

The Town Board of the Town of Lessor, Shawano County, ordains as follows:

**SECTION 1. AUTHORITY.** The town board acts pursuant to the Wisconsin Statutes, including s. 281.77 or its successor, and further in accordance with village powers previously granted by the town electors, in order to protect the health, safety and welfare of the town.

**SECTION 2. PURPOSE.** This ordinance is designed to help limit or prevent contamination of groundwater, which would require the town to provide potable water to those owners of adversely affected wells, to reduce or eliminate damage to crops, lawns or surface waterways. Proper administration should help maintain or increase land values within the town. These purposes should be furthered by regulation of landspreading of contaminants.

**SECTION 3. INTERPRETATION.** This ordinance shall be interpreted liberally to achieve the stated purpose, but shall not be interpreted to conflict with federal or state law. The board is aware at time of passage that sometimes the Wisconsin Department of Natural Resources (DNR) required permits to landspread contaminants. This ordinance is intended to not conflict with DNR standards but instead to be compatible and possibly more restrictive. In this ordinance, use of the single form of terms is ordinarily used, but shall be interpreted as including multiple numbers within the category named.

**SECTION 4. APPLICATION.** Prior to landspreading of any contaminant, the person intending to engage in such activity, and the landowner involved shall completely fill out two identical applications furnished by the town contact person. A photocopy or other accurate reproduction of an original shall be acceptable. Failure to provide full information may serve as grounds for delay, denying a permit, or issuance with restrictions and/or conditions. At the time of receiving the application, or as soon thereafter as is practical, the contact person shall inform the applicant of the preliminary scheduled hearing date, including this information on one application form returned to applicant. Notice to one applicant shall constitute notice to all. Unless the town board establishes another procedure, the hearing date set upon receipt of the application by the contact person will be the next regularly scheduled town board meeting that is more than 2 weeks after the application is submitted. This notice to applicant shall be sufficient unless the hearing time is changed, in which case the contact person or another designated town representative will update the applicant. No application is considered complete and ready for hearing unless accompanied by required fees paid in cash, cashier's check, or postal money order to the town. The application form used has been approved by the town board, and is incorporated into the ordinance by reference.

**SECTION 5. FEES.** To cover the expenses of application and administrative oversight, the town board has established fees in a schedule attached to the ordinances held by the town clerk, which schedule will be reviewed occasionally to ensure little or no taxpayer expense from this procedure. Fees must be paid upon filing of the application.

**SECTION 6. NOTICE OF HEARING.** Once an acceptable application is received, the town contact person shall see that notice of the hearing is printed in any publication the town board has approved to provide notice to area residents. In addition, neighbors owning land within 500 feet of the boundaries of

any tax parcel containing an area proposed for landspreading shall receive a direct notice either by first class mail, certified mail with return receipt, direct service, or use of another method where the neighbor admits in writing or print having received such notice. When part of a tax parcel is planned for landspreading, neighbor notice shall extend from the exterior boundary of that tax parcel.

**SECTION 7. SECURITY.** A condition of permit issuance shall be the providing of financial security by the applicant to cover any remedial expenses that may be associated with cleanup or enforcement costs. This security shall further ensure the payment of any forfeiture and related enforcement costs to ensure no taxpayer burden from the permitted activity. To ensure adequate funds exist, the following amounts, when totalled, shall be available:

A. double the maximum forfeiture amount of the ordinance;

B. an amount equal to the application fees, since further oversight will be required if the fund is needed;

C. an amount equal or greater to a remediation cost estimate provided by an engineer or governmental agency, found reasonably acceptable to the town, based on remediation of a site where 10-50% of the contaminant spread would not effectively be dissipated. It is anticipated that light distillates would be nearer the lower end of contaminant risk with heavy distillates near the high end, with soil type taken into account by the expert. The applicant shall supply the initial estimate on such risk from such an expert, and reimburse any town expense if a second opinion is authorized by the town board due to a reasonable belief of inaccuracy, or lack of information provided by the expert, or a result believed inaccurate due to past experience. Prior to the town obtaining a second expert opinion, the applicant shall post an amount equal or greater to the estimated cost of expert evaluation.

D. A deposit account shall be established and confirmed, with a Wisconsin financial institution or in a money market account of a mutual fund or company acceptable to the town board and permittee. This account shall require consent of the town and permittee before any withdrawal or redemption is allowed, or be pursuant to court order obtained by the town, and the institution where the account is located shall acknowledge these restrictions in writing prior to permit issuance. At the conclusion of three years following landspreading or town withdrawal, whichever is later, the account balance shall be distributed to applicant, his heirs, successors or assigns.

As an alternative, the security amount may in full or part be provided by an irrevocable letter of credit issued to the applicant by a Wisconsin financial institution in good standing with state or federal regulators, which ensures the security funds will be available to the purposes of this ordinance for at least three years following the permitted landspreading.

