GENERAL CODE OF ORDINANCES
FOR MARATHON COUNTY
CHAPTER 11.02
ANIMAL WASTE STORAGE AND NUTRIENT MANAGEMENT CODE

Adopted November 2008
Effective January 2009
Amended April 2014
TABLE OF CONTENTS

(1) INTRODUCTION ......................................................................................................................... 1
   (a) Authority ................................................................................................................................. 1
   (b) Title ........................................................................................................................................... 1
   (c) Findings and Declaration of Policy ........................................................................................ 1
   (d) Purpose ..................................................................................................................................... 1
   (e) Applicability .......................................................................................................................... 1
   (f) Interpretation .......................................................................................................................... 1
   (g) Compliance ............................................................................................................................ 1
   (h) Severability and Non-liability .............................................................................................. 1

(2) DEFINITIONS ............................................................................................................................ 2-3

(3) ACTIVITIES SUBJECT TO REGULATION .................................................................................. 4
   (a) General Requirement ............................................................................................................. 4
   (b) Failing and Leaking ................................................................................................................ 4
   (c) Idle Waste Storage Facilities .............................................................................................. 4
   (d) Safety Devices ...................................................................................................................... 4
   (e) Nutrient Management Plans ............................................................................................... 4
   (f) Compliance with Permit Requirements .............................................................................. 4

(4) STANDARDS. The Technical Guide of the United States Department of Agriculture (U.S.D.A.) ........ 5

(5) APPLICATION FOR AND ISSUANCE OF PERMITS .................................................................. 5
   (a) Permit Required ...................................................................................................................... 5
   (b) Exception to Permit Requirement .......................................................................................... 5
   (c) Fees ......................................................................................................................................... 5
   (d) Waste Storage Facility ........................................................................................................... 5
   (e) Review of Application ............................................................................................................ 5
   (f) Permit Conditions .................................................................................................................... 6
   (g) Permit Revocation .................................................................................................................... 6

(6) ADMINISTRATION ...................................................................................................................... 7
   (a) Delegation of Authority ......................................................................................................... 7
   (b) Administrative Duties ............................................................................................................. 7
   (c) Recording on the Deed .......................................................................................................... 7
   (d) Inspection and Monitoring Authority .................................................................................... 7
   (e) Enforcement Authority ........................................................................................................... 7

(7) VIOLATIONS ................................................................................................................................ 8
   (a) Penalty ..................................................................................................................................... 8
   (b) Enforcement of Injunction ..................................................................................................... 8

(8) APPEALS .................................................................................................................................... 8
The County Board of Supervisors of the County of Marathon does ordain as follows:
Section 11.02 of the General Code relating to Animal Waste is repealed and recreated as follows:

**ANIMAL WASTE STORAGE AND NUTRIENT MANAGEMENT.**
(Cr. #256)

(1) **INTRODUCTION.**
(a) **Authority.** This section is adopted under authority granted by §59.02, §59.03, §59.69, §59.70, §92.06, §92.07, §92.09, §92.11, §92.15 and §92.16.

(b) **Title.** This section shall be known, referred to and cited as the, "County Animal Waste Storage and Nutrient Management Ordinance."

(c) **Findings and Declaration of Policy.**
1. The County Board finds that storage of animal waste in storage facilities and the utilization of livestock sourced nutrients not meeting state agricultural performance standards may cause pollution of the surface and ground waters of the County, and may result in actual or potential harm to the health of County residents and transients; terrestrial and aquatic plant and animal life; surface and groundwater quality, and to the property tax base of the County.

2. The County Board finds that the technical standards developed by the United States Department of Agriculture (U.S.D.A.) Natural Resources Conservation Service and adopted by the Land Conservation and Zoning Committee provide effective, practical and environmentally safe methods of storing animal waste and utilizing nutrients.

(d) **Purpose.** The purpose of this ordinance is to regulate the location, construction, installation, alteration, closure, and application of animal waste from all facilities covered by this ordinance so as to protect the health and safety of residents and transients; prevent the degradation of surface and groundwater thereby preventing the spread of disease and promoting the prosperity and general welfare of the citizens of Marathon County. It is also intended to protect the groundwater and surface water resources of Marathon County.

