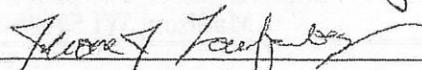


Name(s) of Aggrieved Person(s): Jerome J. Laufenberg

Signature(s) of Aggrieved Person(s): 

Address: N9577 Co Rd F Alma Center, WI 54611

Telephone: 715-964-2052 715-533-0850 cell

Representative (if any): ATTORNEY MARK A. RADCLIFFE

Address: RADCLIFFE LAW OFC, SC 131 MAIN ST., PO BOX 789

Telephone: BLACK RIVER FALLS, WI 54615-0789

↳ (715) 284-1234 mark@radcliffelawfirm.com

All communications, documents and papers submitted to the board by any attorney, and preferably by any aggrieved person, shall be one copy by an electronically transmitted .pdf file which can be read and copied easily with current technology. The e-mail address is: SitingBoard@wisconsin.gov

Laufenberg appeal to DATCP

- 1) Appellant is licensed as a livestock facility for up to 980 animal units and has been so since 2011.
- 2) That in 2015 appellant attempted to construct a roof over an existing concrete pad to assist in keeping animals and manure under cover of a roof. The County Land Conservation department issued a stop work order stating that the appellant was in violation of the local licensing standards ordinance.
- 3) The local (Jackson Co.) licensing standards ordinance states as follows:

23.07 Licensing Standards

The standards for issuing a license are as follows:

1. The state livestock facility siting standards adopted under ATCP 51, Wis. Adm. Code, inclusive of all appendixes and worksheets and any future amendments to this chapter, except as may be noted in this section of the ordinance, are incorporated by reference in this ordinance, without reproducing them in full.

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LIVESTOCK AND ANIMAL FACILITY LICENSING 23.07(2)

2. All animal and livestock facilities new or expanding need to be permitted and must meet the following:

- a) *No overflow of manure storage structures.*
- b) *No unconfined manure stacking (piling) within Water Quality Management areas.*
- c) *No direct runoff from feedlots or stored manure to waters of the State.*
- d) *No unlimited livestock access to waters of the State where the sod cover is compromised in the process and/or a pollution hazard is created by a concentration of livestock.*

3. The following setbacks shall apply to livestock and/or animal structures:

a) Property lines

Except as provided for waste storage structures, livestock and/or animal structures must be located a minimum of 100 feet from the property line if the livestock and/or animal facility will have fewer than 1,000 animal units, and 200 feet from the property line if the livestock and/or animal facility will have 1,000 or more animal units.

The setback requirement does not prevent the use or expansion of a livestock and/or animal structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the property line.

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LIVESTOCK AND ANIMAL FACILITY LICENSING 23.07(3)(b)

b) Public road right-of-way

Highway Setbacks.

For the purpose of determining the distance buildings and other structures shall be set back from the streets and highways of the County, the highways of the County are divided into the following classes:

(1) CLASS A HIGHWAYS.

- a) *All State and federal highways are hereby designated as Class A highways.*
- b) *The setback line for Class A highways shall be 110' from the centerline of*

the highway or 50' from the right-of-way line, whichever is greater.

(c) Service roads to Class A highways shall be considered as Class C highways for the purpose of determining the setback along such service roads

(2) CLASS B HIGHWAYS.

(a) All County trunks are hereby designated as Class B highways. For the purpose of this subchapter, any road will be considered as a County trunk after it has been placed on the County trunk systems by the County Board and approved by the Highway Commission.

(b) The setback for Class B highways shall be 75' from the centerline of such highway or 42' from the right-of-way line, whichever is greater.

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LIVESTOCK AND ANIMAL FACILITY LICENSING 23.07(3)(b)(3)

(3) CLASS C HIGHWAYS.

(a) All town roads, streets and highways not otherwise classified are hereby designated Class C highways.

(b) For all Class C highways setback lines are hereby established parallel to and distant 63' from the centerline of such highway or 30' from the right-of-way line, whichever is greater.

