

Chapter 39

Kewaunee County Agricultural Performance Standards

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Subchapter I – General Provisions

- 39.001 Authority. This ordinance 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 of the Wisconsin Statutes.
- 39.002 Purpose. The purpose of this ordinance is to prescribe performance standards and prohibitions in accordance with the implementation and enforcement procedures contained in ss. NR 151.09 and 151.095 for agricultural facilities, operations and practices.
- 39.003 Interpretation. The provisions of this ordinance shall be liberally construed in favor of Kewaunee County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

- 39.004 Severability. If any term of this ordinance is found to be void or invalid, such invalidity will not affect the remaining terms of this ordinance, which will continue in full force and effect.
- 39.005 Authority Cited. All references to the Wisconsin Statutes or Wisconsin Administrative Code are to those in effect as of the date this ordinance is enacted and includes all subsequent amendments and revisions.
- 39.006 Administration. Kewaunee County hereby designates the Kewaunee County Land and Water Conservation Department to administer and enforce the provisions of this ordinance under the oversight of the Kewaunee County Land and Water Conservation Committee.

Subchapter II: Agricultural Performance Standards & Prohibitions

39.010 Definitions.

- (1) "Accounting period" means the crop rotation period over which compliance is measured and consists of the current year and extends back the previous 7 years moving forward each consecutive year creating a rolling time period not to exceed 8 years.
- (2) "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.
- (3) "Agricultural facilities and practices" has the meaning given in s. 281.16 (1), Stats.
- (4) "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.
- (5) "Closed depression" means a topographical basin where water ponds to a seasonal high water mark, has no external drainage, and drainage may occur either through direct conduits to groundwater or low areas where water ponds and infiltrates into the groundwater. Closed depressions may be identified using topographic maps and visual interpretation, ArcGIS tools, or other methods.
- (6) "Conservation practice" means a best management practice designed to reduce or prevent soil or sediment loss to the waters of the state.
- (7) "County" means Kewaunee County.
- (8) "County land conservation committee" means the committee created by the Kewaunee County Board of Supervisors under s. 92.06, Stats. "County land conservation committee" includes employees or agents of the committee whom, with committee authorization, act on behalf of the committee.
- (9) "Crop producer" means an owner or operator of an operation engaged in crop related agricultural practices specified in s. 281.16 (1) (b), Stats.
- (10) "Cropland practice" means the method, activity or management measure used to produce or harvest crops.
- (11) "DATCP" means the department of agriculture, trade and consumer protection.
- (12) "Department" means the department of natural resources.
- (13) "Direct conduits to groundwater" means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.
- (14) "Direct runoff" includes any of the following:
 - (a) Runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.

- (b) 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 to ground water.
 - (c) Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with s. NR 154.04 (3).
 - (d) Discharge of a significant amount of leachate from stored manure to waters of the state.
- (15) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
 - (16) "Established crop" means a growing annual crop, double crop or cover crop that provides vegetative cover of the soil.
 - (17) "Exceptional resource waters" means waters listed in s. NR 102.11.
 - (18) "Feedlot" means a barnyard, exercise area, or other outdoor area where livestock are concentrated for feeding or other purposes and self-sustaining vegetative cover is not maintained. "Feedlot" does not include a winter grazing area or a bare soil area such as a cattle lane or a supplemental feeding area located within a pasture, provided that the bare soil area is not a significant source of pollution to waters of the state.
 - (19) "Impaired water" means a waterbody impaired in whole or in part and listed by the department pursuant to 33 USC 1313 (d) (1) (A) and 40 CFR 130.7, for not meeting a water quality standard, including a water quality standard for a specific substance or the waterbody's designated use.
 - (20) "Incorporation" has the meaning given in s. NR 243.03(28).
 - (21) "Infield bedrock verification" means determining bedrock depth using available data including, but not limited to well construction reports, location of drill cores or other subsurface investigations, location of quarries and natural bedrock outcrops, geophysical investigations, and uneven crop growth patterns indicating fracture traces in the field.
 - (22) "Injection" has the meaning given in s. NR 243.03(29).
 - (23) "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.
 - (24) "Liquid manure" means manure that contains less than 12 percent solid material by volume.
 - (25) "Livestock facility" means a structure or system constructed or established on a livestock operation.
 - (26) "Livestock operation" has the meaning given in s. 281.16 (1) (c), Stats.
 - (27) "Livestock producer" means an owner or operator of a livestock operation.
 - (28) "Local governmental unit" has the meaning given in s. 92.15 (1) (b), Stats.
 - (29) "Long term no till" means no till farming that has been implemented a minimum of 3 consecutive years.
 - (30) "Manure" means a material that consists primarily of excreta from livestock, poultry or other animals.
 - (31) "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.
 - (32) "Margin of safety level" has the meaning given it in s. NR 243.03 (37).
 - (33) "Mechanical application" means surface application, injection or incorporation of manure on cropland or pastures using manure hauling vehicles or equipment. This does not include an area of land where animals graze or otherwise seek feed in a manner that maintains the vegetative cover over all the area and where the vegetative cover is the primary food source for the animals.