(e) **Applicability.** This section, to be effective upon adoption by the County Board, shall apply to all areas of Marathon County including municipalities that have agreed to allow the Department to enforce this ordinance in their jurisdiction (see last page for needed action).

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

(g) **Compliance.** Waste storage facilities shall be constructed, maintained, operated, and closed in compliance with all applicable Federal, State, and local laws, codes and ordinances. It is the owner's/operator's responsibility to obtain any required permits and/or approvals from other governmental units.

(h) **Severability and Non-liability.** Should any section, clause, provision or portion of this Ordinance be adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in effect.
(2) DEFINITIONS

(a) **Animal Waste.** Includes agricultural manure (including bedding materials), manure processing derivatives, leachate, milk house wastewater and nutrient dense runoff from livestock operations.

(b) **Applicant.** Any person who applies for a permit under this section.

(c) **Committee.** Land Conservation and Zoning Committee (LC&ZC). A committee made up of members of the Marathon County Board of Supervisors and others who, by authority from Chap. 92, Wisconsin Statutes, determine policy and give direction for soil and water conservation activities. The Land Conservation and Zoning Committee also provides direction for the Department. The Land Conservation and Zoning Committee shall be the decision making board for purposes of implementation of this ordinance.

(d) **Direct Runoff.** Runoff of stored manure, including manure leachate, that discharges a significant amount of pollutants to surface waters of the state or to a direct conduit of groundwater.

(e) **Director.** The Director of the Marathon County Conservation, Planning and Zoning Department or their designee.

(f) **Department.** Marathon County Conservation, Planning and Zoning (CPZ) Department (responsible for soil and water conservation activities in Marathon County).

(g) **Failing and Leaking Waste Storage Facilities.** Any waste storage facilities that fail to contain any component of the animal waste that is intended to contain.

(h) **Idle Storage Facility.** A waste storage facility which is:
   1. No longer being used for its intended purpose and no longer having any additional animal waste and manure placed into it.
   2. Has not had any animal waste added or removed for a period of two (2) years.
   3. Will, by all the evidence available, not again be used to store animal waste and manure by an active livestock operation.

(i) **Manure Transfer System.** A combination of hoppers, reception structures, tanks, pumps, pipes, channels, or conduits used to transfer animal waste and other fluids and residues associated with animal waste to a waste storage facility, a waste treatment strip, a loading area, cropland or satellite storage facility using permanent pipeline and conduits.

(j) **Natural Resources Conservation Service (NRCS).** An agency of the United States Department of Agriculture (USDA) which, for purposes of this Section, provides the Marathon County Land Conservation and Zoning Committee and the Department with technical assistance and information on the design criteria, size, shape, engineering strength and other necessary technical data for the proper and safe installation of a storage facility.

(k) **Nutrient Management Plan.** A document that is annually updated outlining the requirements for managing the amount, form, placement, and timing of applications of all sources of plant nutrients to cropland and pastures as identified in ATCP 50.04(3).

(l) **Pasture.** Land on which livestock graze or otherwise seek feed in a manner that maintains the vegetative cover over the grazing area. Pasture may include limited areas of bare soil such as cattle lands and supplemental feeding areas provided the bare soil areas are not significant sources of pollution to waters of the state.
(m) Permit. The signed, written statement issued by the Director under this section that is required before an applicant can construct, install, move, reconstruct, extend, enlarge, convert, substantially alter or close a waste storage facility or its manure transfer system.

(n) Permittee. Any person to whom a permit is issued under this section.

(o) Person. Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, County or State agency within Wisconsin, the federal government or any combination thereof.

(p) Safety Devices, Storage Facility. Devices which are designed to protect humans and livestock from the hazards associated with a waste storage facility. Safety devices shall be designed and installed as required by Technical Standard 313.

