

CHAPTER 23
AGRICULTURAL PERFORMANCE STANDARDS
AND ANIMAL WASTE STORAGE ORDINANCE

This Ordinance supersedes Chapter 23 Door County Code – “Animal Waste Storage Facility Ordinance” (Ordinance No. 4-87, enacted 02/19/87)

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Subchapter I – Introduction

1.01 Authority. This section is adopted under authority granted by Sections 59.01, 59.02, 59.03, 59.04, 59.54, 59.69, 59.70, 66.0113, 92.07, 92.09, 92.11, 92.15, and 92.16 Wisconsin Statutes.

1.02 Title. This Ordinance shall be known as, referred to, and may be cited as the “Door County Agricultural Performance Standards and Animal Waste Storage Ordinance” and is hereinafter referred to as the Ordinance.

1.03 Findings and Declaration of Policy. (1) The Door County Board of Supervisors recognizes the importance of protecting our ground and surface water resources and finds that proper management of agricultural practices contributes to the protection of: ground and surface waters; public health; plant, animal, and aquatic life; and the property tax base of Door County.

(2) The Door County Board of Supervisors recognizes the importance of agricultural activities to the social, economic, historic, and cultural significance and subsistence of Door County residents and transients.

(3) The residents of Door County have the right to implement agricultural activities on the land surface, where as these activities are implemented in a responsible manner so as not to adversely affect ground and surface waters; public health; and plant, animal, and aquatic life of Door County.

(4) The citizens of Door County have the right to implement agricultural practices and shall not have nuisance actions brought against them, in accordance with Section 823.08 Wisconsin Statutes, unless the agricultural use or practice is a substantial threat to public health or safety.

(5) The dominant aim of this ordinance is to promote the public health, safety, convenience and general welfare.

1.04 Purpose. This Ordinance establishes the right to farm responsibly, implements Agricultural Performance Standards and Prohibitions and supersedes Ordinance No. 4-87 Animal Waste Storage Facility Ordinance to reflect new standards.

1.05 Applicability. This ordinance applies to the entire geographical area of Door County, except as otherwise provided by law.

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1.06 Interpretation. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Door County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

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

1.08 Relationship to Other Laws.

(1) The enactment of this ordinance shall not preclude the County of Door from enacting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or any other matters.

(2) The procedures and remedies set forth herein may be used in the alternative or in consonance with or in lieu of any other remedy or procedure authorized by law.

(3) Neither commencement of an action, nor legal remedy granted, under this ordinance may be deemed former jeopardy for purposes of concurrent or subsequent criminal proceedings relating to the same or any other matter.

1.09 Authority Cited. References herein to the Wisconsin Statutes or Wisconsin Administrative Code are to those in effect as of the date this ordinance is enacted or the Statutes or Code as subsequently amended or revised.

1.10 Effective Date. This Ordinance shall become effective upon its enactment and publication by the Door County Board of Supervisors.

1.11 Definitions.

(1) “Adequate sod, or self-sustaining vegetative cover” means 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.

(2) “Agricultural land use” means the use of land for agricultural practices.

(3) “Animal feeding operation” means a feedlot or facility, other than a pasture, where animals have been, are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month period. Two or more animal feeding operations under common ownership or common management are a single

operation if at least one of the following is true:

(a) The operations are adjacent.

(b) The operations utilize common systems for the landspreading of manure or other wastes, including a manure management plan or landspreading acreage.

(c) Manure, barnyard runoff or other wastes are commingled in a common storage facility prior to landspreading.

(4) “Animal unit” (a) means a unit of measure used to determine the total number of single animal types or combination of animal types, as specified in NR 243, which are fed, confined, maintained or stabled in an animal feeding operation.

(5) “Applicant” means any person who applies for a permit under this Ordinance.

(6) “Best management practices” or “BMPs” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

(7) “Conservation practice” means a best management practice designed to reduce or prevent soil or sediment loss to the waters of the state.

(8) “Crop producer” means an owner or operator of an operation engaged in crop related agricultural practices specified in s. 281.16 (1) (b), Stats.

(9) “Cropland practice” means the method, activity or management measure used to produce or harvest crops.

(10) “Direct runoff” means a discharge of a significant amount of pollutants to waters of the state resulting from any of the following practices:

(a) Runoff from a manure storage facility.