- (34) "Navigable waters" and "navigable waterway" has the meaning given in s. 30.01 (4m), Stats.
- (35) "NOD" means a notice of discharge issued under s. NR 243.24 (4).
- (36) "NRCS" means the natural resources conservation service of the U.S. department of agriculture.
- (37) "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.
- (38) "Ordinary high water mark" has the meaning given in s. NR 115.03 (6).
- (39) "Outstanding resource waters" means waters listed in s. NR 102.10.
- (40) "Overflow" means discharge of manure to the environment resulting from flow over the brim of a facility or from flow directed onto the ground through a man-made device including a pump or pipe.
- (41) "Pasture" means 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 lanes and supplemental feeding areas provided the bare soil areas are not significant sources of pollution to waters of the state.
- (42) "Pathogens" has the meaning given in s. NR 204.03(38).
- (43) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.
- (44) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (45) "Pollutant" has the meaning given in s. 283.01(13).
- (46) "Pollution" has the meaning given in s. 281.01(10).
- (47) "Phosphorus index" or "P-index" means Wisconsin's agricultural land management planning tool for assessing the potential of a cropped or grazed field to contribute phosphorus to the surface water.
- (48) "Pre-tillage" means using mechanical equipment to reduce soil preferential flow paths (worm holes, root holes and cracks) by turning and mixing the soil prior to and at least 2 inches below the depth of manure application.
- (49) "Process wastewater" has the meaning given in s. NR 243.03 (53).
- (50) "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.
- (51) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (52) "Silurian bedrock" means the area in Wisconsin where the bedrock consists of Silurian dolomite or is part of the Maquoketa Formation overlain by soils of 20 feet or less. This area comprises portions of the following counties: Brown, Calumet, Dodge, Door, Fond du Lac, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington and Waukesha. Areas where Silurian bedrock occurs in Wisconsin can be identified by the most current NRCS, WGNHS, or county maps and infield bedrock verification methods.
- (53) "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 a direct conduit to groundwater.
 - (d) A channel that flows to a direct conduit to groundwater.
 - (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.
- (54) "Solid manure" means manure that contains 12 percent or greater solid material by volume.
- (55) "Stored manure" means manure that is kept in a manure storage facility or an unconfined manure pile.
- (56) "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.
- (57) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (58) "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.
- (59) "Top of the channel" means an edge, or point on the landscape landward from the ordinary high water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet landward from the ordinary high water mark, the top of the channel is the ordinary high water mark.
- (60) "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.
- (61) "Water quality management area" or "WQMA" means 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, the term means the area within 1,000 feet from the high water mark of the lake; the area within 300 feet from the ordinary high water mark of navigable waters that consist of a river or stream; and a site that is susceptible to groundwater contamination, or that has the potential to be a direct conduit for contamination to reach groundwater.
- (62) "Waters of the state" has the meaning given in s. 283.01 (20), Stats.
- (63) "Winter grazing area" means a cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period of October 1 to April 30.
- (64) "WPDES permit" means a Wisconsin pollutant discharge elimination system permit issued under ch. 283, Stats.