(q) Substantially altered. A change initiated by an owner or operator that results in a relocation of a waste storage facility or structure, or significant changes to all size, depth or configuration of a facility of structure including:
   1. Replacement of a liner in a facility or structure;
   2. An increase in the volumetric capacity or area of a facility or structure greater than 20%;
   3. A change in a facility of structure related to a change in livestock management from one species of livestock to another such as cattle to poultry.

(r) Technical Guide. The document provided by the Natural Resources Conservation Service which contains technical data, including the standards referenced within this ordinance to properly and safely locate, construct, install, alter, design, operate, maintain and close a waste storage facility and/or the associated manure transfer system.

(q) Technical Standard 313. A section of the Technical Guide that covers the proper location, construction, installation, alteration, design, operation and maintenance of a waste storage facility made by construction of an embankment and/or excavating a pit or dugout, or by fabricating a structure.

(r) Technical Standard 634. A section of the Technical Guide that covers installation of components such as conduits, pumps, valves, and other structures or devices to transfer animal waste from buildings and yards to a storage and/or loading area for final disposal and establishes the minimum acceptable requirements for design, construction, and operation of waste transfer system components. It includes mechanical pumping or elevation differential (gravity head) systems.

(s) Technical Standard 360. A section within the Technical Guide that covers the closure of waste storage facilities that are no longer used for their intended purpose to a sanitary and environmentally safe condition.

(t) Technical Standard 590. A section of the Technical Guide that covers managing the amount, form, placement and timing of plant nutrients and establishes the minimum acceptable requirements for the application of plant nutrients associated with organic wastes (manure and organic byproducts), commercial fertilizer, legume crops and crop residues.

(u) Waste Storage Facility. Any site or area specifically designed and/or constructed for the purpose of storage or holding of animal waste and manure. This includes any storage facility previously designed and installed meeting the NRCS Technical Guidelines current at the time of installation, any commercial-prefabricated storage facility, concreted slabs, earthen dugouts, dikes or any other area intended for the storage of animal manure. For the purposes of this Section, a storage area intended to hold an accumulation of manure within an area excavated, or diked for the purpose of storing the manure, no matter how small that accumulation may be or how long the manure is to be stored there, shall be considered a storage facility.
(3) ACTIVITIES SUBJECT TO REGULATION

(a) General Requirement. Any person who locates, installs, moves, reconstructs, extends, enlarges, converts, substantially alters, closes or changes use of a waste storage facility or parts thereof, or who employs another to do the same, on land subject to this section, shall be subject to the provisions of this section.

(b) Failing and Leaking. Failing and leaking waste storage facilities are a menace to the health and general welfare of the citizens of Marathon County, and shall be subject to forfeiture and injunction provisions of this section. A storage facility found to be failing or leaking shall be brought up to, and maintained in, a sanitary condition within the time frame identified by the department. These waste storage facilities shall be repaired to a condition meeting the Technical Standards of the Department within two (2) years of the date that the storage facility is determined to be failing or leaking.

(c) Idle Waste Storage Facilities. As specified in Technical Standard 360, removal of waste, contaminated soils, and closure of any permitted or unpermitted, idle animal waste storage facility to a safe and sanitary condition, as determined by the Department is required within two (2) years of the time the storage facility becomes idle. The owner or operator may retain the facility if they are able to verify all of the following conditions are met:
1. The facility has been designed, constructed and maintained in compliance with current applicable NRCS Standards and has functional safety components in place;
2. Retention of the facility is warranted based on anticipated future use.
3. Landowner agrees to develop and follow an operation and maintenance agreement for the facility.

(d) Direct Runoff of Animal Waste. Direct runoff of animal waste is a menace to the health and general welfare of the citizens of Marathon County, and shall be subject to the forfeiture and injunction provisions of this section. Direct runoff that poses a threat to public health of safety, or surface and/or groundwater resources because of over-application of manure to cropland or pasture, or any alteration or mismanagement of an animal waste storage facility shall be cleaned up in a reasonable time frame as determined by the department.

(e) Safety Devices. Certain safety devices, as defined in section 11.02(2)(n) are required on all storage facilities in Marathon County.