(b) Runoff from an animal lot that can be predicted to reach surface waters of the state through a defined or channelized flow path or man-made conveyance.

(c) Discharge of leachate from a manure pile.

(d) Seepage from a manure storage facility.

(e) Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with s.NR154.04 (3).

(11) “Exceptional resource waters” means waters listed in s. NR 102.11.

(12) “Idle manure storage facility” means a manure storage facility where the operations cease or manure has not been added or removed for 24 months.

(13) “Karst feature” means 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.

(14) “Land Conservation Committee” means

(a) the committee created by a county board under s.

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92.06, Stats. "Land conservation committee" includes employees or agents of a county land conservation committee whom, with committee authorization, act on behalf of the committee.

(b) that committee of the Door County Board of Supervisors which oversees the Soil and Water Conservation Department.

(15) "Landowner" means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.

(16) "Livestock" means all domestic animals including deer, elk, or any fenced-in animals.

(17) "Livestock facility" means a structure or system constructed or established on a livestock operation.

(18) "Livestock producer" means an owner or operator of a livestock operation.

(19) "Livestock operation" has the meaning given in s. 281.16 (1) (c), Stats.

(20) "Manure" means a material that consists primarily of excreta from livestock, poultry or other animals. "Manure" includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

(21) "Manure storage facility" means an impoundment made by constructing an embankment or excavating a pit or dugout or by fabricating a structure to contain manure and other animal or agricultural wastes.

(22) "Navigable waters" or "navigable waterway" means any body of water which is navigable under the laws of this state.

(23) "NOD" means a notice of discharge issued under s. NR 243.24 (4).

(24) "NRCS" means the Natural Resources Conservation Service of the U.S. Department of Agriculture.

(25) "Nutrient Management Plan" means a plan that balances 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).

(26) "Operator" means a person responsible for the oversight or management of equipment, facilities or livestock at a livestock operation, or is responsible for land management in the production of crops.

(27) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of

aquatic vegetation, or other easily recognized 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.

(28) "Outstanding resource waters" means waters listed in s. NR 102.10.

(29) "Pasture" means an area of land where animals graze or otherwise seek feed in a manner that maintains the vegetative cover over all of the grazing area and where the vegetative cover is the primary food source for the animals.

(30) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.

(31) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

(32) "Permit" means the signed, written statement issued by the Door County Soil and Water Conservation Department under this ordinance authorizing the applicant to construct, install, reconstruct, substantially alter, or close a manure storage facility.

(33) "Permitee" means any person to whom a permit is issued under this Ordinance.

(34) "Runoff" means storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

(35) "Site that is susceptible to groundwater contamination" under s. 281.16 (1) (g), Stats., means any one of the following:

(a) An area within 250 feet of a private well.

(b) An area within 1000 feet of a municipal well.

(c) An area within 300 feet upslope or 100 feet downslope of karst features.

(d) A channel with a cross-sectional area equal to or greater than 3 square feet that flows to a karst feature.

(e) An area where the soil depth to groundwater or bedrock is less than 2 feet.

(f) An area where the soil does not exhibit one of the following soil characteristics:

1. At least a 2-foot soil layer with 40% fines or greater above groundwater and bedrock.

2. At least a 3-foot soil layer with 20% fines or greater above groundwater and bedrock.

3. At least a 5-foot soil layer with 10% fines, or greater above groundwater and bedrock.

(36) "Soil and Water Conservation Department" means the enforcing authority of this ordinance.

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(37) “Stored manure” means manure that is kept in a manure storage facility or an unconfined manure pile.

(38) “Substantially altered” means a change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, depth or configuration of a structure or facility including:

(a) Replacement of a liner in a manure storage structure.

(b) An increase in the volumetric capacity or area of a structure or facility by greater than 20%.

(c) A change in a structure or facility related to a change in livestock management from one species of livestock to another such as cattle to poultry.

(39) “Technical standard” means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

(40) “Tolerable soil loss” or “T” means the maximum rate of erosion, in tons per acre per year, allowable for particular soils and site conditions that will maintain soil productivity.

(41) “Unconfined manure pile” means a quantity of manure that is at least 175 ft³ 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.

(42) “Water quality management area” or “WQMA” means any of the following:

(a) The area within 1,000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, “water quality management area” means the area within 1,000 feet from the high-water mark of the lake.

(b) The area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream.

