

**2017.03.xx-DRAFT Portage County
Public Health and Groundwater Protection Ordinance¹
ORDINANCE # _____**

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¹ This Draft Ordinance borrowed heavily from the Kewaunee County *Chapter 30 Public Health and Groundwater Protection Ordinance* (12/20/2016) and the Town of Saratoga *Livestock Operation Ordinance* (11/30/2016)

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2 **1 Introduction**

3 **1.1 Title**

4 This Ordinance shall be referred to as the Portage County Public Health and Groundwater
5 Protection Ordinance.

6 **1.2 Authority**

7 This ordinance is adopted under authority granted by ss. 59.02, 59.03, 59.70, 60.22, 61.34,
8 92.11, and 92.15 Wisconsin Statutes. Narratives of the cited Statutes are included in Appendix
9 A.

10 **1.3 Purpose and Intent**

11 1.3.1 Purpose

12 The purpose of this ordinance is to promote the health and general welfare of the public by
13 preventing the contamination and/or depletion of groundwater in Portage County by regulating
14 local land use and water and waste management in areas that are particularly susceptible to
15 leaching nitrate to groundwater or of dewatering due to decreased inflow by groundwater.
16 Such areas are widespread across the County and include the coarse glacial drift deposits in the
17 east and south portions of the County, and the near-surface fractured crystalline rock present
18 in the northwest part of the County².

19 1.3.2 Intent

20 The Intent of this ordinance is to protect the health and general welfare of the public by
21 preventing the contamination and/or depletion of groundwater in Portage County through
22 regulating local land use and water and waste management in areas that are particularly
23 susceptible to leaching nitrate to groundwater or of dewatering due to decreased inflow by
24 groundwater.

25 It is not the intent of this ordinance to supersede or replace the Wisconsin agricultural non-
26 point pollution performance standards and/or prohibitions found in NR 151³, Wisconsin
27 Administrative Code (WAC).

28 **1.4 Declaration of Policy and Findings**

29 1.4.1 Policy

30 The Portage County Board of Supervisors recognizes the importance of adopting a
31 precautionary approach to protecting groundwater quality and quantity, and that proper land
32 use, responsible waste management, and reasonable groundwater extraction contribute to the
33 protection of groundwater, public health and welfare, and the property tax base of the County.

² See section on Aquifers in the Draft *Portage County Groundwater Management Plan*, p 9-11.

³ <http://dnr.wi.gov/topic/nonpoint/nr151strategy.html>

34 This may include at times to review or suspend the installation of additional high capacity wells
35 within Portage county until such time as the current water extraction rates for agriculture can
36 be determined to be balanced with public health, welfare and quality of life, other economic
37 needs, environmental interests and property values of all county residents/citizens (Wis. Stat
38 92.11 and 92.15).

39 The goal of this ordinance is to promote the protection of public health, safety, and general
40 welfare of the citizens of Portage County through proper land use and management on
41 geographically vulnerable areas, such as landscapes containing areas that are particularly
42 susceptible to leaching nitrate to groundwater or of dewatering due to decreased inflow by
43 groundwater.

44 1.4.1.1 Groundwater Quality

45 The status of groundwater quality is described in the Draft *Portage County Groundwater*
46 *Management Plan*, (PCGMP) Section E. A portion of the Section discusses human influenced
47 groundwater quality issues and discusses several substances of concern including nitrate-N,
48 bacteria, pesticides, and pharmaceuticals, among others. The section includes information
49 regarding the rate that nitrate was detected in private wells (approximately 19% of voluntary
50 private well tests over last 25 years)⁴, the costs incurred for removing nitrate-N from drinking
51 water supplies by three villages in the County (>\$5 million)⁴, a map showing the location of
52 wells in the County that yielded water samples that exceeded the 10 mg/l MCL for nitrate-N,
53 and a map showing portions of the County designated as Atrazine Prohibition Areas. A map
54 created based on the Groundwater Contamination Susceptibility Model (Attachment B) shows
55 that virtually the entirety of Portage County has a high susceptibility to groundwater
56 contamination.

57 The widespread occurrence of potable wells yielding water containing substances above health
58 standards for safe human consumption supports the conclusion that current regulations
59 covering land application of those substances are inadequate for protecting human health in
60 the County.

61 As of October 2016, cumulative historic testing of 11,398 groundwater samples taken over the
62 44-year period between November 2, 1972 and October 19, 2016 in Portage County conducted
63 by the University of Wisconsin-Stevens Point Environmental Analysis Lab, shows that 19% of the
64 wells sampled in Portage County were not safe for human consumption due to nitrate (nitrite
65 (NO₂)+ nitrate (NO₃) as nitrogen (N)) concentrations exceeding 10 milligrams per liter (mg/L,
66 which is equivalent to parts per million), a standard now considered outdated and inadequate

⁴ “According to data found in the viewer approximately 19% of voluntary private well tests in Portage County exceed the nitrate-N drinking water standard, which is twice the state average of 9%. Nitrate-N ranges found in Portage County ranged between none detectable to a high of 76 ppm (see Table 8). Towns with the largest percentage of private wells exceeding the nitrate-N drinking water standard over time include, Buena Vista, 42% of well tests, Pine Grove 40%, Almond 38%, and Plover 30% (Figure 17).” Draft PCGMP p. 33.

67 to address known public health concerns⁵. In Wisconsin, the Preventative Action Limit (PAL)
68 for nitrate is 2 mg/L⁶.

69 In the past ten years alone, over 3,100 Portage County nitrate test results document 22% of
70 samples were above the 10 mg/l standard, and in the past year, nitrate results from 325
71 samples suggest a rise to 26% of wells across Portage County having nitrate concentrations
72 above the federal drinking water standard.

73 1.4.1.2 Substances of Concern

74 Nitrate presents “imminent and substantial endangerment to human health”; “imminent” if
75 conditions that give rise to it are present, even though the actual harm may not be realized for
76 years. (Supreme Court Case *Meghrig vs Western, Inc.* 516 US 479,485 (1996)⁷).

77 Nitrates and other contaminants present substantiated environmental and public health risks.
78 Elevated concentrations of nitrate in groundwater, the most prevalent contaminant in Portage
79 County’s groundwater, has been associated with the risk of Methemoglobinemia⁸ and other
80 diseases and illness attributed to high nitrates⁹.

81 Other substances that are often associated with high Nitrate-N concentrations include bacteria,
82 especially those associated with fecal matter (*E. coli*, *Campylobacter*, and *Salmonella*)¹⁰;
83 pesticides (carcinogens¹¹) and **Herbicide Cocktail in relationship to Atrazine**¹²; and
84 pharmaceuticals, including antibiotics used in animal-related operations, which is documented
85 as being responsible for a significant majority of antibiotic use to treat *Campylobacter* and
86 *Salmonella*; and bacteria antibiotic resistant infections⁸.