39.020 Sheet, rill and wind erosion performance standard.

- (1) All land where crops or feed are grown, including pastures, shall be managed to achieve a soil erosion rate equal to, or less than, the "tolerable" (T) rate established for that soil.

39.030 Tillage setback performance standard.

The purpose of this standard is to prevent tillage operations from destroying stream banks and depositing soil directly in surface waters. In this section, "surface water" has the meaning given in s. NR 102.03 (7).

- (1) No crop producer may conduct a tillage operation that negatively impacts stream bank integrity or deposits soil directly in surface waters.
- (2) No tillage operations may be conducted within 5 feet of the top of the channel of surface waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be required to meet this standard.
- (3) Crop producers shall maintain the area within the tillage setback required under sub. (2) in adequate sod or self-sustaining vegetative cover that provides a minimum of 70% coverage.
- (4) This section does not apply to grassed waterways installed as conservation practices.

39.040 Phosphorus index performance standard.

- (1) All crop and livestock producers shall comply with this section.
- (2)
 - (a) Croplands, pastures, and winter grazing areas shall average a phosphorus index of 6 or less over the accounting period and may not exceed a phosphorus index of 12 in any individual year within the accounting period.
 - (b) Except as provided under sub. (3), for purposes of compliance with this section the phosphorus index shall be calculated using the version of the Wisconsin Phosphorus Index.
 - (c) The accounting period required under par. (a) shall meet the following conditions:
 1. The accounting period shall begin once a nutrient management plan meeting the requirements of s. NR 151.07 and s. ATCP 50.04 (3) is completed.
 2. During the first 8 years of implementation of this standard by a producer, computation of the phosphorus index may be based on a combination of planned crop management and historic data. Planned crop management data is based on projected management and crop rotations. Historic data is based on management and crop rotations that have actually occurred.
 3. Once the nutrient management plan under s. NR 151.07 and s. ATCP 50.04 (3) is developed, historic data shall be used for each year as it becomes available.
- (3) If the phosphorus index is not applicable to a particular crop or situation, an equivalent calculation approved by the department shall be used to meet the requirements of this section.
- (4) Producers may not apply nutrients or manure directly, through mechanical means, to surface waters as defined in s. NR 102.03 (7).

39.050 Manure storage facilities performance standards.

- (1) 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.
- (2) New construction and alterations.
 - (a) New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility and minimize leakage of the facility in order to comply with groundwater standards. The levels of materials in the storage facility may not exceed the margin of safety level.

- (am) Storage facilities that are constructed or significantly altered shall be designed and operated to contain the additional volume of runoff and direct precipitation entering the facility as a result of a 25-year, 24-hour storm.
- (3) Closure.
 - (a) 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.
 - (b) The owner or operator may retain the facility for a longer period of time by demonstrating to the department that all of the following conditions are met:
 - 1. The facility is designed, constructed and maintained in accordance with sub. (2).
 - 2. The facility is designed to store manure for a period of time longer than 24 months.
 - 3. Retention of the facility is warranted based on anticipated future use.
- (4) Existing facilities.
 - (a) Manure storage facilities in existence as of October 1, 2002, that pose an imminent threat to public health, fish and aquatic life, or groundwater shall be upgraded, replaced, or abandoned in accordance with this section.
 - (b) Levels of materials in storage facilities may not exceed the margin of safety level.

