

**TOWN OF BYRON
FOND DU LAC COUNTY, WISCONSIN**

AN ORDINANCE REGULATING LAND DISPOSAL OF SLUDGE

WHEREAS, it is in the public interest and welfare to establish an ordinance regulating the land disposal of sludge for the protection of the Town's residents, quality of life and property values, and the Town's wells and water supply; and

WHEREAS, the Town finds it necessary to exercise its police powers as the same are authorized by sec. 60.22 and 61.34 of the Wisconsin Statutes; and

WHEREAS, the Town wishes to exercise its general powers relating to the prevention of nuisances, the preservation of water supply, groundwater protection and to otherwise encourage the protection of the Town's resources for the health, welfare and safety of the Town's residents;

NOW, THEREFORE, the Town Board of the Town of Byron, Fond du Lac County, Wisconsin does ordain as follows:

SECTION 1. APPLICABILITY.

The purpose of this Ordinance is to establish rules and regulations requiring advance notice of the land disposal of sludge, to prevent nuisances created by the land disposal of sludge, and to provide security to protect Town residents against injury caused by improper or negligent land disposal of sludge. This Ordinance is applicable to land disposal of sludge. This Ordinance is not applicable to land disposal of domestic wastewater by "private plumbers" as defined under NR 113, septage as defined under NR 113, or the field spreading of liquid manure or other farm-originated wastes applied to the land in accordance with agriculturally sound practices. This Ordinance is intended to supplement, but not replace, existing state regulations regarding the land disposal and application of sludge.

SECTION 2. DEFINITIONS

The following definitions shall apply to this Ordinance:

1. "Detimental Effect" means having a significant damaging impact on groundwater for any present or future consumptive or nonconsumptive uses.
2. "Disposal" means the discharge, deposit, or dumping of any sludge so that the sludge or any of its constituents may enter the environment or any waters of the state or be emitted into the air.
3. "Groundwater" means the portion of subsurface water which is within the zone of saturation, and includes, but is not limited to, perched water tables, shallow regional groundwater tables, and aquifers or zones that are periodically, seasonally or permanently saturated.
4. "Incorporation" means the mixing of sewage sludge with topsoil by injecting, disking, mold-board plowing, chisel plowing or rototilling to a minimum depth of four inches.
5. "Injection" means the subsurface placement of liquid sludge to a depth of four to 12 inches.
6. "Landspreading" means the injection of sludge into the soil or the application of sludge to the soil surface.
7. "Nuisance" means any source of filth, odor or probable cause of sickness.
8. "Raw Sludge" means sludge that has not received biological, chemical, physical or thermal treatment that would significantly reduce the volatile solids or pathogens in the sludge, and includes sludge from primary and secondary sedimentation tanks and secondary activated sludge which has not been treated with facilities designed and operated in conformance with NR 110.26.

9. "Sludge" means all of the following: (a) the accumulated solids resulting from the biological or chemical treatment, coagulation, floatation, filtration, or sedimentation of wastewater; (b) whey and whey-related byproducts, cow water and other byproducts of cheese making and other dairy operations, excluding dairy farming; and (c) the residue or remains from the quarrying of stone, gravel and other non-metallic minerals, from the cutting or other processing of such minerals, or from the fabrication of brick or other materials into which such minerals are incorporated.

SECTION 3. NOTICE REQUIREMENTS.

1. No land application of sludge shall occur within the Town of Byron, Fond du Lac County, Wisconsin unless advance written notice of such land application and its intended scope is first given to the Town Board within ten (10) days preceding the month in which the land application is to occur.
2. Said notice shall be given to the Town Clerk and shall include the following:
 - A. A copy of the sludge permit application filed with the Department of Natural Resources under NR 204, if such application is required;
 - B. A copy of the sludge permit issued by the Department of Natural Resources under NR 204, if such permit is required;
 - C. A copy of any and all sludge management reports submitted to the Department of Natural Resources under NR 204;
 - D. A copy of any and all sludge characteristics reports submitted to the Department of Natural Resources under NR 204;
 - E. A copy of any and all landfilling and public distribution reports submitted to the Department of Natural Resources under NR 204;
 - F. A copy of any and all agricultural site characteristics and operation reports submitted to the Department of Natural Resources under NR 204;
 - G. A copy of any and all sludge disposal land application records reports submitted to the Department of Natural Resources under NR 204; and
 - H. A copy of the site approval issued by the Department of Natural Resources for each site on which sludge will be landspread, if such approval is required.

3. The notice required by this section shall be in addition to any other reports, applications, or notices required under any Town Ordinance. The applicant shall be responsible for supplementing or updating the submitted materials. The notice requirements of this section are intended to be of a nature and scope to reasonably inform the Town and its residents of the nature and scope of the land application program and the sites to be utilized.