**SECTION 8. SITE STANDARDS.** Following review of information provided by the DNR, the following standards and regulations are set:

A. One time landspreading of petroleum base contaminated soil, not classified as hazardous waste, may be allowed.

B. Soils contaminated with agricultural chemicals shall comply with rules established by the Wisconsin Department of Agriculture, to the extent of their application.

C. Landspreading is limited to times when the ground is not frozen. It is presumed landspreading is prohibited from November 1 to April 1. Any exception must be approved by the town contact person, who may consult with appropriate resources, such as the UW - Extension agricultural agent. Any exception allowed requires a written confirmation of the permit time by the

town contact person. Upon request by permittee, the contact person has an option to extend frozen ground restriction dates based upon climactic and soil conditions, providing notice to permittee which must be confirmed in writing.

D. The following permeability standards are set:

1. When permeability is 6 inches or less per hour, at least 5 feet of uncontaminated soil above the groundwater table and bedrock must exist.
2. When permeability is greater than 6 inches per hour, at least 10 feet of uncontaminated soil must exist above the groundwater table and bedrock.
3. Permeability may be determined by test areas around the site, or based upon the USDA County Soil Survey information, compared with an appropriate table or information therein, labeled at the time of ordinance passage as PHYSICAL AND CHEMICAL PROPERTIES OF THE SOILS.

E. No surface slope may exceed 6% in the spreading zone or within 20 feet of the edge of that zone.

F. No spreading shall occur:

1. in any zone where storage of contaminated soil is not allowed or in areas where DNR rules prevent contaminant treatment;
2. within a floodplain as shown on the county zoning map;
3. within 100 feet of a wetland or critical habitat area as determined by county zoning personnel or a DNR official;
4. within 1,200 feet of a public water supply or its delineated wellhead protection area established by ordinance of any municipality or district;
5. within 500 feet of a private water supply;
6. within 500 feet of any occupied residence, church or retail business;
7. within 100 feet of any neighboring property not subject to the permit.

G. the maximum thickness of landspread soil may not exceed:

- 4 inches for a 2,000 concentration of GRO mg/DRO kg;
- 2.5 inches for a 3,000 concentration ratio;
- 2 inches for a 4,000 concentration ration;

H. the total organic compound contaminants per landspreading site shall not exceed 6,000 pounds per site, except no more than 300 pounds of benzene may be spread at a single landspreading site, defined as a single tax parcel, in all portions of this ordinance, but no governmental lot or quarter-quarter is more than one tax parcel when under common ownership. Common ownership occurs when a relationship exists akin to immediate family or a business form where the applicant or landowner holds over 2% of the entity's worth.

I. After landspreading, the contaminated soil must be thoroughly mixed with the underlying native soil within 72 hours, unless the contact person allows a time extension due to excessively wet soil conditions, storm damage or other factor beyond the control of applicant that would effectively prevent safe and successful equipment operation.

J. Within 1 week after the landspreading mixture by tilling, planting or seeding of the site by a cover crop previously approved by the town board, in a manner acceptable to the town contact person is required. If conditions beyond control of applicant prevent compliance, the contact person may extend the time frame. This crop may be used for livestock or non-human consumption purposes. The crop will not include vegetables or fruits commonly canned, preserved or packaged for human consumption.

K. Included in the expert plan to be submitted to the town board on behalf of applicant will be a timetable for testing landspreading success, taking into account the type of contaminant and soil type. At least five equidistant test locations per acre shall be at each site. Each test site shall have a sample within the treatment zone and one below the treatment level in previously undisturbed soil. The testing of such samples shall be analyzed in a laboratory appropriately certified by the State of Wisconsin,

which shall include a summary of degree of success in the program and a recommendation of whether further testing is required due to incomplete success. A copy of such testing results shall be sent or delivered to the contact person who shall update the town board. Testing shall never end before conclusion of the following year growing season, when at least one test will occur under the standards herein. Further testing may be extended by the contact person based on continuing DNR testing, recommendation of the laboratory, or damage to or near neighboring land where the problem is consistent with effects of the permitted activity.

**SECTION 9. PLAN.** Prior to permit issuance, the applicant shall provide a detailed plan showing:

A. the type of contaminant to be spread, specifically as to gasoline type, diesel, fuel oil with number, jet fuel, kerosene, waste oil or other type of contaminant. However, manure produced by livestock of an owner or occupant of the land is not considered a contaminant unless subject to other governmental order issued specifically for that person or site;

B. a map of the area where spreading is to occur, showing the land boundaries, spreading area within the parcel shown, names and addresses of neighboring owners requiring notice under this ordinance shown on each respective border, USGS topographic map, Soil Conservation Survey map, and any adjacent public or private highway access to the parcel with the road identified by name and location;

C. soil key information from the USCS survey appropriate to any soil type shown on the map for the entire spreading area parcel, including permeability information for each type in the spreading zone;

D. listing on the map of actual land use of the site and neighbor land;

E. any slope over 5% as to location; depth to water table and bedrock, and organic matter content.

F. the identity and address of any lienholder having an interest in the spreading site real estate, with a written statement acknowledging receipt of information about the spreading plan and any indication whether the lienholder consents to such plan.

