.³⁶
3. The standards and specifications for design, construction, operation, and maintenance of animal waste storage facilities are those identified in Standards 313 and 634 USDA-NRCS Technical Guide.³⁷ An animal waste storage facility shall comply with those standards and with all applicable DNR requirements under §281.65(4)(g)5, WIS. STATS.,³⁸ except that animal waste storage facilities, the use of which has been discontinued for twenty-four consecutive (24) months, shall be abandoned and closed within one year of the date of the determination of such non-use in accordance with section 3(c) of this ordinance.
4. At the recommendation of the County Land Conservation Department, all owners of liquid animal waste storage facilities shall:
 - a. Install stone rip-rap or concrete at critical locations or take other measures to prevent inlet pipe erosion;
 - b. Conduct scheduled cleaning of manure transport and application equipment to prevent spills at manure pump-out locations;
 - c. Agitate at the recesses and corners of the facility to prevent soil liner erosion;
 - d. Have no trees or other root vegetation on or near the pit berms;
 - e. Inspect on a weekly basis the pit walls and berms to detect and eliminate burrowing animals.

³³ *Id.*

³⁴ *Id.*

³⁵ Barron County Animal Waste Storage Facility Ordinance, §11.02(6)(a) (2000).

³⁶ WIS. ADMIN. CODE NR 243.12.

³⁷ NATURAL RESOURCE CONSERVATION SERVICE, STANDARDS 313 WASTE STORAGE FACILITIES (2001); NATURAL RESOURCES CONSERVATION SERVICE 634, MANURE TRANSFER AND HAULING (2002).

³⁸ *See* WIS. ADMIN. CODE ATCP 50.56(3)(c) (effective Oct. 1, 2002).

5. All animal waste storage facilities are prohibited within the one hundred (100) year flood plain.³⁹
6. The local government shall have the power to inspect all animal waste storage facilities.

E. Discontinuance of Use of Animal Waste Storage Facilities

1. No animal waste storage facility may be abandoned except in compliance with this ordinance.
2. Each application for a permit under this ordinance shall include a “Discontinuance of Use” or abandonment plan. The plan shall include provisions for future operation of the animal waste storage facility. The plan shall specify:
 - a. provisions to remove and properly dispose of all accumulated manure in the animal waste storage facility;
 - b. provisions to remove any concrete or synthetic liner, or properly use pieces of the concrete or synthetic liner as clean fill at the site;
 - c. provisions to remove and properly dispose of any soil saturated with animal waste from the animal waste storage facility;
 - d. provisions to remove or permanently plug the animal waste transfer system serving the animal waste storage facility; and
 - e. provisions to fill and shape the area so as to not retain water, covering all disturbed areas with topsoil, seeding the areas with a grass mixture, and mulching the seeded area.⁴⁰
3. The owner or operator of an animal waste storage facility shall notify the local unit of government at least sixty (60) days before the abandonment.
4. Animal waste must be removed from the animal waste storage facility within one hundred twenty days (120) after animals are removed from the animal feeding operation. The owner of the animal waste storage facility shall provide a statement of current and future uses of the animal feeding operation and date of abandonment, if appropriate.
5. If the animal waste storage facility is not abandoned properly, it may be deemed a nuisance. If the facility is determined to be a nuisance, the local unit of government may act to abate such nuisance and require the cleanup of the facility at the property owner’s expense.⁴¹

F. Nutrient Management

1. All animal waste applications by any animal feeding operation, including any concentrated animal feeding operation, shall comply with Standard 590, USDA-NRCS,⁴² except:

³⁹ Trempealeau County Ordinance, §15.7(B).

⁴⁰ Requirements in Section IV.E.2.a - e taken from the Town of Hartland Ordinance, §8.3 (2000).

⁴¹ *Id.*

⁴² NATURAL RESOURCES CONSERVATION SERVICE, STANDARD 590, NUTRIENT MANAGEMENT (1999).

- a. There shall be no application of liquid manure on frozen or snow-covered ground;
 - b. There shall be no application of manure on slopes greater than 12%; and
 - c. Animal waste shall be spread at phosphorus-based application rates on all crop fields.
2. All animal waste shall be injected, knifed, or incorporated into the soil within 72 hours of application.
 3. There shall be no ponding of animal waste in crop fields after application and incorporation of animal waste.

G. Air quality Best Management Practices

- i. For each animal waste storage facility, animal confinement building, and land application area, all concentrated animal feeding operations must install one or more best management practices to limit air pollution and odor from animal waste storage facilities, animal confinement buildings, and land application areas, including but not limited to:
 - a. Controlled anaerobic digestion;
 - b. Mechanical aeration;
 - c. Frequent animal waste collection by flushing, cable scraping or pit drainage;
 - d. Biochemical treatment, including masking agents, counteractants, digestive deodorants, chemical deodorants, adsorbents and feed additives;⁴³
 - e. Waste dehydration;⁴⁴
 - f. Disinfection;
 - g. Composting;
 - h. Air ventilation from the animal confinement building and other measures to control dust;
 - i. Installation of windbreaks around or downwind of the manure storage and treatment facilities as determined by the spring and summer prevailing winds;⁴⁵ or
 - j. Any other best management practice reasonably calculated to control or limit odor from the animal waste storage facility, animal confinement building, and land application area.
- ii. All other animal feeding operations are exempt from this section.

⁴³ BMP's listed in Section IV.G.1.a - d are taken from John M. Sweeten, Extension Agricultural Engineer, *Odor and Dust From Livestock Feedlots*, Texas A&M University System.

⁴⁴ American Society of Agricultural Engineers, Engineering Practice EP379.1 (1994) (*hereinafter* ASAE EP379.2).

⁴⁵ BMP's listed in Section IV.G.1.f - i are taken from ASAE EP 379.2 (1997).

H. Financial assurance required⁴⁶

The applicant shall specify, as part of the plan of operation submittal for conditional use requests, a performance or forfeiture bond providing proof of financial responsibility for the maintenance, abandonment, and discontinuance of use of the manure storage facility.

- i. A bond shall be conditioned upon the faithful performance by the owner and any successor in interest, of all maintenance, abandonment and discontinuance of use requirements of the approved plan of operation or subsequent remedial actions required by the local unit of government. This bond is required prior to issuance of the permit.
- ii. Each bond shall provide that, as long as any obligation of the owner for maintenance, abandonment and discontinuance remains, the bond may not be cancelled by the surety. The bond may be cancelled if a replacement bond or other financial assurance is produced. If the surety proposes to cancel such a bond, the surety shall provide notice to the local unit of government and the owner not less than 90 days prior to the cancellation date. Not less than 30 days prior to the expiration of the 90 day period, the owner shall deliver to the local unit of government a replacement bond or other proof of financial assurance. If the owner fails to do so, all operations must cease and the bond shall remain in effect as long as any obligation of the owner remains for maintenance, abandonment and discontinuance of use.
- iii. If the surety becomes bankrupt or insolvent or is no longer authorized to do business, the owner shall, within 30 days after receiving written notice, deliver to the local unit of government a replacement bond or proof of other financial assurance. If the owner fails to do so, all operations must cease and the bond shall remain in effect as long as any obligation of the owner remains for maintenance, abandonment, and discontinuance of use.

⁴⁶ Green County Ordinance 00-0101, 4-3-6-3, *supra* note 46. The Green County Ordinance also provides additional means of providing financial assurances, including insurance policies, letters of credit, and escrow accounts. *Id.*