39.055 Process wastewater handling performance standard.

- (1) All livestock producers shall comply with this section.
- (2) There may be no significant discharge of process wastewater to waters of the state.
- (3) The department shall consider all of the following factors when determining whether a discharge of process wastewater is a significant discharge to waters of the state:
 - (a) Volume and frequency of the discharge.
 - (b) Location of the source relative to receiving waters.
 - (c) Means of process wastewater conveyance to waters of the state.
 - (d) Slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of process wastewater discharge to waters of the state.
 - (e) Available evidence of discharge to a surface water of the state or to a direct conduit to groundwater as defined under s. NR 151.002 (11m).
 - (f) Whether the process wastewater discharge is to a site that is defined as a site susceptible to groundwater contamination under s. NR 151.015 (18).
 - (g) Other factors relevant to the impact of the discharge on water quality standards of the receiving water or to groundwater standards.

39.060 Clean water diversion performance standard.

- (1) All livestock producers within a water quality management area shall comply with this section.
- (2) 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 s. NR 151.015 (18) (a) is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well.

39.070 Nutrient management.

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

- (2) This performance standard does not apply to the application of industrial waste and byproducts regulated under ch. NR 214, municipal sludge regulated under ch. NR 204, and septage regulated under ch. NR 113, provided the material is not commingled with manure prior to application.
- (3) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan.
 - (a) 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.
 - (b) 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:
 - 1. 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.
 - 2. The plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.
 - 3. 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.
 - (c) 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 ch. NR 102.

39.075 Silurian bedrock performance standards

- (1) All crop producers and livestock producers that mechanically apply manure directly or through contract or other agreement to cropland or pasture areas that meet the definition of Silurian bedrock under s. NR 151.015(17) shall comply with this section.
- (2) Mechanical manure application may not cause the fecal contamination of water in a well.
- (3) Manure may not be mechanical applied on areas of cropland or pastures that have 24 inches or less of separation between the ground surface and apparent water table.
- (4) Manure must be applied in conformance with a nutrient management plan that meets the requirements under all of the following:
 - (a) The plan must be consistent with s. NR 151.07.
 - (b) The plan must be consistent with NRCS Technical Standard 590, dated December 2015.
 - (c) The plan must be designed and implemented consistent with this section to manage manure so as to reduce the risk of pathogen delivery to groundwater and prevent exceedances of groundwater water quality standards.

- (d) The plan must use NRCS soil survey maps/information or other methods as a planning tool to identify Silurian bedrock within or adjacent to cropland and pastures.
- (5) Manure may not be mechanically applied on croplands or pastures until infield bedrock verification or Silurian bedrock map information is used to identify areas where the Silurian bedrock soil depth is less than 5 feet. If infield bedrock verification uses drill cores or other subsurface investigations, they must be backfilled with soil within 72 hours of being created.
- (6) Manure may not be mechanically applied on croplands or pastures where the Silurian bedrock soil depth is less than 5 feet until such fields are evaluated and ranked for risk of pathogen delivery to groundwater. Areas determined to have a high risk for pathogen delivery to groundwater must be avoided or must be lowest priority for manure application.
- (7) Mechanical application of manure and headland stacking of manure is prohibited on soils with 5 feet or less to Silurian bedrock when soils are frozen or snow covered.
- (8) Mechanical application of manure is prohibited within Silurian bedrock having soil depths less than 5 feet when rainfall greater than one inch is forecast within 24 hours of planned application.
- (9) Mechanical application of manure is prohibited for soils with less than 2 feet to Silurian bedrock.
- (10) For soils with 2 to 3 feet to Silurian bedrock, all the following apply:
 - (a) No mechanical application of solid manure unless all the following are met:
 - 1. Solid manure is incorporated within 72 hours to no more than 4 inches below ground.
 - 2. At least one of the following is implemented:
 - a. Solid manure is applied at a rate no greater than 15 tons/acre/year, or the rate that supplies the crop nitrogen recommendations from UW A2809, whichever is less.
 - b. Solid manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.
 - c. Solid manure is composted or treated to reduce pathogen levels via practices to a fecal coliform bacteria density of less than 500,000 colony-forming units or most probable number per gram total solids on a dry weight basis.
 - (b) No mechanical application of liquid manure unless all the following are met:
 - 1. Pre-tillage is completed, unless exempt under par. (c) or (d).
 - 2. Liquid manure is injected or incorporated within 24 hours to no more than 4 inches below ground, unless exempt under par. (c).
 - 3. At least one of the following is implemented:
 - a. Total liquid manure application is applied in compliance with UW A2809, or limited to Table 1, whichever is less, to prevent hydraulic overloading of the soil.

