

CHAPTER 10

AGRICULTURAL SHORELAND MANAGEMENT

10.01 (1) INTRODUCTION

(a) Authority. This Ordinance is adopted under the authority granted by Section 92.17, Wisconsin Statutes, 1995-96, as amended from time to time.

(b) Findings and Declaration of Policy. The Brown County Board finds that agricultural activities conducted in close proximity to surface water can pollute Brown County's water resources, and may result in actual or potential harm to the health of residents and transients; to livestock, aquatic life and other animals and plants; and to the property tax base of Brown County.

(c) Purpose. The purpose of the Ordinance is to complement Brown County's Shoreland and Floodplain Ordinance in Chapter 22 of the Brown County Code to regulate landowner activities within the approximately 1200 miles of agricultural Shoreland management area within the County to prevent surface water pollution and thereby protect the health of Brown County residents and transients; prevent the spread of disease; and promote the prosperity and general welfare of the citizens of Brown County.

(d) Applicability. This Ordinance applies to all lands and surface water in Brown County that are in the agricultural Shoreland management area, as defined in this Ordinance. Brown County shall use United States Geological Survey quadrangle maps, with a scale of 1:24,000, to identify rivers, perennial streams, intermittent streams, lakes and ponds included under the jurisdiction of this Ordinance.

Activities within a drainage district that serve to establish or maintain a district corridor are regulated by Chapter ATCP 48, Wis. Adm. Code, and are not eligible for cost-sharing under this Ordinance. Practices in a district corridor that either control livestock access to surface water or barnyard runoff are eligible for cost-sharing under this Ordinance.

(e) 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 Brown County and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

(f) Conflicts with Brown County's Shoreland Zoning Ordinance. Any conflict or inconsistency between this Ordinance and Brown County's Shoreland Zoning Ordinance will be governed by the more restrictive provision.

(g) Severability. If any Section, provision, or portion of this Ordinance is ruled invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not for that reason be rendered ineffective.

(h) Effective Date. This Ordinance shall become effective upon adoption and publication by Brown County and upon approval by the Department of Agriculture, Trade and Consumer Protection.

10.02 DEFINITIONS

1. GENERAL

(a) Agricultural Lands. Lands in agricultural use. Agricultural use has the meaning provided under Section 91.01(1), Wisconsin Statutes. Uses under this definition include beekeeping; commercial feedlots; dairying; egg or poultry production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; greenhouses and nurseries; grain, grass, mint and seed crops; raising fruits, nuts and berries; sod farming; land idled under federal payment-in-kind programs or the Conservation Reserve Program; participation in the dairy-herd buyout program; and vegetable raising.

(b) Agricultural Shoreland Corridor. Land extending 20 feet from the top of the bank on each side of a perennial stream or river, the centerline of an intermittent stream, or the ordinary high-water mark of any lake or pond shown on a United States Geological Survey quadrangle map with a scale of 1:24,000.

(c) Agricultural Shoreland Management Area. All land that is within 300 feet of the following features as designated on United States Geological Survey quadrangle maps with a 1:24,000 scale:

- 1) The top of the bank of perennial streams or rivers.
- 2) The ordinary high-water mark for ponds and lakes that are designated by name.
- 3) The centerline of an intermittent stream.

(d) Barnyard. A feedlot, dry lot or any area, other than a pasture, where animals have been or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12 month period.

(e) Best Management Practice. A practice included in the Technical Guide or an alternative best management practice that the Department of Agriculture, Trade and Consumer Protection determines to be the most effective, practicable means of preventing or reducing soil erosion or pollution from agricultural nonpoint sources to a level compatible with soil and water resource objectives.

(f) Conservation Plan/Schedule. A written record of best management practices to be implemented, including installation schedule and operation and maintenance requirements.

(g) District Corridor. The access corridor and buffer strip established and maintained around a district ditch under s. ATCP 48.24, Wis. Adm. Code.

(h) District Ditch. A drainage ditch, located within a drainage district, that is constructed or operated by a county drainage board under Chapter 88, Stats. "District ditch" includes a main or lateral ditch.

(i) Drainage District. A drainage district that is subject to Chapter 88, Stats., regardless of whether the drainage district was formed under Chapter 88, Stats., former Chapter 89, Stats., or any other law.

(j) Intermittent Streams. A channel in which water does not flow continuously and that is identified as an intermittent stream on the United States Geological Survey quadrangle map with a scale of 1:24,000.

(k) Notice of availability of funds. A first class letter (certified mail), return receipt requested, mailed by Brown County to the owner of the lands not meeting Ordinance standards, informing them of the availability of cost-share funds under Section 92.14, Wisconsin Statutes.

(l) Notice of problem. A first class letter (certified mail), return receipt requested, mailed by Brown County to the owner of the lands not meeting the Ordinance standards, informing the owner of the nature of the problem and the necessary process to correct it.

(m) Ordinary high-water mark. The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark. This may be erosion, absence of land plants, predominance of aquatic plants, or other easily recognized characteristics.

(n) Pasture. Land with a permanent, uniform cover of grasses or legumes used as forage for livestock. Pastures do not include areas where supplemental forage feeding is provided on a regular basis.

(o) Perennial Stream. A channel where water flows continuously and that is identified as a perennial or permanent stream on the United States Geological Survey quadrangle map with a scale of 1:24,000.

(p) Technical Guide. The United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide that is currently in effect, and as amended from time to time.

(q) Vegetative Buffer. An area within the agricultural Shoreland corridor that is maintained at a minimum level of 70 percent ground cover.