(c) A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

(43) “Waters of the state” means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

(44) “WPDES permit” means a Wisconsin pollutant discharge elimination system permit issued under ch. 283, Stats.

Subchapter II – Administration.

1.20 Delegation of Authority. Door County hereby designates the Door County Soil and Water Conservation Department to administer and enforce this Ordinance.

1.21 Administration. The provisions of this Ordinance shall be administered by the Door County Soil and Water Conservation Department under the oversight of the Land Conservation Committee.

1.22 Entry and Inspection Authority. The Door County Soil and Water Conservation Department is authorized to enter upon any lands affected by this Ordinance to inspect the land to determine compliance with this Ordinance pursuant to the authority granted by Section 92.07 (14), Wis. Stats. If permission cannot be received from the applicant or permittee, entry by the Door County Soil and Water Conservation Department shall be according to Sections 66.0119 and 66.0119 (3), Wis. Stats. Refusal to grant permission to enter lands affected by this Ordinance for purposes of inspection shall be grounds for order of non-compliance, permit denial or revocation.

1.23 Enforcement Authority.

(1) County may issue a citation, pursuant to and in accordance with Section 66.0113 Wisconsin Statutes and Chapter 35 Door County Code.

(2) A cease and desist order may be issued by the Door County Soil and Water Conservation Department. The cease and desist order: may order that all operations on the property that do not conform to this Ordinance immediately cease; and must be reasonably specific and concrete, so as to fairly apprise wrongdoer of specific violation of this Ordinance and necessary remedial measures.

(3) County may institute other proceedings in any court of competent jurisdiction and pursue any remedy or relief afforded by law, including a civil forfeiture or injunction.

Subchapter III – Agricultural Performance Standards and Prohibitions

1.30 Activities Subject to Agricultural Performance Standards and Prohibitions.

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(1) **CROPPED LANDS.** All land where crops or feed are grown shall be subject to Agricultural Performance Standards and Prohibitions.

(2) **LIVESTOCK OPERATION.** All livestock producers shall be subject to Agricultural Performance Standards and Prohibitions. Livestock producers and operations within water quality management areas (WQMA's) have more comprehensive requirements.

(3) **MANURE HANDLING, STORAGE AND APPLICATION.** All manure shall be handled, stored and applied to lands in accordance with Agricultural Performance Standards and Prohibitions.

(4) **APPLICATIONS OF MANURE, COMMERCIAL FERTILIZERS AND OTHER NUTRIENTS TO AGRICULTURAL LANDS.** All crop producers and livestock producers that apply manure or other nutrients directly or through contract to agricultural fields shall be applied in conformance with a nutrient management plan criteria established in NR 151.07.

1.31 Performance Standards and Prohibitions.

(1) **SHEET, RILL AND WIND EROSION.** All land where crops or feed are grown shall be cropped to achieve a soil erosion rate, determined in accordance to RUSLE 2 or equivalent equation, equal to, or less than, the "tolerable" (T) rate established for that soil. Wind erosion rates shall be calculated via the Wind Erosion Equation (WEQ) established by NRCS, and shall be equal to, or less than, the "tolerable" (T) rate established for that soil.

(2) MANURE STORAGE FACILITIES.

(a) *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.

(b) *New construction and alterations.*

1. New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility, minimize leakage of the facility in order to comply with groundwater standards, and maintain one foot of freeboard storage or adequate freeboard storage to the equivalent volume of a 25-year, 24-hour storm, whichever is greater.

2. A new manure storage facility means a facility constructed after October 1, 2002.

3. A substantially altered manure storage facility is a manure storage facility that is substantially altered after October 1, 2002.

(c) *Closure.*

1. 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.

2. The owner or operator may retain the facility for a longer period of time by demonstrating to the Soil and Water Conservation Department that all of the following conditions are met:

a. The facility is designed, constructed and maintained in accordance with 1.31(2)(b) of this ordinance.

b. The facility is designed to store manure 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 existing facilities.* Manure storage facilities in existence as of October 1, 2002, that 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 abandoned in accordance with this section.

(3) CLEAN WATER DIVERSIONS

(a) All livestock producers within a water quality management area shall comply with this section.

(b) 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 NR 151.015 (18) (a) is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well.

(4) NUTRIENT MANAGEMENT

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

(b) This performance standard does not apply to industrial waste and byproducts regulated under NR 214, municipal sludge regulated under NR 204, septage regulated under NR 113 or manure directly deposited by pasturing or grazing animals on fields dedicated to pasturing or grazing.