87 1.4.1.3 Sensitive Receptors and Vulnerable Landscapes

88 Testing of private and public drinking water wells indicate increased nitrate levels are
89 compromising public health in Portage County. Research suggests nitrate levels are a useful
90 proxy for investigating different contaminants. For example, if the nitrate source is related to

⁵ Reference

⁶ http://docs.legis.wisconsin.gov/code/admin_code/nr/100/140.pdf

⁷ <https://supreme.justia.com/cases/federal/us/516/479/case.html>

⁸ https://www.researchgate.net/publication/12414965_Blue_Babies_and_Nitrate-Contaminated_Well_Water

⁹ Dr. Lawrence Roberts, MD. Professor of Environmental Health Sciences and International Health at the Johns Hopkins Bloomberg School of Public Health. Declaration of expert, Dr. Lawrence Roberts, MD. Case 5:14-cv-00395-JGB-SP Document 166 filed 02/17/16 United States District Court for the Central District of California.

¹⁰ Center for Disease Control and Prevention ref. 89,90 p,21: <http://www.cdc.gov/nchs/products/ad.htm>

¹¹ SDWA, §1412 (b)(4); 42 U.S.C.300g-1(b)(4): <http://www.epw.senate.gov/sdwa.pdf>

¹² Joanna Ory, 2015: [Environmental Impact of Restricting the Herbicide Atrazine in the University of Restriction the Herbicide Atrazine in U.S. and Italy](#). University of CA, Santa Cruz

91 agricultural activities, then pesticides are more likely to be present. If the source is related to
92 septic systems, then pharmaceuticals or personal care products are more likely.

93 The following geographically vulnerable landscapes create unacceptably high levels of risk for
94 groundwater contamination from waste applications:

- 95 • Landscapes with poor to marginal soil attenuation (excessive leaching characteristics)
96 underlain by 0-150 feet of glacially deposited permeable sands and gravels (drift).
- 97 • Landscapes where fractured bedrock occurs near the ground surface.

98 1.4.1.4 Groundwater Quantity

99 The status of groundwater quantity is described in the Draft *Portage County Groundwater*
100 *Management Plan*, (PCGMP) Section D. A portion of the Section discusses the volume of water
101 withdrawn from high capacity wells¹³ and presents data indicating volumes withdrawn by
102 various users including agriculture, municipalities, industries, and non-metallic mining, among
103 others (average annual groundwater withdrawal from 2011 – 2015 is ~25 billion gallons). The
104 section includes information regarding the effects of pumping on groundwater quantity and
105 references research performed jointly or separately by the Wisconsin Department of Natural
106 Resources (WDNR), Wisconsin Geological and Natural History Survey (WGNHS), United States
107 Geological Survey (USGS), University of Wisconsin - Stevens Point (UWSP), amongst others, that
108 suggest pumping by high capacity wells can decrease the depth of surface waters. The drying-
109 up of lakes and rivers in Portage County supports the conclusion that current regulations
110 covering land use and groundwater extraction are inadequate for assuring that surface water
111 depths remain or return to levels sufficient for supporting the health and well-being of natural
112 ecosystems and human recreation and enjoyment in the County.

113 1.4.1.5 Land Use

114 Based on available data and past implementation experience in Portage County, current
115 generally accepted nonpoint source pollution abatement best management practices do not
116 adequately protect the County's groundwater resources from contamination, with excessive
117 nutrients, microbial pathogens, and pharmaceuticals present in fertilizers and animal,
118 municipal, and human waste applied to the land.

119 For example, according to 2015 data submitted to DATCP, nearly 6% of the County's cropland is
120 covered by nutrient management plans, but nearly 190,000 potential acres remain unregulated.
121 In addition, current performance standards in NR 151 do not effectively address applications of
122 non-farm wastes on cropland. See NR 151.07(2), Wis. Admin. Code, which excludes the
123 application of industrial wastes and byproducts, municipal sludge regulation, and septage from
124 the nutrient management standard.

¹³ High capacity wells or well systems are defined as one or more wells, drillholes, or mine shafts on a property (contiguous or adjacent land having the same owner) that have a combined approved pump capacity of 70 or more gallons per minute (Section NR 812.07(53) Wisconsin Administrative Code).

125 Current research validates the limited benefits of accepted conservation practices in protecting
126 public health and drinking water. The Wisconsin Department of Natural Resources reported in
127 2016 that of the 118 tested Community Water Systems in Portage County, 10.6% were above
128 the 10 mg/L nitrate standard, and 31.8% were above 5 mg/l¹⁴. Both the Village of Plover and
129 Whiting have had to take additional measures to deal with high nitrates in community water
130 supplies, as have other small communities in Portage County.

131 More specifically, the performance standards, prohibitions, conservation practices, and
132 technical standards developed under s28. 1.16(3), Wis. Stats. are unable to adequately address
133 relevant public health concerns due to multiple factors including failure to adequately address
134 all waste source applications to vulnerable landscapes.

135 1.4.2 Existing Relevant Rules and Ordinances

136 Currently, sections of the Wisconsin Administrative Code that relate to this ordinance include:

- 137 • NR 113, which regulates land application of septic tank and holding tank waste
- 138 • NR 151 and NR 243, supplemented by 2015 USDA NRCS Nutrient Management
139 Standard 590, which regulate agricultural performance standards and prohibitions
- 140 • NR 204, which regulates land application of municipal biosolids
- 141 • NR 214, which regulates land application of liquid industrial wastewater,
142 byproducts and sludge
- 143 • NR 812, which regulates high capacity wells

144 Currently, Portage County ordinances that relate to this ordinance include:

- 145 • 7.1 Portage County Zoning Ordinance
- 146 • 7.2 Portage County Wellhead Protection Ordinance
- 147 • 7.4 Subdivision Ordinance
- 148 • 7.9 Private Sewage System Ordinance
- 149 • 7.10 Animal Manure Storage Ordinance and Nutrient Management Standards

150 In light of the discussion on groundwater quality and quantity in the preceding paragraphs,
151 clearly, the Wisconsin Administrative Code covering land application of wastes, agricultural
152 practices, and high capacity well operation, in general, are inadequate for protecting
153 human health and wellbeing with regard to the County's groundwater. Furthermore, the
154 existing County ordinances do not do enough to supplement the shortcomings of the State
155 Codes.

156 1.4.3 Findings

157 The Portage County Board of Supervisors makes the following findings of fact based on the best
158 available science and monitoring:

¹⁴ <http://dnr.wi.gov/topic/groundwater/GCC/nitrate.html>

- 159 1. Land application of animal wastes can significantly impact groundwater quality
160 by increasing the level of nitrates and increasing the risk of pathogens and other
161 contaminants, particularly in environmentally vulnerable areas.
- 162 2. Nitrates and other contaminants present significant environmental and public health
163 risks. Contaminated groundwater directly threatens the health of both urban and
164 particularly rural County residents, who rely on private wells for their water supply.
- 165 3. The County lies in an area that is recognized by scientists as being particularly
166 susceptible to nonpoint source pollution of its groundwater due to sandy and highly
167 leachable soils that cap coarse glacial drift deposits that hold the County water
168 reserves. Such soils and deposits are prone to leaching because of low attenuation
169 potential, specifically mineral exchange sites and organic matter, are insufficient to
170 bond nutrients or pollutants.
- 171 4. The U.S. Geological Survey has classified Wisconsin soils, and has determined that the
172 soils and surficial geology present in the Central Sands, in which the a majority of the
173 County is located, are among the most susceptible to groundwater contamination.
174 (Attachment ??) The Natural Resource Conservation Services (NRCS) has also classified
175 soil types based upon, among other things, the permeability of the soil and how quickly
176 water infiltrates the soil.
- 177 5. Nearly all of the soils in the County are categorized as among the poorest in terms of
178 permeability and thus evidence high leaching potential due to the ability of water to
179 rapidly pass through the soil. (See <http://websoilsurvey.nrcs.usda.gov>). The
180 predominant soil types in the County are classified as having high to medium-high
181 permeability characteristics. These soil types exhibit rapid or very rapid water
182 movement, which exacerbates the potential for leaching of contaminants into the
183 County's groundwater.
- 184 6. Crops take up nitrate in varying amounts, but can only do so if the nitrate remains in
185 the root zone during the relatively brief periods of the growing season. Water, whether
186 in the form of rain or irrigation, will carry nitrates down below the root zone,
187 sometimes in a matter of hours if sufficient water is applied to the soil. The problem is
188 exacerbated by the need to irrigate because the sandy soil is poor at retaining water.
189 And research has shown that the conditions in the Central Sands region result in even
190 more rapid movement of water than is typically seen in sandy soils generally¹⁵.

¹⁵ Kung, K J S, Preferential Flow in a Sandy Vadose Zone: 2. Mechanism and Implications, *Geoderma* 46 (1-3): 59-71. doi:10.1016/0016-7061(90)90007-V (1990);

- 191 7. Because of the susceptibility of sandy soils to leaching, nutrient management
192 techniques that might otherwise succeed in preventing groundwater contamination in
193 more favorable soils and surficial geology are not effective in areas like the Central
194 Sands. This fact has been extensively documented in longstanding scientific research.
195 For example, in 1989 scientists studying the conditions leading to groundwater
196 contamination from agriculture in the Midwest offered the Central Sands of Wisconsin
197 as a case study. They concluded that "...the Central Sand Plains situation combines
198 virtually every factor for adverse groundwater impact; i.e., soils with high hydraulic
199 conductivities, very shallow aquifers, level terrain, substantial precipitation, and crops
200 with high moisture and fertilizer requirements..."¹⁶
- 201 8. Subsequent research has repeatedly confirmed the original conclusion that the soils in
202 the Central Sands are highly susceptible to groundwater contamination. A 2001
203 analysis of a nationwide dataset from United States Geological Survey (USGS) National
204 Water-Quality Assessment Program (1992-1995) identified predictors of a high
205 likelihood of nitrate contamination. The resulting statistical model indicated that the
206 presence of "well-drained" soils, such as the soils present in the County, significantly
207 increased the probability of dangerous nitrate levels in groundwater.¹⁷
- 208 In 2002, other researchers sought to identify the key factors leading to nitrate
209 contamination of groundwater, by examining the importance of crop type, presence of
210 irrigation, soil permeability, and the nature of the aquifer. The situation most
211 susceptible to nitrate contamination was irrigated, highly permeable soils, overlying an
212 unconsolidated aquifer - precisely the situation in the County.¹⁸
- 213 9. Research conducted specifically in the Central Sands area also confirms the high
214 likelihood of nitrate contamination in the sandy soils present in the County. A study of
215 nitrate concentrations and estimated loadings beneath irrigated sandy agricultural

Kung, K J S, Preferential Flow in a Sandy Vadose Zone: 1. Field Observation, *Geoderma* 46 (1): 51-58.
doi:10.1016/0016-7061(90)90006-U (1990);

Kung, K J S, Laboratory Observation of Funnel Flow Mechanism and Its Influence on Solute Transport, *Journal of Environment Quality* 22 (1): 91. doi:10.2134/jeq1993.00472425002200010012x (1993).

¹⁶ Mossbarger, W A, and Yost, R W, Effects of Irrigated Agriculture on Groundwater Quality in Corn Belt and Lake States, *Journal of Irrigation and Drainage Engineering* 115 (5): 773-90 (1989).

¹⁷ Nolan, Bernard T., Relating Nitrogen Sources and Aquifer Susceptibility to Nitrate in Shallow Ground Waters of the United States, *Ground Water* 39: 290-99 (2001)

¹⁸ Burkart, M R, and Stoner, J D, Nitrate in Aquifers Beneath Agricultural Systems, *Water Science & Technology* 45 (9): 19-29 (2002).

216 fields near Nekoosa, Wisconsin revealed nitrate contamination of groundwater, with
217 concentrations above the safe level for human consumption.¹⁹

218 10. The groundwater at the nearby University of Wisconsin Hancock Agricultural Research
219 Station in Waushara County has also been extensively studied, and testing there shows
220 that the application of fertilizer to potatoes has resulted in levels of nitrates unsafe for
221 human consumption.²⁰

222 11. The high likelihood for groundwater contamination in the County water reserves from
223 the application of nutrients is also confirmed by the experience at a nearby
224 Concentrated Animal Feeding Operation (CAFO), Central Sands Dairy, which is located
225 in Juneau County, Wisconsin. Central Sands Dairy is operating pursuant to a permit
226 issued by the Wisconsin Department of Natural Resources. Despite this oversight and
227 compliance, Central Sand Dairy's application of manure and fertilizer to its crop fields
228 has resulted in substantial exceedances of the health standard for nitrates of 10 parts
229 per million.

230 Central Sand Dairy has been operating four groundwater monitoring wells since
231 December 2014. One of the wells currently has a nitrate level below the human health
232 standard of 10 parts per million, but that well is nearing the enforcement standard with
233 a level of 8 parts per million. The remaining wells show substantial exceedances,
234 ranging as high as 48 parts per million. In July 2015, one of the monitoring wells
235 recorded a nitrate level of 77 parts per million, nearly eight times the health standard.²¹

236 In addition, in 2016 Central Sand Dairy began testing the water in three of its irrigation
237 wells, all of which show substantial exceedances of the nitrate health standard. As of

¹⁹ Stites, Will, and Kraft, George J, Groundwater Quality Beneath Irrigated Vegetable Fields in a North-Central US. Sand Plain, *Journal of Environmental Quality* 29 (January): 1509-17 (2000);

Stites, W, and Kraft, G J, Nitrate and Chloride Loading to Groundwater From an Irrigated North-Central US. Sand-Plain Vegetable Field, *Journal of Environmental Quality* 30 (4), American Society of Agronomy, Crop Science Society of America, Soil Science Society: 1176-79. doi:10.2134/jeq2001.3041176x. (2001);

Kraft, George J, and Stites, Will, Nitrate Impacts on Groundwater From Irrigated-Vegetable Systems in a Humid North-Central US Sand Plain, *Agriculture, Ecosystems & Environment* 100 (1): 63-74. doi:10.1016/S0167-8809(03)00172-5 (2003).

²⁰ Bero, Nicholas J; Ruark, Matthew D, and Lowery, Birl, Controlled-Release Fertilizer Effect on Potato and Groundwater Nitrogen in Sandy Soil, *Agronomy Journal* 106 (2), The American Society of Agronomy, Inc.: 359-10. doi:10.2134/agronj2013.0331 (2014).