(4) LESSER SETBACKS. Lesser setbacks may be permitted by the Board of Adjustment according to 17.96 in cases of unusual topography or existing patterns of lesser setbacks of buildings on nearby properties.

The setback requirement does not prevent the use or expansion of a livestock and/or animal structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the public road right-of-way.

c) Animal Waste Storage Structure

A new waste storage structure, designed to contain 30 days or more of animal manure (long-term storage facility), may not be located within 350 feet of a property line, or within 350 feet of the nearest point of any public road right-of-way.

A new animal waste storage structure designed to contain less than 30 days of animal manure (short-term storage facility), may not be located within 100 feet of a property line, or within 100 feet of the nearest point of any public road right-of-way.

A single new waste storage structure may be constructed closer to the property line or public road if a new structure is:

- Located on the same tax parcel as a waste storage structure in existence before May 1, 2006.
- No larger than the existing structure.
- No further than 50 ft. from the existing structure.
- No closer to the road or property line than the existing structure.

This setback requirement does not apply to existing waste storage structures. An existing short-term storage facility within 100 feet of a property line or road may not expand toward that property line or road. An existing long-term manure storage facility within 350 feet of a property line or road may not expand toward the property line or road.

Page 12. JACKSON COUNTY Revised 03/10

LIVESTOCK AND ANIMAL FACILITY LICENSING 23.07(3)(d)

d) New, expanding, or substantially altered feedlots are prohibited in the 100 Year Floodplain.

e) New, expanding, or substantially altered feedlots shall follow NR.811 and BR.812 Rules for siting wells.

f) New, expanding, or substantially altered feedlots shall be set back a minimum of three hundred (300) feet from a river, creek or stream and one thousand (1000) feet from a lake, pond, or flowage. An existing feedlot already located at less than one hundred fifty (150) feet from a river, creek or stream or one thousand (1000) feet from a lake, pond, or flowage may expand, but the addition shall not further encroach upon the shoreline setback. The setback may be reduced, but only by the County Board of Adjustment through the Variance procedure.

- 4) The local authority has insisted that no structure can be built without engineering plans that prove that the proposed structure complies with the local ordinance 23.07, which as shown above, adopts the state standards.
- 5) That pursuant to the local ordinance an appeal was heard by the Land Conservation and Ag Committee at which time the committee affirmed the land conservation officer's opinion that no structures are allowed to be built without proof from an engineer that the structure will comply with the local ordinance, which as has been pointed out, is the state standards.
- 6) That at the appeal hearing the appellant requested that the committee point out where in the state standards that it states that construction of a roof over concrete cannot commence without an engineer's report stating that it complies with state standards, and the board repeatedly simply referred back to the state's "Worksheet 5 – Runoff Management."
- 7) That my review of "Worksheet 5 – Runoff Management" doesn't show any pre-requirement(s) that would require such a showing before such a building is constructed.
- 8) In essence, the County is relying on the state standards as their authority on this matter and the state standards don't seem to require pre-authorization before this type of post licensing construction takes place. If the state standards don't require the pre-engineering report that the County is requiring then the County should be ordered to cease enforcement of its stop work order and allow the appellant to finish construction.

ROOFS AND COVERS

(No.)
Code 367

Natural Resources Conservation Service
Conservation Practice Standard

I. Definition

A rigid, semi-rigid, or flexible manufactured membrane, composite material, or roof structure placed over a waste management facility.

II. Purpose

To provide a roof or cover for:

- water quality improvement
- diversion of clean water from animal management areas (i.e. barnyard, feedlot or exercise area) and/or waste storage facilities
- capture of biogas for energy production
- reducing net effect of greenhouse gas emissions
- air quality improvement and odor reduction

III. Conditions Where Practice Applies

This practice applies where:

- Exclusion of precipitation from an outdoor animal management area, waste storage facility or waste treatment facility will improve management of an existing or planned animal waste handling system or eliminate a pollution concern.
- Capture and controlled release of emissions from an existing or planned animal waste management, storage, or treatment system will improve air quality and/or reduce the net effect of greenhouse gas emissions.
- Bio-treatment of emissions from an existing or planned waste storage or treatment facility will improve air quality and/or reduce the net effect of greenhouse gas emissions.
- Biogas production and capture for energy are components of an existing or planned waste management system.