G. the time frame for planned landspreading.

H. proposed methods of spreading, mixing and tillage.

I. a detailed crop planting, care and harvesting plan.

J. description of how the landspreading site border will be marked.

K. proposal for site test monitoring.

L. a copy of any material submitted to the DNR or Agriculture Department and a response from either.

M. disclosure of any contractor expected to work on the project, including any references concerning successfully completing similar work on another Wisconsin site;

N. listing of expected soil volume and soil source information involved with the landspreading;

O. all aspects of this plan are to be promptly updated by applicant for the town in the event of any change in status of any plan feature or factor affecting the permit. Updated information shall be provided to the contact person, who is responsible for updating the town board.

**SECTION 10. APPLICATION EVALUATION.** In deciding whether to issue the permit, the town board, following public hearing, shall take into account information presented in the plan and application, any action taken or comment by a state or county agency about the plan; zoning compliance, the past history of compliance with legal standards by the applicant and any contractor. Comments



of neighbors or other members of the public are to be considered, but not be determinative of issuance, by itself.

The board shall appoint a contact person for ordinance administration purposes, who serves at the pleasure of the board, until a successor is named, death or guardianship occurs. In the event the contact person resigns or is unable to continue performance of duties, the town chairperson becomes the contact. In the event of inability to act by the contact person and chairman, the clerk shall be the contact person. In any such vacancy, the town board shall act at the nearest practical time to name a replacement.

The first contact person is Town Chairman.

No permit shall be issued by the contact person until board approval of the permit.

Each permit shall expire one year after the date of issuance, unless the town board has approved a different ending time.

Permits are issued with the condition that inspection for enforcement purposes is consented to by the applicant and landowner, their heirs, successors or assigns. Any law enforcement officer, health officer, zoning official, town contact person, expert for testing or town agent shall have the right to enter on said permitted premises or land adjacent thereto of the applicant or owner to inspect the same and ensure compliance, at all reasonable times. When practical, notice of inspection shall be provided to permittee.

**SECTION 11. ENFORCEMENT.** The board sets penalties with the knowledge that failure to comply with the ordinance can lead to substantial costs for town residents.

The board may seek an injunction, forfeiture or combination of both.

The contact person is authorized to issue a citation for violation of any portion of this ordinance, but shall promptly advise the town board for a determination whether any other action should occur.

Ordinance violation is grounds to increase the level of security required of the applicant. A permit may be temporarily suspended or permanently revoked following consideration of the offense severity and the number of present and past offenses.

Any person violating any provision of this ordinance shall upon conviction thereof forfeit the costs of prosecution and penalty, and in default of payment may be imprisoned in the county jail until payment of any remaining amount owing, up to the maximum time level allowed by law. Each day shall constitute a separate violation when the defect has not been remedied. Payment of forfeiture may be ordered by the court from any security deposit funds.

Forfeiture range: \$ 5,000 to \$ 10,000.00

<u>DEPOSIT SCHEDULE</u>	<u>FIRST OFFENSE</u>	<u>SUBSEQUENT OFFENSE (3 years)</u>
	<u>\$ 2,500.00</u>	<u>\$ 5,000.00</u>

plus applicable court costs of enforcement

**SECTION 12. SEPARABILITY AND CONFLICT.**

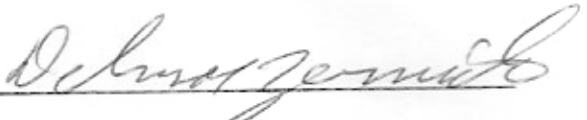
(a) If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.


(b) All ordinances or parts of ordinances inconsistent with or contrary thereto are hereby repealed; except nothing in this ordinance shall be interpreted so as to conflict with state laws or orders regulating trailers or mobile homes or any of the requirements of any ordinances of the town.

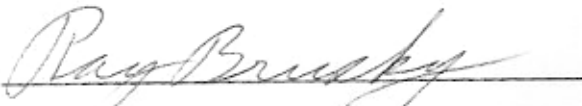
**SECTION 13. EFFECTIVE DATE.** This ordinance shall take effect from and after its passage and publication as required by law, s. 66.035.

Vote for:   3   against:   0  

Passed on: October  8 , 1998.


  
Chairperson Delmar Zernicke

  
Supervisor Gerald Jarek

  
Supervisor Ray Brusky

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using s. 66.035 procedure for ordinance code amendment, before and after passage.

  
Clerk Joanne Thiede