Table 1. Silurian Bedrock Maximum Liquid Manure Application Rates			
Soil Texture	2 to 3 Feet Depth (gal/ac/yr)	3 to 5 Feet Depth (gal/ac/wk)	5 to 20 Feet Depth (gal/ac/wk)
Sand	6,750	6,750	13,500
Sandy Loam	13,500	13,500	27,000*
Loam	13,500	13,500	27,000*
Silt Loam	13,500	13,500	27,000*
Clay Loam	13,500	13,500	20,000*
Clay	6,750	6,750	13,500

* It is anticipated that this rate would exceed the UW A2908 annual (crop year) application rate.

- b. Liquid manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.
 - c. Liquid manure is treated to substantially reduce pathogen levels via practices to a fecal coliform bacteria density of less than 500,000 most probable number or colony-forming units per 100 milliliter sample.
 - (c) Pre-tillage, incorporation or injection is not required if cropland or pastures meet long term no-till or have perennial or established crop. Each surface application of liquid manure must not exceed 6,750 gallons per acre.
 - (d) Pre-tillage is not required if demonstrated to the department that a field cannot meet s. NR 151.02 over an eight-year crop rotation using a combination of the following practices: tillage, crops, contouring, filter strips, or cover crops.
- (11) For soils with 3 to 5 feet to Silurian bedrock, all the following apply:
- (a) No mechanical application of solid manure unless all the following are met:
 - 1. Incorporated within 72 hours to no more than 6 inches below ground.
 - 2. At least one of the following is implemented:
 - a. Manure is applied in accordance with UW A2809 annual application rate, or at a rate of 15 tons/acre/year, whichever is less.
 - b. Manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.
 - c. Manure is composted or treated to reduce pathogen levels via practices to a fecal coliform bacteria density of 500,000 colony-forming units, or most probable number per gram total solids on a dry weight basis.
 - (b) No mechanical application of liquid manure unless all the following are met:
 - 1. Pre-tillage is completed unless exempt under par. (c) or (d).
 - 2. Liquid manure is injected or incorporated within 24 hours to no more than 6 inches below ground; unless except under par. (c).
 - 3. At least one of the following is implemented:
 - a. Total liquid manure application is applied in compliance with UW A2809, or limited to sub. (10) (b) 3. Table 1 rates, whichever is less, to prevent hydraulic overloading of the soil.