²¹ Attachment B in Town of Saratoga Livestock Operation Ordinance

238 July 2016, the nitrate levels in the irrigation wells were 22, 30 and 33 parts per million,
239 respectively.¹⁹

240 12. A recent experience in the Town of Saratoga, which is located on the Central Sand Plain
241 immediately west of the Portage County Town of Grant, has also confirmed the high
242 likelihood of nitrate contamination from agricultural practices in the Town's vulnerable
243 sandy soil. A 160-acre parcel was converted from pine plantation to agricultural crops,
244 and in a period of only about two and a half years, the nitrate level in a nearby Town
245 monitoring well downgradient from the converted crop fields rose from 2.5 parts per
246 million to 12.6 parts per million as of September 2016.²²

247 13. Results from the Town of Saratoga's groundwater monitoring wells confirm that, with
248 the exception of the recently contaminated well described in the preceding paragraph,
249 the groundwater in the Town is exceptionally clean, with nitrate levels as of September
250 2016 ranging from undetectable amounts to a high of 3.2 parts per million.²⁰

251 14. The Town of Saratoga has engaged experts in nutrient management and hydrogeology
252 to evaluate the likely groundwater impacts of the proposed Golden Sands Dairy
253 Concentrated Animal Feeding Operation. The conclusions of the Town's experts are
254 consistent with the academic research and the observed nitrate levels in and near the
255 Town in agricultural areas. The Town's experts have modeled the potential impacts of
256 the Golden Sands operation, using Golden Sands' submissions to the DNR, and have
257 concluded that within three to five years the nutrient applications proposed by Golden
258 Sands would raise nitrate levels in residential wells downgradient from Golden Sands'
259 crop fields above the human health standard.

260 Given the vulnerable soils, surficial geology, and the characteristics of the aquifer
261 extending beneath a large portion of Portage County, land use and management
262 regulations beyond the performance standards, prohibitions, conservation practices and
263 technical standards contained in Wis. Stat. § 281.16(3) and Wis. Adm. Code ch. NR 151
264 are necessary to achieve or maintain water quality standards under Wis. Stat. § 281.15.

265

266 **2 Definitions**

267 In this ordinance:

268 A. "Frozen Ground" as per NR243.03 (24), Wis. Admin. Code, means soil that is frozen
269 anywhere between the first ½ inch and 8 inches of soil as measured from the ground
270 surface.

²² See Attachment C in Town of Saratoga Livestock Operation Ordinance

- 271 B. "Glacial Drift" as per USGS Glossary of Glacial Terminology means a collective term used
272 to describe all types of glacier sedimentary deposits, regardless of the size or amount of
273 sorting. The term includes all sediment that is transported by a glacier, whether it is
274 deposited directly by a glacier or indirectly by running water that originates from a
275 glacier.
- 276 C. "Industrial wastewater" means wastewater from food, dairy, and other industrial
277 facilities.
- 278 D. "LWCC" means Portage County Land and Water Conservation Committee.
- 279 E. "LWCD" means Portage County Land and Water Conservation Division.
- 280 F. "NRCS" means Natural Resources Conservation Service.
- 281 G. "Permeable" as per USGS Glossary means the ability of a material to allow the passage of
282 a liquid, such as water through rocks. Permeable materials, such as gravel and sand, allow
283 water to move quickly through them, whereas impermeable materials, such as clay, don't
284 allow water to flow freely.
- 285 H. "Person" means an individual, corporation, partnership, cooperative association, limited
286 liability company, trust, or other legal organization or entity.
- 287 I. "Saturated soils" as per NR 243.03(57), Wis. Admin. Code, means soils where all pore
288 spaces are occupied by water and where any additional inputs of water or liquid wastes
289 cannot infiltrate into the soil.
- 290 J. "Septage" as per NR 113.03(55), Wis. Admin. Code, means the wastewater or contents of
291 septic or holding tanks, dosing chambers, grease interceptors, seepage beds, seepage
292 pits, seepage trenches, privies or portable restrooms.
- 293 K. "Sewage Sludge", "Sludge" or "Biosolids", as per NR 204.03(55), Wis. Admin. Code, means
294 the solid, semi-solid or liquid residue generated during the treatment of domestic sewage
295 in a treatment works. Sewage sludge includes scum or solids removed during primary,
296 secondary, or advanced wastewater treatment processes and material derived from
297 sewage sludge. Sewage sludge does not include ash generated during the firing of a
298 sewage sludge incinerator or grit or screenings generated during preliminary treatment of
299 domestic sewage in a treatment works. (Note" all three items defined here are
300 interchangeable, and recognized by the LWCD, as they are all in common use).
- 301 L. "Snow-Covered Ground", as per NR 243.03(60), Wis. Admin. Code, means areas of a field
302 covered with any amount of snow.
- 303 M. "USDA" means United States Department of Agriculture.

304 N. "Vulnerable Geographical Landscapes" as per Glossary of Statistical Terms means a
305 geographical area likely to be damaged or disrupted, on account of its nature or location,
306 by the impact of a particular hazard. For example, this would include permeable glacial
307 drift deposits, etc.

308 O. "Waste" means septage, sewage sludge, sludge, biosolids, industrial waste, animal
309 wastes, or any combination of these materials.

310 **3 Regulation of local soil and water resource management practices pursuant**
311 **to s. 92.11, Wis. Stats.**

312 1. Portage County agencies shall focus on what's being done to positively protect
313 groundwater for all Portage County residents.

314 2. Portage County agencies shall strive to meet Wisconsin State averages of NO₃-N (mg/L) of
315 5.6 mg/L and reduce the percentage of all wells testing greater than 10 mg/L to 5%

316 3. Portage County shall focus on enforcement of EPA, NRCS and WDNR standards by revising
317 and compliance with new standards including a list of County Standards and best
318 practices that should be reviewed including:

319 a. Annually inspect cropped fields in spring before manure application, tillage, or
320 planting and/or in late summer or fall after crop harvest and before manure
321 application to ascertain compliance with ordinance

322 b. Inspect alfalfa and perennial cropped fields in spring and summer before or -10 days
323 after cutting - look for uneven crop growth that follows distinct lines

324 c. No manure application of liquid manure as defined by having less than 12% solids
325 content on permeable soils at risk for leaching

326 d. Maintain updated nutrient management plan maps with identified features

327 e. When developing and managing NMP all nutrient sources and not just manure
328 should be considered

329 f. All livestock operations that apply manure must prepare and implement a NMP that
330 reflects, at a minimum, those of the proposed 2015 NRCS 590 Standard

331 g. Analyze low solids content manure for ammonia and adjust the first year available
332 nitrogen based on the results, per UWA2809, Nutrient Application Guidelines,
333 Chapter 9, page 73, Table 9.1

334 h. Practices need to reflect manure type and not farm size. Manure characteristics (e.g.
335 solids nutrient, and pathogen content) help better define groundwater
336 contamination risk(s) and should be a primary criterion for practice
337 recommendations

338 4. On permeable soils livestock may be pastured as long as the following items are met:

339 a. Pasture is maintained in adequate, perennial vegetation

340 b. Pasture is maintained in perennial vegetation and is maintained year round

341 c. Producer develops and maintains a grazing plan

- 342 d. The grazing plan, at a minimum, meets 2015 NRCS 590 Standard and nutrient
343 management and 528, prescribed grazing
- 344 5. Nutrient management plans must include winter spreading plan requirements to address
345 manure applications on permeable soils during winter (frozen ground).
- 346 6. For municipal/septic waste and or manure mixed with industrial waste we request the
347 County require chloride (Cl) sampling in addition to Nitrate (N), Phosphates (P), Potassium
348 (K), and other applicable WPDES permit sampling requirements, as authorized under NR
349 214.17 and 214.18 Wis. Adm. Code

350 **3.1 NRCS 590**

351 All land application of manure shall conform to the United States Department of Agriculture
352 Natural Resources Conservation Service (NRCS) Standard 590.