10.03 ACTIVITIES SUBJECT TO REGULATION

1. GENERAL REQUIREMENT. Any person who conducts agricultural activities within the agricultural Shoreland management area or who employs another person to do the same, on land subject to this Ordinance, shall be subject to the provisions of this Ordinance. All activities on land within agricultural Shoreland management areas must be conducted in ways that prevent soil erosion and minimize the movement of suspended solids into surface water.

2. COMPLIANCE WITH ORDINANCE REQUIREMENTS. Persons are in compliance with this Ordinance if they install or follow best management practices on their land affected by this Ordinance.

10.04 STANDARDS

1. AGRICULTURAL ACTIVITIES IN THE AGRICULTURAL SHORELAND CORRIDOR.

(a) Vegetative Buffer. Landowners or operators shall establish and maintain an adequate vegetative buffer or equally effective erosion control practice, in the agricultural Shoreland corridor. When a vegetative buffer is established, the plant variety or seed mixture shall be one of those listed in Technical Guide Standard 342, Critical Area Planting. If any activity disturbs a vegetative buffer in the agricultural Shoreland corridor, the landowner must replant or restore the disturbed area to an effective vegetative buffer as soon as practicable. Row cropping and tillage practices are prohibited in the agricultural Shoreland corridor, except that tillage practices are allowed to establish or re-establish a seed bed.

(b) Pastures. Pastures within the agricultural Shoreland management area must comply with Technical Guide Standard 510 for pasture and hayland management. Rotation grazing must comply with the UW-Extension publication "Pastures for Profit" (February 1993 edition).

(c) Agricultural lands receiving manure and other nutrients. Agricultural lands within the agricultural Shoreland management area must meet Technical Guide Standard 590 if they receive manure and other nutrients through the application of sludge, commercial fertilizer, and other added nutrients.

10.05 ADMINISTRATION

1. DELEGATION OF AUTHORITY.

(a) The County Land Conservation Department is hereby designated to administer and enforce the provisions of this Ordinance.

2. ADMINISTRATIVE DUTIES.

(a) In the administration and enforcement of this Ordinance, the Land Conservation Department shall:

1) Inform all landowners or operators subject to this Ordinance of the potential agencies which may be available to provide technical or financial assistance.

2) Establish a procedure for landowners or operators to contact the Brown County Land Conservation Department about conditions on their land that are not in compliance with the Ordinance and establish a procedure for landowners or operators to apply for funding.

3) Send notices of problems to landowners or operators that are not in compliance with the Ordinance.

4) Send notices of availability of funds to landowners or operators that are not in compliance with the Ordinance.

5) Provide accomplishment reports to the State Department of Agriculture, Trade and Consumer Protection on the activities related to this Ordinance and its effectiveness.

- 6) Investigate complaints relating to compliance with the Ordinance.
- 7) Perform other duties as specified in this Ordinance.

3. INSPECTION AUTHORITY.

(a) Brown County Land Conservation Department employees are authorized to enter upon any lands affected by this Ordinance to inspect the land to determine compliance with this Ordinance. If permission cannot be obtained from the landowner or operator, entry by Brown County Land Conservation Department employees shall be according to Sections 92.07(14), 66.122 and/or 66.123, Wisconsin Statutes.

4. ENFORCEMENT PROCEDURE.

(a) A notice of problem must be mailed to the landowner or operator stating that the standards of this Ordinance have not been met. Brown County Land Conservation Department staff shall prepare a conservation plan with the landowner or operator including a schedule of implementation. The Brown County Land Conservation Department must provide a notice of availability of funds to the landowner or operator when funds are available to implement or install the necessary practices.

(b) The Brown County Land Conservation Department must provide along with the notice of problem: a list of pertinent best management practices and associated average costs per unit as provided by the Brown County Land Conservation Department, a written statement informing the landowner of the right to appeal the decision, and the appeals procedure.

10.06 VIOLATIONS.

1. PENALTIES.

(a) Any person who violates or refuses to comply with any of the provisions of this Ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$500.00. Each day of violation shall constitute a separate offense. A violation includes failure to comply with any standard of this Ordinance or with any condition or qualification attached to the conservation plan/schedule.

2. ENFORCEMENT BY INJUNCTION.

(a) As a substitute for or in addition to forfeiture actions, the Brown County Land Conservation Department may seek to enforce any part of this Ordinance by seeking injunctions or restraining orders.

10.07 VARIANCES

1. PROCEDURES.

(a) Variances from the requirements of this Ordinance may be granted by the Brown County Land Conservationist or designee based on any of the following findings:

1) Staff are not available due to excessive workload to develop conservation plans or schedules of implementation.

2) Cost-share funds have not been made available to the landowner or operator as required under Section 92.17(2m), Wisconsin Statutes.

3) Severe weather or other catastrophic events beyond the control of the landowner or operator make implementation impractical.

4) The installation or implementation of all components of the conservation plan/schedule will not or does not result in complete compliance with this Ordinance. A variance under this provision can only be granted if all the components of the conservation plan/schedule are installed or implemented.

10.08 APPEALS

1. AUTHORITY.

(a) Pursuant to Chapter 68, Wis. Stats., the Brown County Land Conservation Committee is hereby authorized to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination that has been made by the Brown County Land Conservation Department in administering this Ordinance.

2. WHO MAY APPEAL.

(a) Appeals may be made by any person having a substantial interest which is adversely affected by the order, decision, or determination made by the Brown County Land Conservation Department.