IV. Federal, Tribal, State, and Local Laws

Users of this standard should be aware of potentially applicable federal, tribal, state and local laws, rules, regulations or permit requirements governing waste

facility covers. This standard does not contain the text of federal, tribal, state, or local laws.

V. Criteria

A. General Criteria Applicable to All Purposes

1. Service Life

The roof or cover along with any necessary appurtenances shall be designed to provide a service life of not less than 10 years.

2. Materials

The type, thickness and material properties of the roof or cover and any supporting members shall account for all loads and stresses due to operational, environmental, and climatic conditions.

The roof or cover manufacturer and/or installer shall provide maintenance instructions and certify that the roof or cover is properly installed.

Flexible membrane materials, used for fabrication of inflated and floating covers, shall be certified by the manufacturer as suitable for the intended application.

The minimum material thickness for flexible or composite geomembrane covers shall be:

- 40 mils for non-reinforced material
- 36 mils for reinforced materials

Any materials exposed to biogas shall be resistant to corrosion. Equipment shall be suitable for use within a potentially explosive environment.

3. Loads

For facility components that serve as part of the foundation or support for a roof or cover,

all loads shall be considered in the structural design.

4. Design

The design of foundations associated with animal waste storage facilities shall meet the structural design criteria outlined in Wisconsin NRCS FOTG Section IV Standard 313, Waste Storage Facility. Design roofs and covers according to the criteria in the current editions of the following material references as appropriate:

- Steel: Steel Construction Manual, American Institute of Steel Construction.
- Timber: "National Design Specifications for Wood Construction," American Forest and Paper Association.
- Concrete: "Building Code Requirements for Structural Concrete, ACI 318," American Concrete Institute.
- Liquid-Tight Concrete Slabs and Walls: "Code Requirements for Environmental Engineering Concrete Structures and Commentary, ACI 350," American Concrete Institute.
- HDPE/LLDPE Geomembrane: "HDPE and LLDPE Geomembrane Installation Specification," International Association of Geosynthetic Installers.

5. Treated Wood

When exposed to waste or elements, use preservative-treated wood that meets the requirements in the applicable American Wood Protection Association (AWPA) Standards or in an evaluation service report prepared by an organization recognized by the International Code Council (ICC). A listing of allowable preservatives includes but is not limited to CCA (Chromated Copper Arsenate), ACQ-C (Alkaline Copper Quat Type C), ACQ-D Carbonate (Alkaline Copper Quat Type D, Carbonate formulation), CuN (Copper Naphthenate), ACZA (Ammoniacal Copper Zinc Arsenate), CBA-A and CA-B (Copper Azole Types A and B).

Aluminum fasteners shall not be used in direct contact with treated wood. Use galvanized or stainless steel bolts, washers, nuts, nails, and other hardware which meet

ASTM Specifications A153 for fasteners and A653 Class G185 sheet metal for connectors, Type 304 or 316 (stainless) steel, or other type of material or coating as approved by the preservative manufacturer. All fasteners, connectors, and any other metal contacting ACZA, ACQ or CA treated wood shall be stainless steel.

6. Access

Enclosed facilities, as the result of a roof or cover, shall provide suitable access, as necessary, for normal operation and maintenance of the waste facility.

7. Repair

Flexible roof and cover material shall be readily repairable by solvent, adhesive, thermoplastic welding, or according to manufacturer's recommendation. Rigid or semi-rigid roof and cover material shall be repairable by sectional replacement.

8. Safety

Roof and cover systems shall include safety features, including fences and warning signs, as appropriate, to prevent undue hazards.

The cover shall include safety features, including fences and warning signs as appropriate to prevent undue hazards. Specialized safety equipment and procedures required shall be included in the Operation and Maintenance Plan.

Provisions shall be included to prevent the unintentional conveyance of biogas to connected facilities as a result of the roof or cover placement.