353 **3.2 Nutrient Management Plans.**

354 Where the land application of manure is a component of a nutrient management plan
355 required under Wis. Adm. Code §§ NR 151.07 or NR 243.14, the land application shall
356 conform to the nutrient management plan.

357 **3.3 WPDES Permits.**

358 Where the land application of manure is regulated by a WPDES permit, the land application
359 shall comply with all terms of the permit, including any additional restrictions DNR imposes
360 pursuant to Wis. Adm. Code § NR 243.14(10), based upon DNR's determination that such
361 restrictions are necessary to prevent exceedances of groundwater quality standards.

362 **3.4 Procedures for Groundwater Standards Exceedances from Manure Application.**

- 363 1. The Town may require a person engaged in the land application of manure to file a report
364 with the Town, by a deadline set by the Town, under either of the following
365 circumstances:
- 366 a. A groundwater contaminant exceeds a water quality Preventive Action Limit
367 established by Wis. Adm. Code § NR 140.10, Table 1, at a point of standards
368 application; there is a reasonable basis to conclude that manure application
369 upgradient from the contamination has contributed to the contamination; and the
370 concentration of the contaminant has increased more than 50% since the
371 commencement of manure application; or
- 372 b. A groundwater contaminant exceeds a water quality Enforcement Standard
373 established by Wis. Adm. Code § NR 140.10, Table 1, at a point of standards
374 application; and there is a reasonable basis to conclude that manure application
375 up- gradient from the contamination has contributed to the contamination.
- 376 2. The report required under Section 3.4(1) shall include, at a minimum, the following along
377 with any other information specified by the Town:

- 378 a. If the person responsible for the manure application disputes that the manure
379 application has caused or contributed to the increase in the contaminant level,
380 the factual basis for this position;
- 381 b. All testing results and other information regarding the level of the contaminant on
382 the property where the manure application occurs as well as any off-site,
383 down- gradient areas;
- 384 c. Proposed steps to investigate the causes and extent of the contamination;
- 385 d. Proposed steps to curtail the increase in the contaminant level, and to avoid
386 exceedances of the enforcement standard for the pollutant;
- 387 e. Proposed steps to remediate the contamination.
- 388 3. In addition to or in lieu of requiring a report, when either of the circumstances specified
389 in 3.4(1) is present, the Town may also do one or more of the following:
- 390 a. Take no action;
- 391 b. Require the installation and sampling of groundwater monitoring wells;
- 392 c. Require a change in an existing groundwater monitoring program, including
393 increased monitoring;
- 394 d. Require an investigation of the extent of groundwater contamination;
- 395 e. Require a revision of the operational procedures associated with the land
396 application;
- 397 f. Require an alternate method of manure application or disposal;
- 398 g. Require remedial action to renovate or restore groundwater quality; or
- 399 h. Require remedial action to prevent or minimize the further discharge or release of
400 the contaminant to groundwater.
- 401 4. A person engaged in land application of manure shall provide copies to the County of all
402 groundwater testing results that the person provides to the DNR or other governmental
403 entity.
- 404 5. A person engaged in land application of manure shall notify the County within two
405 business days when they become aware of an exceedance of a groundwater enforcement
406 standard under Wis. Adm. Code§ NR 140.10, Table 1.

407 **4 Application**

408 Application of this ordinance in any town is subject to approval by a majority of all votes
409 cast in the town in a referendum conducted in accordance with sec. 92.11(4), Wis. Stats.,

410 using the following question:

411 "Shall the town approve the application of Portage County Ordinance #_to the town
412 in order to prevent groundwater pollution, protect human health, prevent the spread
413 of disease, and promote the general welfare of the citizens of Portage County by
414 regulating local land use and management practices in the town, specifically through
415 controlling the application of wastes on shallow carbonate bedrock areas as well as
416 direct conduits to groundwater?"

417 **5 Land and Water Conservation Committee Powers**

418 **5.1 County Powers. The County may:**

- 419 1. Consult with the County public health department and other appropriate resources
420 to obtain accurate public health data and expertise necessary to the administration
421 of this Ordinance.
- 422 2. Respond to elevated groundwater contaminant levels as provided in Section 3.4.
- 423 3. Refer a violation of this ordinance to the County's legal counsel for legal action.
- 424 4. Issue a citation for a violation of this ordinance.
- 425 5. Use any other lawful means to enforce this Ordinance, or take any emergency or
426 interim action necessary to prevent or mitigate imminent harm to public health or
427 safety, or other actions authorized by law.
- 428 6. Hear and decide appeals, through the Town's Board of Adjustment, where it is
429 alleged there is an error in a Town decision.

430 **5.2 Other Lawful Means of Enforcement.**

431 Nothing in this section may be construed to prevent the Town from using any other lawful
432 means to enforce this Ordinance.

433 **6 Authority**

- 434 1. The Land and Water Conservation Committee is authorized to hear and decide appeals
435 where it is alleged there is an error in any decision, determination, or order issued by
436 the County Conservationist, except that this authority does not include the authority to
437 hear appeals from a citation or any decision, determination, or order that may be
438 appealed to the circuit court or that is otherwise subject to judicial review. Appeals
439 under this ordinance will be conducted in accordance with Wis. Stat. Ch. 68.
- 440 2. The Land and Water Conservation Committee, upon written request by a landowner,
441 may grant exemption to land use and management restrictions in Section 3 upon the
442 submission of a spreading or stacking plan to adequately minimize the public health
443 risks.
- 444 3. Specific sites may be reviewed by the Land and Water Conservation Committee, upon
445 written request by a landowner, and if contrary evidence of vulnerable landscape is

446 provided using technology currently found acceptable by the Wisconsin Geological and
447 Natural History Survey, the Committee may, after consulting with the Land and Water
448 Conservation Department, amend the mapping designation.

449 4. The Land and Water Conservation Committee may consult with the county public health
450 department and other appropriate resources to obtain accurate public health data and
451 expertise necessary to the administration of the ordinance.

452 **7 Administration**

453 **7.1 Department Responsibilities**

- 454 1. This Ordinance shall be administered by the Land and Water Conservation Department
455 and the County Conservationist shall:
- 456 a. Keep an accurate record of all inspections, and other official actions.
 - 457 b. Investigate complaints relating to compliance with this ordinance.
 - 458 c. Perform any other duties specified in this ordinance.