(f) Nutrient Management Plans. As specified in Technical Standard 590, the amount, form, timing, and placement of nutrient sources shall be done in accordance with an approved nutrient management plan that must be filed annually with the department by the date identified by the Director. Nutrient Management Plan 590 provisions shall apply to all landowners with an animal waste storage facilities permit under this ordinance regardless of date of construction, and landowners who have received a bona fide offer of cost share funding as required by ATCP50.08.

(f) Compliance with Permit Requirements. A person is in compliance with this section if he or she follows the procedures and requirements of this section, receives a permit from the Director or their designee prior to beginning activities requiring a permit and they comply with the requirements of the permit.

No permit or approval pursuant to this chapter shall be issued where the applicant is in violation of this or any code administered by the Department or for any parcel(s) of land which has an outstanding violation until the violation has been corrected. A request for waiver of these provisions may be made, to grant or deny a permit or approval on the merits of the application, to the Corporation Counsel and the Committee.

Where issuance of an after-the-fact permit or approval would have the effect of correcting a violation it may be granted if all conditions required for issuance can be complied with.
(4) **STANDARDS.**

The Technical Guide of the United States Department of Agriculture (U.S.D.A.) Natural Resources Conservation Service (NRCS) has been adopted by the Committee and the Department. These Technical Guides shall apply until amended and then shall apply as amended. The following components of the Technical Guide will be used when a storage facility is to be constructed, installed, abandoned, moved, reconstructed, extended, enlarged, converted, substantially altered, closed or emptied for nutrient application: 313-Manure Waste Storage Facility; 634-Waste Transfer System; 360-Closure of Waste Impoundment; and 590-Nutrient Management.

(5) **APPLICATION FOR AND ISSUANCE OF PERMITS**

(a) **Permit Required.** No person may undertake an activity subject to this section without obtaining a permit from the Department prior to beginning the proposed activity.

(b) **Exception to Permit Requirement.** All emergency repairs on any component of the waste storage facility or manure transfer system which cause any disruption of the original construction of the storage facility shall be done so as to restore the storage facility to the original state, as determined by the technical standards set forth in Section (4) above; and such repairs shall further be reported to the Department within two days. Nutrient management planning and implementation are also exempt from obtaining a permit.

(c) **Fees.**

A non-refundable application fee and Manure Storage Construction Permit fee under this ordinance shall be calculated utilizing the fee schedule adopted by the Land Conservation and Zoning Committee. The fee schedule may be amended as the LC&Z Committee deems necessary. A double fee will be charged for all after-the-fact applications and/or permits.

(d) **Waste Storage Facility and Manure Transfer System. Plans and Specifications.** Each application for a permit under this section shall include plans and specifications prepared and approved by an agricultural or civil engineer registered with the State of Wisconsin or a DATCP or NRCS engineering practitioner, in accordance with the criteria of the appropriate standard and shall describe the requirements for applying the practice to achieve its intended use.

The plans, specifications, and documentation for construction shall include:

1. Management Assessment.
2. Site assessment.
3. Safety design.
4. Operation and Maintenance plan.
6. Construction plan, schedules, and staging.
7. Construction Inspection plan.
8. Final construction plan showing any plan changes and certifying that the facility meets all applicable NRCS Standards.

(e) **Review of Application.** The Director or their designee shall receive and review all permit applications and shall determine if the proposed facility and its manure transfer system meets required standards set forth in sub. (4) of this section. Within 15 days after receiving the completed application and fee, the department shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the department shall so notify the permit applicant in writing. The department has 15 days from the receipt of the additional information in which to approve or disapprove the application. If the department fails to approve or disapprove the permit application in writing within 15 days of the receipt of the permit application or additional information requested in writing by the department, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.
(f) **Permit Conditions.** All permits issued under this section shall be issued subject to the following conditions and requirements. Activities authorized by permit shall be completed within 2 years from the date of issuance after which such permit shall be void.