Confined spaces where human entry may occur shall be designed and operated in compliance with the provisions contained in ASABE EP470, Manure Storage Safety.

B. Additional Criteria for Rigid and Semi-Rigid Roofs and Covers

Rigid and semi-rigid roofs and covers shall be designed to withstand all anticipated loads including but not limited to internal and external loads, uplift pressure, concentrated surface and impact loads and load combinations in

compliance with this standard. Roofs, covers and associated support systems shall be designed to resist snow and wind loads as specified in the current version of ASCE 7, Minimum Design Loads for Buildings and Other Structures.

Vertical supports for roofs shall support the roof for wind and snow loads described above. Design for vertical supports shall include anchoring to resist uplift forces. Fasteners shall be capable of supporting all horizontal and vertical loadings.

Rigid covers shall meet the structural requirements of Wisconsin NRCS FOTG Section IV Standard 313, Waste Storage Facility. The cover or cover vessel design shall include provisions for fail safe pressure relief. Maximum pressure shall not exceed 12 inches water column.

Covers intended for vehicle, equipment and/or livestock traffic shall be designed to withstand anticipated dead and live loads. The live load values for covers contained in ASAE EP378.3, Floor and Suspended Loads on Agricultural Structures Due to Use, and in ASAE EP393.3, Manure Storages, shall be the minimum used. For tank wagons having more than a 2,000 gallon capacity, the actual axle load shall be used.

Equip openings in covered tank with grills or secure covers for safety, and for odor and vector control.

Roof structures shall be designed to prevent waste located under the roof from becoming a pollution problem. Structural practices for collecting roof runoff shall follow criteria outlined in Wisconsin NRCS FOTG Section IV Standard 558, Roof Runoff Structure. All outside surface water shall be diverted from the roofed area.

C. Additional Criteria for Flexible Covers

Floating membrane covers shall be supplemented with floatation materials as necessary for proper function, operation, and maintenance.

Floating covers shall be designed to fluctuate with the liquid level as necessary to properly manage the storage facility.

Impermeable floating covers shall be designed with a biogas collection, transfer, and control system to provide protection for the cover and convey biogas to a flare, release or control point.

Inflated covers shall be:

- equipped with a warning system to notify operator of blower failure for mechanically forced air systems.
- provided with a support system to limit cover collapse.
- provided with a suitable access port for normal maintenance equipment.

Flexible membrane cover systems shall be designed to resist snow, wind, and wind uplift loads as appropriate.

D. Additional Criteria for Biogas Control/Utilization

1. Biogas Emissions

The cover system shall provide for capture and control or utilization of biogas, bio-reduction and direct release of gaseous emissions, or contain and release of gaseous emissions, as appropriate.

Perforated pipe and other components under the facility cover shall be designed to exclude floating debris and waste residue and shall have a service life consistent with the expected cover life, but not less than 10 years.

a. Capture and Control/Utilization

The cover system shall be designed to capture biogas emissions and transfer to point of discharge without mixing with air. The point of discharge shall be equipped with a flare or utilization equipment as appropriate. Flares shall be equipped with an automatic ignition system.

b. Bio-reduction and Direct Release

The cover shall be fabricated of a permeable composite membrane designed to promote biological treatment of gaseous emissions which pass through the membrane for direct release to the atmosphere.

c. Contain and Release

The cover system is designed for rainfall exclusion and not to specifically capture biogas. For systems which generate biogas, designs shall provide for the safe handling and transfer of the biogas.

2. Anchorage

The cover anchorage system shall be designed in a manner to resist internal gas pressures, corrosive environment, wind loads, air tightness (as necessary), or other forces as appropriate to the cover system.

3. Pressure

Roofs and covers associated with biogas production shall include provisions for fail safe pressure relief when interior pressures can exceed design operating pressures. Maximum pressure shall not exceed manufacturer's recommendations.

4. Precipitation

Impermeable covers shall direct precipitation to collection points for removal by pumping or by controlled release to suitable grassed or otherwise stabilized areas for discharge or infiltration.