459 **7.2 Inspection Authority**

460 The Land and Water Conservation Department is authorized pursuant to Wis. Stat. sec.
461 92.07(14) to enter upon any lands affected by this ordinance to inspect the land to determine
462 compliance with this ordinance. If permission to enter lands is not given by the landowner,
463 entry may be gained pursuant to Wis. Stat. sec. 66.0119. Refusal to grant permission to enter
464 lands affected by this ordinance for purposes of inspection shall be considered a violation of
465 this ordinance.

466 **7.3 Citation Authority**

467 The County Conservationist, or his/her designee, may issue a citation for any violation of this
468 ordinance

469 **7.4 Referral Authority**

470 The County Conservationist may refer a violation of this ordinance to the County's Corporation
471 Counsel for legal action.

472 **7.5 Other Enforcement means**

473 Nothing in this section may be construed to prevent the County from using any other lawful
474 means to enforce this ordinance, and does not limit or prevent the County Conservationist from
475 taking other emergency or interim action, including an abatement order, to prevent or mitigate
476 imminent harm to public health and safety or other actions otherwise authorized by law.

477 **8 Violations**

- 478 1. It is unlawful to violate any provision in this ordinance.

- 479 2. It is unlawful for any person to knowingly provide false information, make a false
480 statement, or fail to provide, or misrepresent any material fact to a county agent, board,
481 committee, department, employee, officer, or official acting in an official capacity under
482 this ordinance.
- 483 3. It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or
484 otherwise resist an order issued pursuant to this ordinance.
- 485 4. A separate offense is deemed committed on each day that a violation occurs or
486 continues.
- 487 5. The failure of any agent, board, commission, committee, department, employee,
488 officer, or official to perform any official duty imposed by this code will not subject the
489 agent, board, commission, committee, department, employee, officer, or official to the
490 penalty imposed for a violation of this code unless a penalty is specifically provided.

491 **9 Penalties**

- 492 1. This ordinance may be enforced through civil forfeiture or through issuance of an
493 injunction by the circuit court in an action initiated by the County or LWCC. The court
494 may award reasonable attorney fees to any plaintiff in a successful action for
495 enforcement through injunction.
- 496 2. A person will, upon conviction for a violation of this ordinance, forfeit not less than \$500
497 nor more than \$1,000 for each offense, together with costs of prosecution for each
498 violation, and may be ordered to take such action as is necessary to abate the offense
499 within a specified time.
- 500 3. The minimum and maximum forfeitures specified in this section are doubled each time
501 that a person is convicted for the same violation of this ordinance within a 24-month
502 period.
- 503 4. A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but
504 who fails or refuses to do so may be confined in the county jail until the forfeiture and
505 costs are paid, but the period of confinement may not exceed 30 days. In determining
506 whether a person has the ability to pay, all items of income and all assets may be
507 considered regardless of whether the income or assets are subject to garnishment, lien,
508 or attachment by creditors.
- 509 5. In the event an offense is not abated as ordered, Portage County may take such action
510 as is necessary to abate the offense and the cost of such abatement will become a lien
511 upon the person's property and may be collected in the same manner as other taxes

512 **9.1 APPEALS**

513 Any person aggrieved by a decision of the County pursuant to the Portage County Public Health
514 and Groundwater Protection Ordinance may seek review before the Board of Adjustment

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517
518

Appendix A
State statutes and codes referenced in the
Portage County Public Health and Groundwater Protection Ordinance

State statutes and codes referenced in the Portage County Public Health and Groundwater Protection Ordinance

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Statutes

59.02 Powers, how exercised; quorum.

- (1)** The powers of a county as a body corporate can only be exercised by the board, or in pursuance of a resolution adopted or ordinance enacted by the board.
- (2)** Ordinances may be enacted and resolutions may be adopted by a majority vote of a quorum or by such larger vote as may be required by law. Ordinances shall commence as follows: “The county board of supervisors of the county of does ordain as follows”.
- (3)** A majority of the supervisors who are entitled to a seat on the board shall constitute a quorum. All questions shall be determined by a majority of the supervisors who are present unless otherwise provided.

History: [1977 c. 447](#); [1995 a. 201](#).

The county board's failure to use the prescribed language of sub. (2) did not invalidate an ordinance. *Cross v. Soderbeck*, [94 Wis. 2d 331](#), [288 N.W.2d 779](#) (1980).

A supervisor who is required to abstain is not “present” for calculating the number of votes required for passage. *Ballenger v. Door County*, [131 Wis. 2d 422](#), [388 N.W.2d 624](#) (Ct. App. 1986).

59.03 Home rule.

(1) ADMINISTRATIVE HOME RULE. Every county may exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature which is of statewide concern and which uniformly affects every county.

(2) CONSOLIDATION OF MUNICIPAL SERVICES, HOME RULE, METROPOLITAN DISTRICT.

(a) Subject to s. [59.794 \(2\)](#) and [\(3\)](#) and except as elsewhere specifically provided in these statutes, the board of any county is vested with all powers of a local, legislative and administrative character, including without limitation because of enumeration, the subject matter of water, sewers, streets and highways, fire, police, and health, and to carry out these powers in districts which it may create for different purposes, or throughout the county, and for such purposes to levy county taxes, to issue bonds, assessment certificates and improvement bonds, or any other evidence of indebtedness. The powers hereby conferred may be exercised by the board in any municipality, or part thereof located in the county upon the request of any such municipality, evidenced by a resolution adopted by a majority vote of the members-elect of its governing body, designating the particular function, duty or act, and the terms, if any, upon which the powers shall be exercised by the board or by a similar resolution adopted by direct legislation in the municipality in the manner provided in s. [9.20](#). The resolution shall further provide whether the authority or function is to be exercised exclusively by the county or jointly by the county and the municipality, and shall also find that the exercise of such power by the county would be in the public interest. Upon the receipt of the resolution, the board may, by a resolution adopted by a majority vote of its membership, elect to assume the exercise of the function, upon the terms and conditions set forth in the resolution presented by the municipality.

(b) The board of any county may, by a resolution adopted by a majority of its membership, propose to any of the municipalities located in the county that it offers to exercise such powers and functions therein in order to consolidate municipal services and functions in the county. Such resolution shall designate the particular function, duty or act and the terms and conditions, if any, upon which the board will perform the function, duty or act. The powers conferred in par. [\(a\)](#) and designated in such resolution may thereafter be exercised by the board in each municipality which accepts the proposal by the adoption of a resolution by a majority vote of the members-elect of its governing body or by direct legislation in the manner provided in s. [9.20](#).

(c) Whenever the request under par. [\(a\)](#) or acceptance under par. [\(b\)](#) of a municipality is by resolution of its governing board, the request or acceptance shall not go into effect until the expiration of 60 days from the adoption of the resolution or, in the case of county law enforcement services provided to a city as described in s. [62.13 \(2s\)](#), as provided in s. [62.13 \(2s\)](#) [\(d\)](#). If a petition under s. [9.20](#) for direct legislation on the request or acceptance is filed before the expiration of said 60 days, the resolution of the governing board is of no effect but the request or acceptance of such municipality shall be determined by direct legislation, except that no petition for direct legislation under s. [9.20](#) may be filed to approve or reject a contract entered into by a city and a county under s. [62.13 \(2s\)](#).