- b. Liquid manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.
 - c. Liquid manure is treated to substantially reduce pathogen levels via practices to a fecal coliform bacteria density of less than 500,000 most probable number or colony-forming units per 100 milliliter sample.
 - (c) Pre-tillage, incorporation or injection is not required if cropland or pastures meet long term no-till or have a perennial or established crop. Each surface application of liquid manure must not exceed 6,750 gallons per acre.
 - (d) Pre-tillage is not required if demonstrated to the department that a field cannot meet s. NR 151.02 over an eight-year crop rotation using a combination of the following practices: tillage, crops, contouring, filter strips, or cover crops.
- (12) For soils with 5 to 20 feet to Silurian bedrock, all the following apply:
- (a) No mechanical application of liquid manure unless all the following are met:
 - 1. Pre-tillage is completed unless exempt under par. (b) or (c).
 - 2. Liquid manure is injected or incorporated within 24 hours to no more than 6 inches below ground unless exempt under par. (b).
 - 3. At least one of the following is implemented:
 - a. Total liquid manure application is applied in compliance with A2809, limited to sub. (10) (b) 3. Table 1 rates, whichever is less, to prevent hydraulic overloading of the soil.
 - b. Liquid manure is applied in compliance with A2809 and within 10 days of the planting date or applied on a perennial or established crop.
 - c. Liquid manure is treated to substantially reduce pathogen levels via practices to a fecal coliform bacteria density of less than 500,000 most probable number or colony-forming units per 100 milliliter sample.
 - (b) Pre-tillage, incorporation or injection is not required if cropland or pastures meet long term no-till, or have a perennial or established crop. Each surface application of liquid manure must not exceed 10,000 gallons per acre.
 - (c) Pre-tillage is not required if demonstrated to the department that a field cannot meet s. NR 151.02 over an eight-year crop rotation using a combination of the following practices: tillage, crops, contouring, filter strips, or cover crops.
- (13) Mechanical manure applications are prohibited within any of the following:
- (a) 1000 feet of a community water system as defined in s. NR 811.02.
 - (b) 250 feet of a private water system or a non-community water system as defined in s. NR 812.07.
 - (c) An area within 300 feet upslope or 100 feet downslope of a direct conduit to groundwater as defined in s. NR 151.002 (11m).
 - (d) 100 feet of a concentrated flow channel that leads to a water system included in par. (a) or (b) or direct conduit to groundwater in par. (c).
- (14) Mechanical manure applications are prohibited on or within 100 feet of Silurian bedrock in a closed depression unless the manure is injected or incorporated within 24 hours or prior to precipitation capable of producing runoff, whichever comes first. The prohibition of mechanical application of manure does not apply to areas following long term no-till practices or with a perennial or established crop.

- (15) No surface application of manure on slopes of 6 percent or greater in cropland and pasture areas that have concentrated flow channels that drain to a closed depression in Silurian bedrock, unless the material is incorporated within 24 hours or prior to precipitation capable of producing runoff, whichever comes first. The prohibition of surface application of manure does not apply to areas following long term no-till practices or with a perennial or established crop.
- (16) Practices must retain land applied manure on the soil where they are applied with minimal movement to maintain setback distances specified in subs. (13) and (14).
- (17) Silurian bedrock performance standards. (Kewaunee County adopts NR 243.143.) Owners or operators that mechanically apply manure directly or through contract or other agreement to cropland or pasture areas that meet the definition of Silurian bedrock under s. NR 151.015(17) shall comply with s. NR 151.075.

39.080 Manure Management Prohibitions.

- (1) All livestock producers shall comply with this section.
- (2) A livestock operation shall have no overflow of manure storage facilities.
- (3) A livestock operation shall have no unconfined manure pile in a water quality management area.
- (4) A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state.
- (5)
 - (a) 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.
 - (b) This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

39.090 Implementation and enforcement procedures for cropland performance standards.

- (1) Purpose. The purpose of this section is to identify the procedures the County will follow in implementing and enforcing the cropland performance standards. 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 151.005, 151.02, 151.03, 151.04, 151.07, and 151.075.
- (2) (INTENTIONALLY LEFT BLANK)
- (3) 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.
 - (b) General requirements. If any cropland is meeting a cropland performance standard on or after the effective date of the standard, 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 sub. (4) (b) 2.

(c) Existing cropland requirements.

1. A landowner or operator of an existing cropland, defined under sub. (4) (b), shall comply with a cropland performance standard if all of the following have been done by the department:
 - a. Except as provided in subds. 2. and 3., a determination is made that cost sharing has been made available in accordance with sub. (4) (d) on or after the effective date of the cropland performance standard.
 - b. The landowner or operator has been notified in accordance with sub. (5) or (6).
2. A landowner or operator of existing cropland, defined under sub. (4) (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 s. NR 151.07, 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. (4) (b), shall comply with the cropland performance standards, regardless of whether cost sharing is available.

(4) County Determinations.