5. Biogas Capture

The cover materials and all appurtenances such as weights and floats shall be designed to capture and convey biogas to the gas collection system. The cover design shall provide for the following:

a. Air Exclusion

The cover system and appurtenances, including perimeter soil slopes above the water line for in-ground digesters, shall be designed to exclude the entrance of air under all operating conditions.

b. Gas Collection, Control, and Utilization.

The collection, control, and utilization of biogas shall meet appropriate criteria in Wisconsin NRCS FOTG Section IV Standard 366, Anaerobic Digester.

6. Biogas Safety

As a minimum for all roofs and covers that contain or control biogas, the following warning signs shall be posted:

- "Warning Flammable Gas"
- "No Smoking"
- And, when necessary: "Do Not Enter - Hazardous Gases"

Where biogas is captured, the gas collection and control/utilization system shall be designed in accordance with standard engineering practice for safely handling a flammable gas including safety criteria noted in Wisconsin NRCS FOTG Section IV Standard 366, Anaerobic Digester.

VI. Considerations

Additional recommendations relating to design that may enhance the use of, or avoid problems with, this practice but are not required to ensure its basic conservation functions are as follows.

- A. Animal waste storage facilities can release large amounts of biogas at certain times of the year. The cover and gas collection system should be designed for release of this gas.
- B. Storage of biogas should be considered when installing flexible covers over storage impoundments (lagoons) to attenuate gas supply for end use or controlled release.
- C. The covered waste facility should be located near a suitable site for energy utilization equipment. Short distances for the transmission of methane through buried pipe are preferable.
- D. For areas where energy production is an option, consider adding energy recovery or production to the gas handling system. Energy recovery or production can offset additional air emissions from reduced fossil fuel combustion.
- E. Waste facility covers which capture biogas may increase the nutrient content of the manure stored. Consider the effect this may have on the nutrient management plan.
- F. Waste facility covers which capture biogas may increase the odor nuisance during agitation, pump out, and land application. Consider the effect this may have on the surrounding area and management options.

- G. To further improve water quality, consider eliminating or reducing feedlot areas when placing livestock under roof.
- H. Screening with vegetative plantings, landforms, or other measures may be implemented for aesthetic purposes.
- I. To maintain storage capacity and functionality by minimizing solids accumulation, manure management methods such as solid/liquid separation should be considered.
- J. For organic applications, consider using special construction material such as qualifying lumber as documented by an evaluation service recognized by the ICC. Other application considerations may also need to be made to address organic issues.
- K. For areas where energy production is an option, consider adding energy recovery or production to the gas handling system. Energy recovery or production can offset additional air emissions from reduced fossil fuel combustion.

VII. Plans and Specifications

Plans and specifications shall be prepared in accordance with the criteria of this standard. Define the purpose, goals and objectives of the practice. Include information about the location and construction sequence.

As a minimum, the plans and specifications shall provide the following:

1. Layout and location of waste management facility with roof or cover including waste collection points and planned access.
2. Grading plan showing excavation, fill, and drainage, as appropriate.
3. Materials and structural details of the roof or cover including all necessary appurtenances as appropriate for the complete system.
4. For roof and cover systems with gas collection and control include a listing of material, equipment, and necessary appurtenances.

VIII. Operation and Maintenance

An operation and maintenance (O&M) plan must be prepared and reviewed with the landowner or operator responsible for the application of this

practice. The O&M plan shall provide specific instructions for proper operation and maintenance of each component of this practice and shall detail the level of repairs needed to maintain the effectiveness and useful life of the practice. An maintenance O&M plan shall be developed that is consistent with the purposes of the practice, its intended life, safety requirements, and the criteria used for its design.

Develop an emergency action plan for covered systems associated with biogas production. The plan shall contain instructions as to limits of cover performance and emergency procedures if control equipment fails.

For enclosed waste facilities, exercise caution and care during cover removal or access. If opening of the cover is required for facility management, include provisions to prevent exposure of workers to hazardous gases.