(d) After and upon the adoption of resolutions by the board and subject to par. [\(c\)](#) by one or more municipalities either as provided in par. [\(a\)](#) or [\(b\)](#) the board shall have full power to legislate upon and administer the entire subject matter committed to it, and among other things, to determine, where not otherwise provided by law, the manner of exercising the power thus assumed.

(e) The municipality concerned may enter into necessary contracts with the county, and appropriate money to pay to the county the reasonable expenses incurred by it in rendering the services assumed. Such expenses may be certified, returned and paid as are other county charges, and in the case of services performed under a proposal for the consolidation thereof initiated by the board and made available to each municipality in the county on the same terms, the expenses thereof shall be certified, returned and paid as county charges; but in the event that every municipality in the county accepts the proposal of the board, the expenses thereof shall be paid by county taxes to be levied and collected as are other taxes for county purposes. The municipalities are vested with all necessary power to do the things herein required, and to do all things and to exercise or relinquish any of the powers herein provided or contemplated. The procedure provided in this subsection for the request or acceptance of the exercise of the powers conferred on the board in cities and villages is hereby prescribed as a special method of determining the local affairs and government of such cities and villages under [article XI, section 3](#), of the constitution.

[59.03\(2\)\(f\)](#) (f) The powers conferred by this subsection shall be in addition to all other grants of power and shall be limited only by express language.

History: [1995 a. 201](#) ss. [97](#), [99](#), [243](#); [2005 a. 40](#); [2013 a. 14](#).

In a county that does not have a county executive or administrator, the personnel committee of the county board does not possess the statutory authority to remove the county social services director. The county board may not, under s. 59.025 [now s. 59.03 (1)], transfer the authority to appoint. [81 Atty. Gen. 145](#).

59.70 Environmental protection and land use.

(1) BUILDING AND SANITARY CODES. The board may enact building and sanitary codes, make necessary rules and regulations in relation thereto and provide for enforcement of the codes, rules and regulations by forfeiture or otherwise. The codes, rules and regulations do not apply within municipalities which have enacted ordinances or codes concerning the same subject matter. "Sanitary code" does not include a private on-site wastewater treatment system ordinance enacted under sub. (5). "Building and sanitary codes" does not include well or heat exchange drillhole ordinances enacted under sub. (6).

(2) SOLID WASTE MANAGEMENT. The board of any county may establish and operate a solid waste management system or participate in such system jointly with other counties or municipalities. Except in counties having a population of 500,000 or more, the board of a county or the boards of a combination of counties establishing a solid waste management system may create a solid waste management board to operate the system and such board, in a county that does not combine with another county, shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of solid waste management, but not more than 5 of the board members may be appointed from the county board of supervisors. In any combination of counties, the solid waste management board shall be composed of 11 members with 3 additional members for each combining county in excess of 2. Appointments shall be made by the county boards of supervisors of the combining counties in a manner acceptable to the combining counties, but each of the combining counties may appoint to the solid waste management board not more than 3 members from its county board of supervisors. The term of office of any member of the solid waste management board shall be 3 years, but of the members first appointed, at least one-third shall be appointed for one year; at least one-third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any solid waste management board member may be removed from office by a two-thirds vote of the appointing authority. The solid waste management board may employ a manager for the system. The manager shall be trained and experienced in solid waste management. For the purpose of operating the solid waste management system, the solid waste management board may exercise the following powers:

- (a) Develop a plan for a solid waste management system.
- (b) Within such county or joint county, collect, transport, dispose of, destroy or transform wastes, including, without limitation because of enumeration, garbage, ashes, or incinerator residue, municipal, domestic, agricultural, industrial and commercial rubbish, waste or refuse material, including explosives, pathological wastes, chemical wastes, herbicide and pesticide wastes.
- (c) Acquire lands within the county by purchase, lease, donation or eminent domain, within the county, for use in the solid waste management system.
- (d) Authorize employees or agents to enter lands to conduct reasonable and necessary investigations and tests to determine the suitability of sites for solid waste management activities whenever permission is obtained from the property owner.
- (e) Acquire by purchase, lease, donation or eminent domain easements or other limited interests in lands that are desired or needed to assure compatible land uses in the environs of any site that is part of the solid waste disposal system.
- (f) Establish operations and methods of waste management that are considered appropriate. Waste burial operations shall be in accordance with sanitary landfill methods and the sites shall,

insofar as practicable, be restored and made suitable for attractive recreational or productive use upon completion of waste disposal operations.

(g) Acquire the necessary equipment, use such equipment and facilities of the county highway agency, and construct, equip and operate incinerators or other structures to be used in the solid waste management system.

(h) Enact and enforce ordinances necessary for the conduct of the solid waste management system and provide forfeitures for violations.

(i) Contract with private collectors, transporters or municipalities to receive and dispose of wastes.

(j) Engage in, sponsor or cosponsor research and demonstration projects that are intended to improve the techniques of solid waste management or to increase the extent of reuse or recycling of materials and resources included within the wastes.

(k) Accept funds that are derived from state or federal grant or assistance programs and enter into necessary contracts or agreements.

(L) Appropriate funds and levy taxes to provide funds for acquisition or lease of sites, easements, necessary facilities and equipment and for all other costs required for the solid waste management system except that no municipality which operates its own solid waste management program under s. [287.09 \(2\) \(a\)](#) or waste collection and disposal facility, or property therein, shall be subject to any tax levied hereunder to cover the capital and operating costs of these functions. Such appropriations may be treated as a revolving capital fund to be reimbursed from proceeds of the system.

(m) Make payments to any municipality in which county disposal sites or facilities are located to cover the reasonable costs of services that are rendered to such sites or facilities.

(n) Charge or assess reasonable fees, approximately commensurate with the costs of services rendered to persons using the services of the county solid waste management system. The fees may include a reasonable charge for depreciation which shall create a reserve for future capital outlays for waste disposal facilities or equipment. All assessments for liquid waste shall be assessed by volume.

(o) Create service districts which provide different types of solid waste collection or disposal services. Different regulations and cost allocations may be applied to each service district. Costs allocated to such service districts may be provided by general tax upon the property of the respective districts or by allocation of charges to the municipalities whose territory is included within such districts.

(p) Utilize or dispose of by sale or otherwise all products or by-products of the solid waste management system.

(q) Impose fees, in addition to the fees imposed under ch. [289](#), upon persons who dispose of solid waste at publicly owned solid waste disposal sites in the county for the purpose of cleaning up closed or abandoned solid waste disposal sites within the county, subject to all of the following conditions:

1. The fees are based on the amount of solid waste that is disposed of by each person.
2. The fees may not exceed 20 percent of the amount that is charged for the disposal of the solid waste.
3. The effective date of the fees and any increase in the fees is January 1 and such effective date is at least 120 days after the date on which the board adopts the fee increase.
4. The cleanup of the site is conducted under the supervision of the department of natural resources.

5. The board may prevent the implementation of, or may terminate, fees imposed by the solid waste management board.

(3) RECYCLING OR RESOURCE RECOVERY FACILITIES. The board may establish and require use of facilities for the recycling of solid waste or for the recovery of resources from solid waste as provided under s. [287.13](#).

(5) PRIVATE ON-SITE WASTEWATER TREATMENT SYSTEM ORDINANCE.