(c) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan as established in ATCP 50.04 (3).

1. 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.

2. 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:

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a. 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.

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

c. 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.

3. 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 NR 102.

(d) This section is in effect on January 1, 2005 for existing croplands under NR 151.09 (4) that are located within any of the following:

1. Watersheds containing outstanding or exceptional resource waters.
2. Watersheds containing impaired waters.
3. Source water protection areas defined in NR 243.03 (29).

(e) This section is in effect on January 1, 2008 for all other existing croplands under NR 151.09 (4).

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

(5) MANURE MANAGEMENT PROHIBITIONS.

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

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

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

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

(e) 1. 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.

2. This prohibition does not apply to properly designed, installed and maintained livestock or farm

equipment crossings.

1.32 Cost-sharing required. 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 ordinance unless cost-sharing is available from any source, to the owner or operator. 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 NR 151.09 (4) (d) or NR 151.095 (5) (d) when funding is provided under s. 281.65, Stats., and will be determined 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.

1.33 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. In this section, "cropland performance standards" means performance standards in ss. NR 151.02 and 151.07.

(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 completing enrollment 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 sub. (2) (b), shall comply with a cropland performance standard if all of the following have been done by the Soil and Water

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Conservation Department:

a. Except as provided in subd. 2. and 3., a determination is made that cost sharing has been made available in accordance with section 1.32 on or after October 1, 2002.

b. The landowner or operator has been notified in accordance with sub. (3) or (4).

2. A landowner or operator of existing cropland, defined under sub. (2) (b), 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 1.30 (4), 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 sub. (2) (b), shall comply with the cropland performance standards, regardless of whether cost sharing is available.

(2) SOIL AND WATER CONSERVATION DEPARTMENT DETERMINATIONS.

(a) *Scope of determinations.* If croplands are not in compliance with a cropland performance standard, the Soil and Water Conservation Department shall make determinations in accordance with the procedures and criteria in this subsection.

(b) *Cropland status.* The Soil and Water Conservation Department shall classify non-complying croplands to be either new or existing for purposes of administering this ordinance. In making the determination, the Soil and Water Conservation 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 or conservation reserve enhancement program administered by the United States Department of Agriculture.

3. A new cropland is one that does not meet the definition under subd. 1. or 2., including:

a. Land without a previous history of cropping that is converted to cropland October 1, 2002. "Without a previous history of cropping" means land where crops have not been grown and harvested for agricultural purposes in the last 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 sub. (1) (c), the Soil and Water Conservation 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 AND COMPLIANCE PERIODS FOR EXISTING CROPLANDS WHEN COST-SHARING IS REQUIRED.

(a) *Landowner notification.*

1. The Soil and Water Conservation Department shall notify a landowner or operator in writing of the determinations made under sub. (2) 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 sub. (2) (b).

c. The determination made in accordance with sub. (2) (c) 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 1.32 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

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performance standard.

g. An explanation of the possible consequences if the landowner 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.

(b) *Compliance period.*

1. 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 section 1.32.

2. The compliance period identified in the notice in par. (a) shall be determined by the Soil and Water Conservation Department as follows:

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 60 days to 3 years unless otherwise provided for in this subdivision.

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

d. The Soil and Water Conservation Department may authorize an extension up to 4 years on a case-by-case basis provided that the reasons for the extension are beyond the control of the landowner or operator. A compliance period may not be extended to exceed 4 years in total.

3. Once a landowner or operator achieves compliance with a cropland performance standard, compliance with the standard shall be maintained by the existing landowner or operator and heirs or subsequent owners, regardless of cost sharing.

(4) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR EXISTING CROPLANDS IN SITUATIONS WHEN NO ELIGIBLE COSTS ARE INVOLVED.

(a) *Landowner notification.*

1. The Soil and Water Conservation Department shall notify a non-complying landowner or operator of existing croplands of the determinations made under sub. (2).

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 sub. (2) (c).

b. The cropland status determination made in

accordance with sub. (2) (b).

c. A compliance period for achieving the cropland performance standard. The compliance period may not exceed the time limits in par. (b).

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) *Compliance period.*

1. The compliance period for existing croplands where best management practices and other corrective measures do not involve eligible costs 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 60 days to 2 years unless otherwise provided for in this subsection.