SECTION 4. APPLICATION FEE.

The notice required under Section 3, above, shall be accompanied by an application fee in the amount of \$750.00. The purpose of the application fee is to defray the Town's expenses incurred in the investigation and review of the information submitted under Section 3, above. A separate application fee of \$750.00 is payable to the Town annually.

SECTION 5. LANDSPREADING REQUIREMENTS.

1. All sludge which is landspread shall be applied in conformance with the permit issued under NR 204 and the provisions of said chapter, to the extent applicable.

2. In addition to the foregoing, all sludge which is landspread on sites located within the Town shall be either incorporated or injected. If incorporated, sewage sludge shall be mixed with the topsoil within sixty (60) minutes of spreading.

3. Without intent of limitation, the injection and/or incorporation requirements of this section are applicable to sludge and to raw sludge, the landspreading of which is authorized on an emergency basis by the Department of Natural Resources under NR 204.

4. The provisions of this section are intended for the protection of the residents of the Town and their health, safety and sensibilities and to reasonably prevent the creation of a nuisance.

SECTION 6. GROUNDWATER/WELL SECURITY.

1. The protection of groundwater sources and wells is necessary for the maintenance of the health, welfare and economic well being of the Town of Byron and its residents. To protect Town property owners from the detrimental effect to groundwater or wells in the Town, and to provide for reasonable compensation for any losses which may be incurred by Town residents, the security requirements of this section must be met.

2. Prior to landspreading sludge on sites located within the Town, all parties required to indemnify the under subsection 3, below, shall file with the Town Clerk a sworn certificate representing that the applicator, or the generator of the sludge, as may be appropriate, has a net worth of not less than \$500,000.00.

3. In addition to the foregoing, the applicator and the generator of the sludge, if different from the applicator, shall state in writing that they agree to indemnify the Town and its residents for damages which have been proven to have been caused by the landspreading or land disposal practice. The application and the generator of the sludge shall be jointly and severally liable for any such damages.

4. In lieu of filing a statement of net worth as set forth above, the relevant parties shall file a bond or other form of security acceptable to the Town Board in an amount deemed necessary to protect the Town and its residents in light of the facts and circumstances of the proposed landspreading and disposal program.

SECTION 7. EMERGENCY WATER PROVISIONS.

The party or parties landspreading sludge shall reimburse the Town and its residents for the cost of providing emergency water provisions for human and/or animal use in all cases where it is reasonably determined by the Town Board that the operation of the sludge disposal program was the cause of the loss of the existing water supply.

SECTION 8. NONEXCLUSIVITY.

The adoption of this Ordinance shall not preclude the Town of Byron from adopting any other ordinance or regulation for the protection of the resources and residents of the Town. The jurisdiction and duties defined in this Ordinance shall not preclude the Town Board or any other Town officer from the enforcement of any other Town Ordinance or regulation. The requirements of this Ordinance are in addition to any other requirements or ordinances adopted by the Town of Byron or Fond du Lac County.

SECTION 9. ENFORCEMENT AND PENALTIES.

The Town Board shall have the authority to institute the appropriate legal action or proceeding to prevent, restrain, correct or abate a violation of this Ordinance. Enforcement remedies created by this Ordinance are cumulative and shall be in addition to all other remedies available under law. Any person who violates any provision of this Ordinance or any order, rule, or regulation promulgated by the Town Board under this Ordinance shall, upon conviction, be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), for each offense, together with the costs and attorneys' fees incurred in the prosecution. The Town Board shall provide written notice of a violation of this Ordinance. The relevant party receiving notice shall have 14 days to correct the infraction. Each day that a violation continues after the 14 days subsequent to the notice shall be deemed a separate offense. The penalties authorized under this Ordinance are not intended to preempt or replace a private party's right to seek damages in a civil action filed against the person or entity landspreading sludge on sites located within the Town of Byron.

SECTION 10. INTERPRETATION.

The provisions of this Ordinance shall be considered minimum requirements. Where the provisions of this Ordinance impose greater restrictions than any statute, other regulation, ordinance, or covenant, the provisions of this Ordinance shall prevail. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this Ordinance, the provisions of such statute, other regulation, ordinance or covenant shall prevail.

SECTION 11. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional, or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

SECTION 12. EFFECTIVE DATE.

This Ordinance shall take effect upon adoption and publication as a Class I notice in the Town's official newspaper.

The foregoing Ordinance was adopted at a duly called meeting of the Town Board of the Town of Byron, Fond du Lac County, Wisconsin on the 7 day of April, 2008.

Francis Ferguson

Town Chairman

Attest:

Shawna S. Kelley

Town Clerk

Published this 18 day of April, 2008.