1. Waste storage facility and its waste transfer system design, construction, alteration or closure shall be according to Department approved standards and plans.
2. The permittee shall give five (5) working days' notice to the Department before starting any construction activity authorized by the permit.
3. Approval in writing shall be obtained from the Department prior to any modifications to the approved storage facility plan.
4. The agricultural or civil engineer registered with the State of Wisconsin or a DATCP or NRCS engineering practitioner shall certify in writing to the department within 30 days of project completion, that any activities permitted under this ordinance were installed as planned, meet the guidelines of the appropriate NRCS Standards, and provide an “as-built” set of plans to the department.

(g) **Permit Revocation.** The Director may revoke any permit issued under this section if the holder of the permit has misrepresented any material fact in the permit application or storage facility plan, or if the holder of the permit violates any of the conditions of the permit.
(6) ADMINISTRATION

(a) Delegation of Authority. The County hereby designates the Director, or that person's representative to administer and enforce this section.

(b) Administrative Duties. In the administration and enforcement of this section, the Director or that person's representative shall:
   1. Keep an accurate record of all permit applications, waste storage facility plans, closures, permits issued, inspections made and other official actions.
   2. Review permit applications and issue permits in accordance with sub. (5) of this section.
   3. Inspect the site of any permitted activity to ensure those activities are being done according to plan specifications.
   4. Investigate complaints relating to compliance with the section.
   5. Track landowner compliance with state agricultural performance standards as specified by this section.
   6. Perform other duties as specified in this section.

(c) Recording on the Deed. In the case of idle storage facilities, if a landowner would like to do the minimum required to close the facility to a safe and sanitary condition, a landowner can sign an Affidavit of Closure that would be recorded on the deed to that parcel. The affidavit will identify that this was a manure storage facility at one time, that it has been returned to a safe and sanitary condition pursuant to NRCS 360, and if it is to be utilized as a manure storage facility in the future it is the responsibility of the landowner to obtain a permit and provide documentation that it meets current NRCS Standards prior to utilization.

(d) Inspection and Monitoring Authority. Pursuant to authority granted by Section 92.07(14) Wisconsin Statutes, the Director, or that person's representative is authorized to enter upon any lands affected by this section to inspect the land prior to or after permit issuance to determine compliance with this section. If permission cannot be received from the applicant or permittee, entry by the Director or that person's representative, shall be according to §66.0119, Wisconsin Statutes. Refusal to grant permission to enter lands affected by this ordinance for purposes of inspection shall be grounds for permit denial or revocation.

(e) Enforcement Authority.
   1. The Director, or that person's representative is authorized to post an order stopping work upon land which has had a permit revoked or is currently undergoing activity in violation of this section. Notice shall be given by both: Posting, upon the land where the violation occurs, one or more copies of a poster stating the violation, and; By mailing a copy of the order by certified mail to the person whose activity is in violation of this section. The order shall specify that the activity shall cease or be brought into compliance within 15 days.
   2. Any permit revocation or order stopping work shall remain in effect unless retracted by the Administrative Review Board, Marathon County General Code of Ordinances Chapter 24.02, the Director or by court of general jurisdiction; or until the activity is brought into compliance with this section. The Director is authorized to refer any violation of this section or of an order stopping work issued pursuant to this section to the Corporation Counsel for commencement of further legal proceedings.
(7) VIOLATIONS

(a) Penalty. Any person who violates, neglects or refuses to comply with, or resists the enforcement of any of the provisions of this section, shall be subject to a forfeiture as provided in §25.04 of this General Code. A violation includes failure to comply with any standard of this section, or with any condition or qualification attached to the permit.

(b) Enforcement of Injunction. As a substitute for, or an addition to, forfeiture actions, the County may seek enforcement of any part of this section by court actions seeking injunctions or restraining orders.

(8) APPEALS

Appeals from any administrative order issued pursuant to this Chapter shall be governed by Chapter 24 of the General Codes of Ordinances. Appeals from any County ordinance prosecution commenced pursuant to this Chapter, shall be governed by applicable state statutes concerning appeals.