

**TOWN OF DECATUR
CHAPTER 25
MANURE APPLICATION AND TRANSPORTATION ORDINANCE**

RECITALS

- A. The Town of Decatur recognizes the need to balance the right to use certain property for agricultural purposes and the need to protect the general public from groundwater contamination and offensive, obnoxious and unhealthful odors;
- B. According to studies including, without limitation, a pamphlet entitled *Application of Liquid Animal Manures Using Center Pivot Irrigation Systems* published by the University of Nebraska – Lincoln Extension, the application of manure and manure by-products by Center Pivot Manure Distribution Systems offers a large potential for significant odor release during short periods of time;
- C. A Memorandum prepared by Robert Thiboldeaux, PhD., a toxicologist for the Wisconsin Division of Public Health, and dated February 17, 2011, raises the potential for substantial health concerns resulting from the land application of liquid manure and manure by-products using center pivot sprinkler technology;
- D. The Town Board believes that the regulation of the use and application of manure and manure by-products is necessary to promote the public health, safety and welfare of citizens of the Town of Decatur as well as the general private, commercial and recreational interest in clean, uncontaminated surface and ground water and wishes to take action to that effect.
- E. The Town Board believes that the regulation of the transport of manure and manure by-products is necessary to minimize the potential for spills and leakage from vehicles, pipes or hoses transporting the same on, over, under or across town roads and rights-of-way, to minimize the potential for damage to Town roads and Town rights-of-way caused by the same, and to protect the health, safety and general welfare of the public.

NOW, THEREFORE, the Town Board of the Town of Decatur, Green County, Wisconsin, creates Chapter 30 of the Town Ordinances entitled “Animal Manure Application and Transportation Ordinance” as follows:

Section I. Authority.

This Ordinance is adopted pursuant to the powers granted to the Town under the Wisconsin Constitution and the Wisconsin Statutes, including, but not limited to, Wis. Stat. sections 60.22, 61.34, 82.03, and 86.07 (2), for the management and control of highways, and for the promotion and for the health, safety, welfare and convenience of the public.

Section II. Purpose and Intent.

The purpose of this Ordinance is to promote the health, safety, welfare and convenience of the public and, in particular, to promote the general private, commercial and recreational interest in clean, uncontaminated surface and ground water, to minimize the substantial odor related to the transportation and application of animal manure, and to protect the condition of Town roads and rights-of-way. It is the general intent of this Ordinance to regulate the application and transport of animal manure and by-products of the same, including wastewater from manure lagoons, within the Town.

Section III. Abrogation and Greater Restrictions.

It is not intended by this Ordinance to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to law including, but not limited to, the Green County Animal Storage Ordinance, Chapter 4 of Title 9 of the Green County Code. However, when this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

Section IV. Interpretation.

In its interpretation and application, the provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to be a limitation or repeal of any other power granted by the Wisconsin Statutes except as expressly set forth herein.

Section V. Definitions.

ANIMAL MANURE: Excrement from livestock and poultry and the byproducts, liquid and solid, from such excrement.

CENTER PIVOT MANURE DISTRIBUTION SYSTEM: A system for spreading lagoon wastewater or other liquid by-products of manure which involves spraying the wastewater or by-products in liquid form through nozzles attached to a pivoting arm located in a farm field.

PERSON: Any individual, corporation, partnership, limited liability company, joint venture or organization of the same.

Section VI. Prohibition of Use of Center Pivot Manure Distribution Systems.

A. Prohibition

The use of all center pivot manure distribution systems for the spreading of animal manure and lagoon wastewater and other liquid by-products of animal manure within the Town is hereby prohibited.

B. Enforcement

Any person who operates or causes the operation of a Center Pivot Manure Distribution System for the spreading of animal manure, lagoon wastewater or other liquid by-products of animal manure in the Town shall be deemed in violation of this Ordinance and the Town Board may take action to enjoin such violation and/or to impose a fine by initiating an action in the courts of this state. Any person violating this section shall, upon conviction of any such violation, forfeit not less than \$1000 nor more than \$5000 for each day the violation continues, together with the costs of prosecution, and, in default of payment, shall be imprisoned in the county jail until such forfeiture is paid, but not to exceed 90 (ninety) days.