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

(b) Cropland status. The County shall classify non-complying croplands to be either new or existing for purposes of administering this section and s. 281.16 (3) (e), Stats. In making the determination, the 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 the effective date of the standard.
 - b. The cropland is not in compliance with a cropland performance standard in this subchapter as of the effective date of the standard. 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 U.S. department of agriculture. This subdivision does not apply to croplands re-enrolled after October 1, 2002.
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 after the effective date of the standard. “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 the effective date of the standard 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.

1. If cost sharing is required to be made available under sub. (3) (c), the County shall determine the total cost of best management practices and corrective measures needed to bring a cropland into compliance with performance standards and shall determine which of those costs are eligible for cost-sharing for the purposes of administering this section and s. 281.16 (3) (e), Stats.
2. The cost-share eligibility provisions identified in chs. NR 153 and 154 shall be used in identifying eligible costs for installation of best management practices and corrective measures.
3. Eligible technical assistance costs include best management practice planning, design, installation supervision, and installation certification.
4. If cost sharing is provided, the corrective measures shall be implemented in accordance with the BMPs and technical standards specified in ch. NR 154 or subch. VIII of ch. ATCP 50.

(5) Notification requirements and compliance periods for existing croplands when cost-sharing is required.

(a) Landowner notification.

1. The County shall notify a landowner or operator in writing of the determinations made under sub. (4) 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. (4) (b).
 - c. The determination made in accordance with sub. (4) (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 NR 151.09(4) (d) 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 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.

(b) Compliance schedule.

- 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 with NR 151.09(4)(d)2.
- 2. The compliance period identified in the notice in par. (a) shall be determined by the County 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 not less than 60 days nor more than 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 County 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.

(6) Notification requirements and compliance periods for existing croplands in situations when no eligible costs are involved.

(a) Landowner notification.

- 1. The County shall notify a non-complying landowner or operator of existing croplands of the determinations made under sub. (4).
- 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. (4) (c).
 - b. The cropland status determination made in accordance with sub. (4) (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.

(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 not less than 60 days nor more than 3 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 County may meet multiple notification requirements within any single notice issued to a landowner or operator.

39.095 Implementation and enforcement procedures for livestock performance standards and prohibitions.

- (1) Purpose. The purpose of this section is to identify the procedures the County will follow in implementing and enforcing the livestock performance standards. If a livestock performance standard is also listed as a cropland performance standard, the County may choose the procedures of the cropland performance standards or this section to obtain compliance with the standard. 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 151.005, 151.05, 151.055, 151.06, and 151.08.
- (2) (INTENTIONALLY LEFT BLANK)
- (3) (INTENTIONALLY LEFT BLANK)
- (4) 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.
 - (b) General requirements. If any livestock facility is meeting a livestock performance standard or prohibition on or after the effective date of the standard or prohibition, 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 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. (5) (b), shall comply with a livestock performance standard or prohibition if all of the following have been done by the County:
 - a. Except as provided in subd. 2., a determination is made that cost sharing has been made available in accordance with NR

- 151.095(5)(d) on or after the effective date of the livestock performance standard or prohibition.
- b. The owner or operator of the livestock facility has been notified in accordance with sub. (6) or (7).
2. An owner or operator of an existing livestock facility, defined under sub. (5) (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. (5) (b), shall comply with the livestock performance standards and prohibitions, regardless of whether cost sharing is available.
- (5) County determinations.
 - (a) Scope of determinations. If a livestock facility is not in compliance with a livestock performance standard or prohibition, the County shall make determinations in accordance with the procedures and criteria in this subsection.
 - (b) Livestock facility status. The County shall classify a non-complying livestock facility on an operation to be either new or existing for purposes of administering this section. In making the determination, the County 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 the effective date of the livestock performance standard or prohibition.
 - b. The facility is not in compliance with a livestock performance standard or prohibition in this subchapter as of the effective date of the livestock performance standard or prohibition. 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 the effective date of the livestock performance standard or prohibition, 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 of the effective date of the livestock performance standard or prohibition, unless the land is part of an existing rotational grazing or pasturing operation.
 - b. For a livestock operation that is in existence as of the effective date of the livestock performance standard or prohibition that establishes or constructs or substantially alters a facility after the effective date of the livestock performance standard or prohibition, the facilities constructed, established or substantially altered after the effective date of the livestock performance standard or prohibition 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 the

