

ORDINANCE

Livestock Operations

THE TOWN BOARD OF THE TOWN OF CLEVELAND, CHIPPEWA COUNTY, DOES HEREBY ORDAIN AS FOLLOWS:

The following ordinance, Title 4, Chapter 7, is hereby adopted by the Town Board of the Town of Cleveland to be codified in the Town Code of Ordinances.

Chapter 7

Livestock Operations Ordinance

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4-7-1 Authority

This Ordinance is adopted pursuant to the authority granted in Wis. Stat. §§ 60.10, 60.22, 61.34, 92.11, and 92.15.

4-7-2 Findings of Fact and Declaration of Policy.

The Town of Cleveland makes the following findings and declarations in support of this Ordinance:

- A. The Town recognizes the importance of protecting groundwater quality, and that proper land use and management, including proper management of nutrients from livestock

operations, is essential to the protection of groundwater quality; public health, safety and welfare; and the property tax base of the Town.

B. Land application of animal wastes can significantly impact groundwater quality by increasing the level of nitrates and increasing the risk of pathogens and other contaminants, particularly in environmentally vulnerable areas.

C. Nitrates and other contaminants present significant environmental and public health risks. Scientific research shows that elevated concentrations of nitrate in drinking water have been associated with the risk of methemoglobinemia, or "blue baby syndrome," in humans, among other health risks. Contaminated groundwater directly threatens the health of Town residents, who rely on private wells for their water supply.

4-7-3 Purpose.

The purpose of this Ordinance is as follows:

A. To provide for the administration and enforcement of standards necessary to preserve and protect the Town's groundwater resources.

B. To promote the protection of public health, safety, and general welfare of the citizens of the Town by protecting and preventing contamination of surface water and groundwater in the Town by enforcing state regulations for livestock operations and manure management and state water quality standards.

4-7-4 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 the Town of Cleveland, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

4-7-5 Severability.

A. Should any section, clause, provision, or portion of this Ordinance be adjudged to be unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, the remainder of the Ordinance shall remain in full force and effect.

B. If any application of this Ordinance to a particular parcel of land is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.

4-7-6 Effective Date.

This Ordinance shall become effective the day after publication or posting as provided by Wis. Stat. § 60.80.

4-7-7 Definitions.

Unless specifically defined herein, all terms in this Ordinance have the meaning provided for in Wis. Stat. chs. 92 and 281, and Wis. Admin. Code chs. ATCP 50 and 51 and NR 151.

- A. "Manure" means excreta from livestock and includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.
- B. "Person" means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other legal organization or entity.
- C. "Point of standards application" has the meaning set forth in Wis. Stat. § 160.01(5) and Wis. Admin. Code § NR 140.22.
- D. "Town" means the Town of Cleveland, Chippewa County, Wisconsin.

4-7-8 Town Powers.

The Town may:

- A. Consult with the County public health department and other appropriate resources to obtain accurate public health data and expertise necessary to the administration of this Ordinance.
- B. Respond to elevated groundwater contaminant levels as provided in sec. 3.4.
- C. Refer a violation of this ordinance to the Town's legal counsel for legal action.
- D. Issue a citation for a violation of this ordinance.
- E. Use any other lawful means to enforce this Ordinance, or take any emergency or interim action necessary to prevent or mitigate imminent harm to public health or safety, or other actions authorized by law.
- F. Hear and decide appeals, through the Town Board under sec. 4.3, where it is alleged there is an error in a Town decision.

4-7-9 Other Lawful Means of Enforcement.

Nothing in this section may be construed to prevent the Town from using any other lawful means to enforce this Ordinance.

4-7-10 Administrative Duties.

In the administration and enforcement of this Ordinance, the Town shall:

- A. Investigate complaints relating to compliance with this Ordinance.
- B. Keep an accurate record of all inspections made, and other official actions.
- C. Perform other duties as specified in this Ordinance.

4-7-11 Inspection Authority.

The Town may make any inspections necessary, at its own expense, under this Ordinance to protect public health and safety. Where the Town does not have permission to enter lands subject to this Ordinance for inspection purposes, entry shall be according to Wis. Stat. § 66.0119. Refusal to grant permission to enter lands affected by this Ordinance for inspection purposes pursuant to the requirements of s. 66.0119 shall be grounds for initiating an enforcement action.

4-7-12 LAND APPLICATION OF MANURE.