Section VII. Application of Animal Manure and By-products in Liquid Form.

A. Time Requirement for Incorporation

Wastewater from animal manure lagoons and animal manure in liquid form applied to lands in the Town must be incorporated into the ground by disc or knifing within 24 hours of application.

B. Enforcement

Any person who fails to comply with this section shall be deemed in violation of this Ordinance and the Town Board may take action to enjoin such violation and/or to impose a fine by initiating an action in the courts of this state. Any person who violates this section shall, upon conviction of any such violation, forfeit not less than \$1000 nor more than \$5000 for each day or portion of a day that the violation continues beyond the 24 hours following application as described in the preceding subsection, together with the costs of prosecution, and, in default of payment, shall be imprisoned in the county jail until such forfeiture is paid, but not to exceed 90 (ninety) days.

Section VIII. Transport of Animal Manure and By-products by Pipeline

A. Hoses and Pipes for Transport of Animal Waste

Except as expressly allowed in this Section VIII, no hoses or pipes used or intended for the transport of animal manure or wastewater from manure lagoons shall be located on, over, under, across or within a Town road or right-of-way. There shall be no discharge of animal manure or wastewater from animal manure lagoons onto or within a Town right-of-way except as contained within the hoses or pipes.

B. Temporary Surface Hoses and Pipes

1) No sooner than three days after the receipt of a written permit application in a form required by the Town Board, and an application fee for the same determined by the Town Board, the Town Board may permit the installation of surface hoses or pipes used or intended for the transport of animal manure or lagoon wastewater from animal manure lagoons may be placed within a Town right-of-way for a period of time not to exceed two continuous two-week periods annually, but shall not be placed in the same location for any longer or additional periods of time except as expressly permitted by the Town Board. In no case shall any surface hose or pipe be placed or located across, on, or over the travelled portion of a Town road.

2) If any surface hose or pipe discharges any animal manure, wastewater from animal manure lagoons or other manure by-products within a Town right-of-way, any person responsible for or participating in the installation, operation or removal of the hoses or pipes or the discharge from the same, as well as the property owners of the property from which the discharged material came and the property owners the property to which the material was directed, shall be responsible for the immediate clean-up of such discharge and for any damages caused by such discharge.

3) If the discharge is not cleaned up promptly, the Town Board may, in its discretion, cause the discharge to be cleaned up and recover the expense of the clean-up from any person responsible for or participating in the installation, operation or removal of the hoses or pipes or the discharge from the same, as well as the property owners of the property from which the discharged material came and the property to which the material was directed.

C. License for Underground Pipeline

1) No sooner than three days after the receipt of a written license application in a form required by the Town Board, and an application fee for the same determined by the Town Board, the Town Board may permit the installation of an underground pipeline used or intended for the transport of animal manure, wastewater from animal manure lagoons, or other manure by-products, under a Town road or a Town right-of-way, subject to the following standards:

a. The design of the pipeline shall be in accordance with sound engineering principles considering the properties of the material to be transported, management operations, exposure and other relevant factors, and, in any case, shall be designed and constructed according to the Waste Transfer Standards incorporated as Code 634 by the Natural Resources Conservation Service of the United States Department of Agriculture as incorporated in regulations adopted by the Wisconsin Department of Agriculture, Trade and Consumer Protection for the regulation of waste storage facilities under Section ATCP 51.18 of the Wisconsin Administrative Code. The Town may specify the location and depth of any such pipes and the type of pipe material used and may require any such pipes be installed in private culverts at the expense of the individual and in accordance with sound engineering design, as well as County and State laws or regulations.

b. The pipeline shall be designed to convey the required flow without plugging or backups.