effective date 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. This includes manure storage facilities that fail to meet the requirements of s. NR 151.05 (3) and were either: constructed on or after October 1, 2002; or were constructed prior to October 1, 2002, and subject through October 1, 2002, to the operation and maintenance provisions of a cost share agreement.

3. Pursuant to the implementation procedures in this section, if the department or the County 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 the effective date of the livestock performance standard or prohibition, or directs the owner or operator to reconstruct the existing facility as a corrective measure on or after the effective date of the livestock performance standard or prohibition, 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 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 County 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.

(6) Notification requirements and compliance periods for existing livestock facilities when cost sharing is required.

(a) Owner or operator notification.

1. The department shall notify an owner or operator in writing of the determinations made under sub. (5) 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. (5) (b).
 - c. The determination made in accordance with sub. (5) (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 NR 151.095(5)(d) 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.

(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 NR 151.095 (5) (d) 2.
- 2. The compliance period identified in the notice in par. (a) shall be determined by the department as follows:
 - a. The compliance period shall begin on the post-mark date of the notice or the date of personal delivery.
 - b. The length of the compliance period shall be not less than 60 days nor more than 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 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.

(7) Notification requirements and compliance periods for existing livestock facilities in situations when no eligible costs are involved.

(a) Owner or operator notification.

- 1. The County shall notify a non-complying owner or operator of an existing livestock facility of the determinations made under sub. (5).
- 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. (5) (c).
 - b. The livestock operation status determination made in accordance with sub. (5) (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.
- (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 not less than 60 days nor more than 3 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, 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 County may meet multiple notification requirements within any single notice issued to the owner or operator.

Subchapter III – Variances & Violations

39.097 Variances.

- (1) The County may recommend to the department acceptance of a variance to the performance standards, technical standards or other non-statutory requirements of this ordinance.
- (2) The County will not recommend and the department will not grant a variance solely on the basis of economic hardship.
- (3) The County may recommend a variance 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) The County shall use the following process when administering a variance request:
 - (a) The landowner or operator shall submit the variance request in writing to the Kewaunee County Land and Water Conservation Department within 60 days of receiving the notice.
 - (b) County staff will immediately forward any variances that it receives to the department.

- (c) County staff will review the variance request and shall forward any recommendations concerning acceptance of the variance to the department within 10 working days of receipt.
- (d) The department shall make its determination based upon the factors in s. NR 151.097(3).
- (e) The department shall notify the landowner or operator and the County of its determination. If the department grants the variance request, the department or the County shall send to the landowner or operator an amended notice.
- (f) 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.

39.098 Violations.

- (1) Penalties. Any person who violates, neglects, or refuses to comply with or resists the enforcement of any provision of this ordinance shall be subject to a forfeiture of not less than \$10 nor more than \$5,000 plus costs of prosecution of each violation. An unlawful violation includes failure to comply with any standard of this ordinance or with any condition or qualification attached to any permit or variance. Each day that a violation exists shall be a separate offense. Failure to obtain proper permit is considered a violation.
- (2) Enforcement Actions, Temporary Restraining and/or Other Necessary Remedial Action. As a substitute for or an addition to forfeiture actions, Kewaunee County may seek enforcement of any part of this ordinance by Court Actions seeking injunctions or restraining orders.
- (3) The County may enforce the provisions of this ordinance through the issuance of a citation in accordance with Wis. Stat. §66.0113. Any citation issued under this ordinance shall have a deposit in the amount of seventy-five dollars (\$75.00) plus court costs and one-hundred fifty dollars (\$150.00) plus court costs for a second violation of this ordinance within a 12 month period.