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

2. 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.

(c) *Combined notices.* The Soil and Water Conservation Department may meet multiple notification requirements under par. (a), sub. (3) and section 1.24 within any single notice issued to a landowner or operator.

1.34 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. In this section, "livestock performance standards and prohibitions" means the performance standards and prohibitions in ss. NR 151.05, 151.06 and 151.08.

(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

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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 sub. (2) (b), shall comply with a livestock performance standard or prohibition if all of the following have been done by the Soil and Water Conservation Department:

a. Except as provided in subd. 2., a determination is made that cost sharing has been made available in accordance with section 1.32 on or after October 1, 2002.

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

2. An owner or operator of an existing livestock facility, defined under sub. (2) (b), 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 sub. (2) (b), shall comply with the livestock performance standards and prohibitions, regardless of whether cost sharing is available.

(2) SOIL AND WATER CONSERVATION DEPARTMENT DETERMINATIONS.

(a) *Scope of determinations.* If a livestock facility is not in compliance with a livestock performance standard or prohibition, the Soil and Water Conservation Department shall make determinations in accordance with the procedures and criteria in this subsection.

(b) *Livestock facility status.* The Soil and Water Conservation Department shall classify a non-complying livestock facility on an operation to be either new or existing for purposes of administering this ordinance. In making the determination, the Soil and Water Conservation 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 subchapter 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 subd. 1., 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 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 subd. 3.

c. A livestock facility that is in existence and in compliance with a livestock performance standard or prohibition on or after October 1, 2002 of the livestock performance standard or prohibition 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 Soil and Water Conservation Department or a municipality 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 subd. 1. 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 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 sub. (1) (c), the Soil and Water Conservation 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.

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(3) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR EXISTING LIVESTOCK FACILITIES WHEN COST-SHARING IS REQUIRED.

(a) *Owner or operator notification.*

1. The Soil and Water Conservation Department shall notify an owner or operator in writing of the determinations made under sub. (2) 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 sub. (2) (b).

c. The determination made in accordance with sub. (2) (c) 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 1.32 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.

(b) *Compliance period.*

1. 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 1.32.

2. The compliance period identified in the notice in par. (a) shall be determined by the Soil and Water Conservation Department as follows:

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 60 days to 3 years unless otherwise provided for in this subdivision.

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

d. The Soil and Water Conservation Department may authorize an extension up to 4 years on a case-by-case basis provided that the reasons for the extension are beyond the control of the owner or operator of the livestock facility. A compliance period may not be extended to exceed 4 years in total.

3. Once an owner or operator achieves compliance with a livestock performance standard or prohibition, compliance with the standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators, regardless of cost sharing.

(4) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR EXISTING LIVESTOCK FACILITIES IN SITUATIONS WHEN NO ELIGIBLE COSTS ARE INVOLVED.

(a) *Owner or operator notification.*

1. The Soil and Water Conservation Department shall notify a non-complying owner or operator of an existing livestock facility of the determinations made under sub. (2).

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 sub. (2) (c).

b. The livestock operation status determination made in accordance with sub. (2) (b).

c. A compliance period for meeting the livestock performance standard or prohibition. The compliance period may not exceed the time limits in par. (b).

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) *Compliance period.*

1. The compliance period for existing livestock facilities where best management practices and other corrective measures do not involve eligible costs 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 60 days to 2 years unless otherwise provided for in this subdivision.

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

2. Once compliance with a livestock performance standard or prohibition is attained, compliance with the performance standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators.

(c) *Combined notices.* The Soil and Water Conservation Department may meet multiple notification requirements under par. (a), sub. (3) and section 1.23 within any single notice issued to the owner or operator.

1.35 Variances. NR 151.097

(1) **REQUESTS.** Requests for a variance to the performance standards shall be made in writing to the Soil and Water Conservation Department. Requests shall be reviewed by the Soil and Water Conservation Department prior to submittal to Department of Natural Resources and shall include:

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

(b) any permit applications required by this ordinance.

(c) any facility or operational plans as required by this ordinance.

(2) **ECONOMIC HARDSHIP.** A variance shall not be granted solely on the basis of economic hardship.

(3) **CONDITIONS.** The Soil and Water Conservation 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 subchapter.