c. Clean-out access shall be provided for within 50 feet of any location where the pipeline is located under a Town road or Town right-of-way and the pipeline shall be inspected and cleaned by the pipeline owner or operator regularly when in use.

d. The applicant shall be liable for any damages arising in any way from the installation, removal or operation of the pipeline.

e. As a condition of receiving a permit, the applicant shall post a bond in a reasonable amount to be determined by the Town for the purpose of securing payment for any potential clean-up, damages or removal under the terms of this Ordinance, and for any damage to road surfaces or sub-surfaces.

f. The Town Board may impose such other conditions as may be necessary for the health, safety and general welfare of the public.

2) In addition to the license for installation under subsection 1, an underground pipeline of the type permitted under this Section shall not be used to transport material during any calendar year unless the operator first obtains an annual license for such use from the Town Board. An application for renewal must be received and approved by the Town Board prior to the commencement of use in any calendar year.

a. There shall be a presumption that the license will be renewed unless the Board determines: (1) that there have been violations of this Ordinance or County, State or Federal law within the past year, (2) that there has been a substantial change in circumstances relative to the Town right-of-way, including but not limited to, repair or improvement of the road or development along the road, or (3) that there are additional or more significant health hazards posed by the pipeline than were known or understood by the Board before the initial license was granted or before a prior renewal of the license.

b. A license application or renewal may be denied or additional conditions placed on a renewal for any of the reasons specified in this Section VIII or on any other reasonable grounds deemed by the Town Board to pose a threat to the health, safety, welfare or convenience of the public.

c. A license may be revoked at any time by the Town Board for violations of Town, County, State or Federal law.

3) The license application fee for a new pipeline and the yearly license fee for operation of such a pipeline shall be in an amount set by the Town Board by resolution and determined in relation to the Town's cost incurred in administering this section, and shall be paid to the Town Treasurer prior to the issuance or renewal of any license.

4) A separate license for installation shall be required for the expansion of an existing licensed underground pipeline.

D. Removal

When deemed necessary by the Town Board for purposes of public health or safety, or in connection with highway improvement or repair, the owner or operator of the pipeline may be required to remove at any time, at the owner or operator's own expense and without any cost to the Town, any pipeline located on, over, under, across or within a Town road or Town right-of-way.

E. Enforcement and Penalties

Any person who fails to comply with this section by using temporary hoses and pipes beyond the time permitted under this section, or by installing and leaving in place a pipeline without a license, or by using an underground pipeline without first obtaining an annual license for its use, or by failing to remove a pipeline as required under this section, shall be deemed in violation of this Ordinance and the Town Board may take action to enjoin such violation and/or to impose a fine by initiating an action in the courts of this state. Any person who violates this section shall, upon conviction of any such violation, forfeit not less than \$1000 nor more than \$5000 for each day or portion that a violation continues, together with the costs of prosecution and any cost of abatement incurred by the Town, and, in default of payment, shall be imprisoned in the county jail until such forfeiture is paid, but not to exceed 90 (ninety) days.

Section IX. Transport of Animal Manure by Vehicles.

To the extent permitted under Wis. Stat. §§ 348.17 and 349.16, the Town Board or any officer in charge of maintenance may impose special or seasonal weight limitations upon the transportation of animal manure on Town roads as necessary to protect said roads from damage.

Section X. Severability

If any section, clause, provision or other portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance or the chapter or article of which it is a part shall not be affected thereby. If any application of this Ordinance to a particular structure or parcel of land is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not be applicable to any other structure or parcel of land not specifically included in the court's judgment except as expressly ordered by the court.

Section XI. Effective Date

This Ordinance shall take effect and be in force from and after the day after passage and publication as required by law.

Dated this 17th day of January, 2017

Allen Schneider, Town Chair

Ron Schwartzlow, 1st Supervisor

Robert A. Gadow, 2nd Supervisor

Ann L. Schwartz, Clerk/Treasurer