- A. NRCS 590. All land application of manure shall conform to the United States Department of Agriculture Natural Resources Conservation Service (NRCS) Standard 590.
- B. Nutrient Management Plans. Where the land application of manure is a component of a nutrient management plan required under Wis. Adm. Code §§ NR 151.07 or NR 243.14 or other source of law, the land application shall conform to the nutrient management plan.
- C. WPDES Permits. Where the land application of manure is regulated by a WPDES permit, the land application shall comply with all terms of the permit, including any additional restrictions DNR imposes pursuant to Wis. Adm. Code § NR 243.14(10) or other source of law.

4-7-13 Procedures For Groundwater Standards Exceedances From Manure Application.

- A. The Town may require a person engaged in the land application of manure to file a report, at that person's expense, with the Town, by a deadline set by the Town, under either of the following circumstances:
 - 1. A groundwater contaminant exceeds a water quality Preventive Action Limit established by Wis. Adm. Code § NR 140.10, Table 1, at a point of standards application and there is a reasonable basis to conclude that manure application up-gradient from the contamination has contributed to the contamination; or
 - 2. A groundwater contaminant exceeds a water quality Enforcement Standard established by Wis. Adm. Code § NR 140.10, Table 1, at a point of standards

application; and there is a reasonable basis to conclude that manure application up-gradient from the contamination has contributed to the contamination.

B. The report required under Section 3.4(1) shall include, at a minimum, the following along with any other information specified by the Town:

1. If the person responsible for the manure application disputes that the manure application has caused or contributed to the increase in the contaminant level, the factual basis for this position;
2. All testing results and other information regarding the level of the contaminant on the property where the manure application occurs as well as any off-site, down-gradient areas;
3. Proposed steps to investigate the causes and extent of the contamination;
4. Proposed steps to curtail the increase in the contaminant level, and to avoid exceedances of the enforcement standard for the pollutant;
5. Proposed steps to remediate the contamination.

C. In addition to or in lieu of requiring a report, when either of the circumstances specified in 3.4 (1) is present, the Town may also do one or more of the following:

1. Take no action;
2. Require the installation and sampling of groundwater monitoring wells;
3. Require a change in an existing groundwater monitoring program, including increased monitoring;
4. Require an investigation of the extent of groundwater contamination;
5. Require a revision of the operational procedures associated with the land application;
6. Require an alternate method of manure application or disposal;
7. Require remedial action to renovate or restore groundwater quality; or
8. Require remedial action to prevent or minimize the further discharge or release of the contaminant to groundwater.

D. A person engaged in land application of manure shall provide copies to the Town of all groundwater testing results that the person provides to the DNR or other governmental entity.

E. A person engaged in land application of manure shall notify the Town within two business days when they become aware of an exceedance of a groundwater enforcement standard under Wis. Adm. Code § NR 140.10, Table 1.

4-7-14 Violations.

A. It is unlawful for any person to violate Sections 3.1, 3.2 or 3.3 of this Ordinance, or to fail to submit a report or take a required action under Section 3.4.

B. It is unlawful for any person to knowingly provide false information, make a false statement, or fail to provide or misrepresent any material fact to a Town agent, board, commission, department, employee, officer, or official acting in an official capacity under this Ordinance.

C. It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or otherwise resist an order issued pursuant to this Ordinance.

D. A separate offense is deemed committed on each day that a violation occurs or continues.

4-7-15 Penalties.

A. This Ordinance may be enforced through civil forfeiture or through issuance of an injunction by the circuit court in an action initiated by the Town.

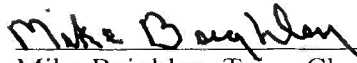
B. Each day of violation constitutes a separate offense. A person will, upon conviction for a violation of this Ordinance, forfeit not less than \$1000 and no more than \$5000 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

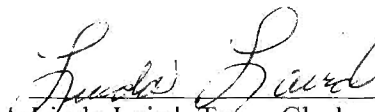
C. In the event an offense is not abated as ordered, the Town may take such action as is necessary to abate the offense and the cost of such abatement will become a lien upon the person's property and may be collected in the same manner as other taxes.

4-7-16 Appeals.

Any person aggrieved by a decision of the Town may seek review before the Town Board by serving a petition for review on the Town Clerk within 30 days of the decision. The Town Board shall use the rules, procedures, duties and powers authorized by Wisconsin Statutes in hearing and deciding appeals. Appeals to the Town Board may be taken by any aggrieved person or by an officer, department, board or bureau of the Town affected by any decision of the administering authority.

Adopted this 13th day of January, 2020, by the Town of Cleveland Board of Supervisors.


Mike Beighley, Town Chair


Linda Laird, Town Clerk

This ordinance is effective the day after publication. Published on January 22, 2020.