(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 Soil and Water Conservation Department shall use the following process when administering a variance request:

(a) The landowner or operator shall submit the variance request to the Soil and Water Conservation

Department within 60 days of receiving the notice.

(b) The Soil and Water Conservation Department shall immediately forward any variance requests that it receives to the Department of Natural Resources. The Soil and Water Conservation Department shall send any recommendations concerning acceptance of the variance request to the Department of Natural Resources within 10 working days of receiving the variance request.

(c) The Department of Natural Resources shall make its determination based on the factors in NR 151.097(3).

(d) The Department of Natural Resources shall notify the landowner or operator and the Soil and Water Conservation Department of its determination. If the variance is granted, the Department of Natural Resources or Soil and Water Conservation Department shall send to the landowner or operator an amended notice.

(e) The period of time required to make a ruling on a variance request does not extend the compliance periods allowed under ss. NR 151.09 and 151.095.

Subchapter IV – Manure Storage Construction Permit

1.40 Permit Required. (1) No existing or proposed manure storage facility or parts thereof, may be located, installed, moved, substantially altered, or its use changed, including closure, without a Manure Storage Construction Permit as provided in this Ordinance, without compliance with the provisions of this Ordinance, and without compliance with USDA-NRCS Technical Guide as adopted as part of this Ordinance. The specific conditions under which a permit is required are shown in Table 2.

TABLE 2 Permits required for manure storage facilities	
New	All construction of manure storage facilities as of the effective date of this Ordinance.
Existing	All substantial alteration, repair, or replacement of existing manure storage facilities.
	All closure of idle, failing, or leaking manure storage facilities; including voluntary closures of existing systems.

(2) With the exception of the closure of manure storage facilities, those receiving Manure Storage

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Construction Permit issued under authority of this Ordinance shall be required to implement an approved nutrient management plan and verify the ability of the applicant to comply with USDA-NRCS Technical Standard for Nutrient Management (590). Manure storage facility closures are required to remove and properly dispose of all accumulated manures and contaminated soil in the manure storage facility in compliance with USDA-NRCS Technical Standard for Nutrient Management (590).

(3) The requirements of this Ordinance shall be in addition to any other Ordinance regulating animal manure and nutrient management. In the case of conflict, the most stringent provisions shall apply.

1.41 Exception to Permit Requirements.

(1) Emergency minor repairs to facilities such as fixing a broken pipe or equipment, leaking dykes or the removal of stoppages may be performed without a permit. Such work shall be reported to the Door County Soil and Water Conservation Department as soon as possible for a determination as to whether a permit will be required or additional alterations or repairs to the facility are required. The Door County Soil and Water Conservation Department shall render a decision within thirty (30) days of receiving the request.

(2) Permit applicants may request that the Door County Soil and Water Conservation Department waive specific manure storage construction plan components in Section 1.43 (1) if manure storage facility alterations, repairs or replacements render the construction plan components unnecessary. Although specific manure storage construction plan components may be waived, the constructed manure storage facility shall remain in compliance with section 1.31.

1.42 Fee. A non-refundable fee for a Manure Storage Construction Permit under this Ordinance shall be calculated as required in a fee schedule set by the Land Conservation Committee.

Permit application packets can be obtained from the Door County Soil and Water Conservation Department, 421 Nebraska Street, P.O. Box 670, Sturgeon Bay or by calling (920) 746-2214.

1.43 Construction Requirements.

(1) **MANURE STORAGE CONSTRUCTION PLAN REQUIREMENTS.** Each application for a Manure Storage Construction Permit under this section shall include a manure storage construction plan. The exception is any manure storage facility closure, which shall only follow the requirements of sub. (2). The plan shall meet or exceed the minimum established limits

and specific criteria within USDA-NRCS Technical Standard for Waste Storage Facility (313), and additional Technical Standards, including, but not limited to, Critical Area Planting (342), Fence (382), Roof Runoff Structure (558), Nutrient Management (590), and Manure Transfer (634) where they apply. The plan shall include:

(a) A general location map drawing of the manure storage facility which shall include:

1. The location of the manure storage facility in relation to buildings, homes, property lines, roads, wells, karst features, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand (1000) feet of the proposed facility.

2. The scale of the drawing and the north arrow.

3. The date the general location map was prepared.

(b) An engineering design drawing of the manure storage facility which shall include:

1. Specific design components that shall comply with USDA-NRCS Technical Standard for Waste Storage Facility (313), and additional applicable Technical Standards.