If personnel are or may be required to enter an enclosed waste facility, include safety provisions recommended by NIOSH (National Institute for Occupational Safety and Health) for working in confined spaces including but not limited to using a positive-pressure self-contained breathing apparatus, safety line, and standby personnel.

IX. References

USDA, NRCS National Engineering Handbook, Part 651, Agricultural Waste Management Field Handbook.

American Concrete Institute. 2008. Building Code Requirements for Structural Concrete, ACI 318-08. ACI Committee 318. ACI, Farmington Hills, MI. www.concrete.org.

American Concrete Institute. Code Requirements for Environmental Engineering Concrete Structures. ACI Committee 350. ACI, Farmington Hills, MI. www.concrete.org.

American Forest and Paper Association. 2005. National Design Specifications for Wood Construction. AF&PA, Washington, DC. www.AFANDPA.org.

American Institute of Steel Construction. 2005. Steel Construction Manual, 13th Edition. AISC, Chicago, IL. www.AISC.org.

American Society for Testing and Materials. Annual Book of ASTMs. Standard Specification for Zinc

Coating (Hot-Dip) on Iron and Steel Hardware, A 153. ASTM, Philadelphia, PA. www.ASTM.org.

American Society for Testing and Materials. Annual Book of ASTM Standards. Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process, A 653. ASTM, Philadelphia, PA. www.ASTM.org.

American Society of Agricultural and Biological Engineers. Floor and Suspended Loads on Agricultural Structures Due to Use, ASAE EP378.3. ASABE, St. Joseph, MI. www.ASABE.org.

American Society of Agricultural and Biological Engineers. Manure Storages, ASAE EP393.3. ASABE, St. Joseph, MI. www.ASABE.org.

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American Wood Protection Association. AWPA, Birmingham, AL. www.AWPA.com.

International Association of Geosynthetic Installers. 2007. HDPE and LLDPE Geomembrane Installation Specification. IAGI, St. Paul, MN. www.IAGI.org.

International Building Code. 2009. International Code Council (ICC). ICC, Whittier, CA. www.ecodes.biz.

International Code Council Evaluation Service. International Code Council (ICC). ICC, Whittier, CA. www.ICC-ES.org.

Trumble, Lisa K - DATCP

From: DATCP SitingBoard
Sent: Tuesday, May 12, 2015 2:05 PM
To: Mark Radcliffe
Cc: Castelnovo, Richard M - DATCP; Trumble, Lisa K - DATCP
Subject: RE: Laufenberg Appeal

Mark,

I hope you have just had a conversation with Lisa Trumble in our Division of Ag Resource Management. As I had posited might be the case, Lisa confirmed with me that the requirement for the engineering plans is in the federal NRCS 590 standards, adopted by reference in Wis. Admin. Code ch. ATCP 51. She will be the resource person you need to understand the requirements for the engineering report.

As I also stated to you, the request for an appeal to the Livestock Facility Siting Review Board cannot be granted because the Board does not have authority to deal with compliance monitoring and actions taken when some type of violation of the licensing ordinance occurs. The Board only hears appeals in the case of either the grant or denial of a license or CUP.

I wish you and your client success in attaining the needed modifications to meet the ordinance requirements.

Cheryl

Cheryl Furstace Daniels

Assistant Legal Counsel
Wisconsin Department of Agriculture,
Trade and Consumer Protection and
Livestock Facility Siting Review Board
2811 Agriculture Dr., Madison WI 53708-8911
608-224-5026

From: Mark Radcliffe [mailto:mark@radcliffelawfirm.com]
Sent: Friday, March 27, 2015 4:17 PM
To: DATCP SitingBoard
Subject: Laufenberg Appeal

Dear DATCP Siting Board:

Attached please find an appeal on behalf of my client Jerome J. Laufenberg, Inc. / Jerome J. Laufenberg.

Please confirm receipt. Thank you.

MARK RADCLIFFE
RADCLIFFE LAW OFFICE SC
131 MAIN STREET
PO BOX 789
BLACK RIVER FALLS, WI 54615
ph. 715-284-1234

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