2. A recoverable benchmark(s) including elevation(s) expressed in feet and tenths.

3. The scale of the drawing and the north arrow.

The engineering design drawing shall be drawn to a scale no smaller than one (1) inch equals one forty (40) feet.

4. The date the engineering design drawing was prepared.

(c) A narrative of the general criteria required within USDA-NRCS Technical Standard for Waste Storage Facility (313), and additional applicable Technical Standards such as management assessment, site assessment and operation and maintenance procedures for installed practices.

(d) Any other additional information required by the Door County Soil and Water Conservation Department to protect water quality and determine compliance with this Ordinance.

(2) **MANURE STORAGE FACILITY CLOSURE PLAN REQUIREMENTS.** 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 storage facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters. Applications for a Manure Storage Construction Permit under this section shall include a manure storage closure plan to be submitted with the permit application. The plan shall include:

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(a) A general location map drawing of the manure storage facility which shall include:

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

(b) A description of the method and specifications in transferring manure into and from the manure storage facility to ensure proper closure of transfer systems.

(c) Provisions to remove or permanently plug the manure transfer system serving the manure storage facility.

(d) Provisions to remove and properly dispose of all accumulated manure in the manure facility in compliance with USDA-NRCS Standard for Nutrient Management (590).

(e) For all earthen waste impoundments, plan requirements and provisions shall be in compliance and consistent with USDA-NRCS Technical Standard for Closure of Waste Impoundments (360).

(f) *Safety provisions.* Manure storage facility closures and conversions shall implement safety measures to ensure the protection of the public from hazardous conditions.

(g) *Use conversion option.* The manure storage facility may be converted to other uses, where as it is demonstrated the conversion will not result in a degradation of ground and/or surface waters or be a threat to public health, safety or general welfare. A detailed description of intended alternative use must be described for all manure storage facility conversions for determination if conversions will be allowed.

(h) Any other additional information required by the Door County Soil and Water Conservation Department to protect water quality and determine compliance with this Ordinance.

1.44 Review of Application. (1) The Door County Soil and Water Department shall receive and review all permit applications. Prior to approval or disapproval of the permit application, the applicant shall submit a copy of the proposed plan(s) to the Door County Soil and Water Department for review if appropriate. The Door County Soil and Water Department shall determine if the proposed facility meets the required standards set forth in Section 4 of this Ordinance. Within thirty (30) days after receiving the completed application and fee, the Door County Soil and Water Department shall inform the applicant in writing whether the permit

application is approved or disapproved.

(2) If additional information is required, the Door County Soil and Water 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 Door County Soil and Water Department requires comment from an outside agency, the Door County Soil and Water Department has thirty (30) days from receipt of the comments from the referral agency.

(3) The Door County Soil and Water Department personnel may conduct a site inspection prior to approving or disapproving the application. If the Door County Soil and Water 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 applicant information or the 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.

1.45 Permit Conditions. All permits issued under this Ordinance shall be issued subject to the following conditions and requirements:

(1) Design, construction, and management shall be carried out in accordance with the manure storage facility or manure storage closure plan and applicable standards specified in Subchapter III of this Ordinance.

(2) The permittee shall give two (2) working days notice to the Door County Soil and Water Conservation Department before starting any construction activity authorized by the permit.

(3) Approval in writing must be obtained from the Door County Soil and Water Conservation Department prior to any modifications to the approved manure storage facility or closure plan.

(4) The permittee and, if applicable, the contractor, shall certify in writing by signing the certification sheet that the facility was installed as planned and designed. A copy of the signed certification sheet shall be given to the Door County Soil and Water Conservation Department within thirty (30) days of completion of installation. The Door County Soil and Water Conservation Department personnel may conduct site inspection during and following construction to determine that the facility was installed as planned and designed.

(5) Activities authorized by permit must be completed within one (1) year from the date of issuance after which such permit shall be void.

1.46 Permit Revocation. The Door County Soil and Water Conservation Department may revoke any permit issued under this Ordinance if the holder of the permit

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has misrepresented any material fact in the permit application, manure storage facility or closure plans, or if the holder of the permit violates any of the conditions of the permit.

Subchapter V – Violations and Appeals

1.50 Violations.

(1) PENALTIES.

(a) Any person violating this ordinance shall:

1. Forfeit not less than \$10.00 nor more than \$500.00 for each offense; and;
2. Institute those remedial measures, summarily and/or within a defined time period, necessary to correct any violation.
3. Be enjoined or restrained from further violation.
4. Pay the fees, costs and disbursements incurred by County associated with prosecution of the action.

(b) Each day a violation exists or continues constitutes a separate offense.

1.51 Appeals.

(1) GENERAL PROVISIONS.

(a) *What can be appealed.*

1. Final compliance determination made in writing by Soil and Water Conservation Department (SWCD).
2. Final permit application decisions made in writing by SWCD.
3. Final permit modification or denial decision made in writing by SWCD.
4. Final permit suspension or revocation decisions made in writing by SWCD.

(b) *Who may appeal.*

1. Person aggrieved by the decision.
2. A person is aggrieved by the decision if such adversely impacts the substantial interests of that person.

(c) *How an appeal is taken.*

1. Payment of fee for filing a Notice of Appeal.
2. Filing a Notice of Appeal with the Land Conservation Department (LCC), with a copy to SWCD.
3. Notice must identify appellant, specify the decision sought to be reviewed, and designate the factual and legal bases for the appeal.
4. Fee must be paid and Notice of Appeal filed within thirty (30) days from issuance of the decision, or an appeal is barred.

(d) *Stay.*

1. The appeal, ordinarily, stays all proceedings in furtherance of the decision appealed from.
2. The appeal does not stay all proceedings if,

after the appeal is filed, SWCD certifies to the LCC that a stay would pose an imminent threat to the environment, public health or public safety.

(e) *Standard of review.*

1. Certiorari (i.e. an inquiry, based on the record, into whether the SWCD could have reasonably made the decision that it did).

2. SWCD's decisions shall be accorded due deference.

3. The standards set forth in this ordinance are controlling.

(f) *Burden of proof.*

1. The burden of proof rests with the appellant.

2. The appellant must submit evidence sufficient to support granting the appeal.

(g) *Hearings.*

1. LCC shall fix the time for and location of hearing an appeal. The hearing shall commence within forty-five (45) days of the fee being paid and Notice of Appeal being filed.

2. Process.

a. Opening Remarks by Appellant and then by SWCD. These opening remarks are intended to acquaint the LCC with the case and set out, in a general way, each side's case.

b. Appellant presents real and testimonial evidence first.

c. SWCD presents real and testimonial evidence second.

d. Appellant may offer rebuttal real and testimonial evidence.

e. Closing remarks by appellant and then by SWCD. These closing remarks are intended to be a brief summation of each side's position on the contested issues and the reasons each is entitled to prevail.

f. Appellant and SWCD may cross-examine witnesses of the other side.

g. LCC may swear witnesses.

h. LCC will mark and preserve exhibits.

i. LCC may cause the proceedings to be taken by a stenographer or by a recording device. The expense thereof to be paid by the parties to the proceeding. Any record of hearing will be retained by LCC.

j. The rules of evidence should be adhered to, but do not strictly apply.

k. The hearing shall be informal in nature.

(h) *Final Determination/Judicial Review.*

1. LCC may affirm or reverse in whole or part or it may modify the decision on review.

2. Within forty-five (45) days of completion of the hearing LCC shall mail or deliver to each side its written determination stating the reasons therefore. This determination shall be a final determination.

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3. Any party to the proceeding may seek judicial review thereof pursuant to and in accordance with Section 68.13 Wisconsin Statutes.

(i) *Assessment/Refund of Costs and Fees.*

1. If the Appellant prevails and at the LCC's sole discretion, the filing fee may be refunded in whole or part.

2. Otherwise, each party must pay its own costs and fees.

(j) *Screening mechanism.*

1. This mechanism is intended to protect the LCC's impartiality, to maintain LCC's appearance of fairness, and to allow LCC to hear and adjudicate appeals hereunder.

2. Because of the appearance of impartiality and actual bias are of equal importance, LCC members shall refrain from:

a. Having any direct or personal connection with a pending appeal.

b. Outside of the hearing, have discussions with or receive evidence from SWCD staff, the landowner or land user, or any other person with respect to the substance of a pending appeal. If an LCC member's impartiality can reasonably be questioned, the LCC member will have to recuse oneself from consideration of the appeal.

(Ordinance #2004-15; 08/24/04)