(a) Every governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. [145.01 \(5\)](#), shall enact an ordinance governing private on-site wastewater treatment systems, as defined in s. [145.01 \(12\)](#), which conforms with the state plumbing code. The ordinance shall apply to the entire area of the governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. [145.01 \(5\)](#). After July 1, 1980, no municipality may enact or enforce a private on-site wastewater treatment system ordinance unless it is a governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. [145.01 \(5\)](#).

(b) The governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. [145.01 \(5\)](#), shall administer the private on-site wastewater treatment system ordinance under s. [145.20](#) and the rules promulgated under s. [145.20](#).

(6) OPTIONAL WELL AND HEAT EXCHANGE DRILLHOLE ORDINANCES.

(a) *Definitions.* In this subsection:

1. "Department" means the department of natural resources.
2. "Private well" has the meaning specified by rule by the department under s. [280.21 \(2\)](#).
3. "Well" has the meaning specified under s. [280.01 \(6\)](#).

(b) *Permits.* If authorized by the department under s. [280.21 \(1\)](#), a county may enact and enforce a well construction, heat exchange drillhole construction, or pump installation ordinance or both. Provisions of the ordinance shall be in strict conformity with ch. [280](#) and with rules of the department under ch. [280](#). The ordinance may require that a permit be obtained before construction, installation, reconstruction or rehabilitation of a private well or installation or substantial modification of a pump on a private well, other than replacement of a pump with a substantially similar pump. The county may establish a schedule of fees for issuance of the permits and for related inspections. The department, under s. [280.21 \(4\)](#), may revoke the authority of a county to enforce its ordinance if the department finds that the ordinance or enforcement of the ordinance does not conform to ch. [280](#) and rules of the department under ch. [280](#).

(c) *Existing wells.* With the approval of the department under s. [280.21 \(1\)](#), a county may enact and enforce an ordinance in strict conformity with ch. [280](#) and with department rules under ch. [280](#), as they relate to existing private wells. The department, under s. [280.21 \(4\)](#), may revoke the authority of a county to enforce its ordinance if the department finds that the ordinance or enforcement of the ordinance does not conform to ch. [280](#) and rules of the department under ch. [280](#).

(d) *Enforcement.* A county may provide for enforcement of ordinances enacted under this subsection by forfeiture or injunction or both. The district attorney or county corporation counsel may bring enforcement actions.

(e) *Other municipalities.* No municipality may enact or enforce an ordinance regulating matters covered by ch. [280](#) or by department rules under ch. [280](#).

(7) SOIL CONSERVATION. The board of any county with a population of less than 750,000 may contract to do soil conservation work on privately owned land either directly or through a committee designated by it.

(8) INLAND LAKE PROTECTION AND REHABILITATION. The board may establish an inland lake protection and rehabilitation program and may create, develop and implement inland lake protection and rehabilitation projects similar to projects which an inland lake protection and rehabilitation district is authorized to create, develop and implement under ch. [33](#). In this subsection, "lake rehabilitation", "program", "project" and "lake" have the meanings specified under s. [33.01 \(4\)](#), [\(6\)](#), [\(7\)](#) and [\(8\)](#), respectively.

(8m) HARBOR IMPROVEMENT. The board may establish, own, operate, lease, equip, and improve harbor facilities on land owned by the county that is located in this state or in another state, subject to the laws of the state in which the land is located, and may appropriate money for the activities specified in this subsection, except that in a county with a population of 750,000 or more, the county executive shall be in charge of the operation of the harbor facilities.

(9) IMPROVEMENT OF ARTIFICIAL LAKES. The board may appropriate money for the purpose of maintaining, dredging and improving any artificial lake existing on July 1, 1955, all or a portion of which is adjacent to or within a county park, and for the acquisition of land required in connection therewith.

(10) DRAINAGE DISTRICT BONDS. The board may purchase drainage district bonds at market value or at a discount to salvage the equity of the county in the lands affected and to secure resumption of tax payments thereon and so permit the dissolution of the district.

(11) ACQUISITION OF RECYCLING OR RESOURCE RECOVERY FACILITIES WITHOUT BIDS. The board may contract for the acquisition of any element of a recycling or resource recovery facility without submitting the contract for bids as required under s. [59.52 \(29\)](#) if the board invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design and the developers' experience in other similar projects.

(12) MOSQUITO CONTROL DISTRICTS.

(a) A county or 2 or more contiguous counties may establish a district to control mosquitoes, upon a majority vote of each board, except that the board of a county with a population of 750,000 or more may not take any action under this subsection or sub. [\(13\)](#).

(b)

1. If a county establishes a district, the board shall elect 3 county supervisors to a commission. If 2 or more contiguous counties establish a district, each board in the district shall elect 2 county supervisors to a commission. The elected county supervisors shall serve as members of the commission until the expiration of their terms as county supervisors, as provided in s. [59.10 \(1\) \(b\)](#), [\(2\) \(b\)](#), [\(3\) \(d\)](#) or [\(5\)](#). Each board in the district shall elect supervisors as replacements when vacancies occur in the commission. The commission shall operate the mosquito control district.

2. The commission shall elect a chairperson, vice chairperson and secretary at its first meeting each year as provided under subd. [3](#). The chairperson, or vice chairperson, in the chairperson's absence, shall preside at meetings and shall sign contracts and other written instruments of the commission. The secretary shall keep a record of the minutes of each meeting that is available for public inspection at all reasonable times, and shall mail notices to all members of the time and place of meetings.

3. The commission shall meet on the first Thursday after the first Monday in January to select officers of the commission and to conduct other organizational business. The commission shall also meet if the chairperson calls a meeting, or within 48 hours if a majority of the members of the commission request a meeting in writing, specifying the time and place for the meeting. The commission shall give adequate public notice of the time, place and purpose of each meeting. All business of the commission shall be open to the public.

4. The board of each county in the district shall reimburse commissioners representing that county in the manner provided in s. [59.13](#) for board committee members.

(13) COMMISSION; POWERS AND DUTIES.

(a) The commission may:

1. Adopt bylaws to regulate its proceedings.
2. Employ the persons and contract for services to carry out the mosquito control program. The commission may not employ any person who is related to a commissioner.
3. Reimburse employees for expenses that are incurred or paid in the performance of their duties, and provide a reasonable daily reimbursement.
4. Purchase the materials, supplies and equipment to carry out the mosquito control program.
5. Take measures to control mosquitoes in accordance with expert and technical plans.
6. Accept gifts of property to control mosquitoes.
7. Dispose of property of the commission or mosquito control district, if it is no longer needed to control mosquitoes, by selling the property on competitive bids after 2 weeks' published notice.
8. Obtain public liability insurance and worker's compensation insurance.
9. Enter into agreements with other political subdivisions of the state outside the mosquito control district to conduct mosquito control activities within these political subdivisions, to promote mosquito control in the district.
10. Enter into agreements with contiguous states or political subdivisions in contiguous states, as provided in s. [66.0303](#), to conduct mosquito control activities within those states or political subdivisions, to promote mosquito control in the mosquito control district.
11. Collect money from all counties in the district for operation of the district.
12. Require the employees of the commission who handle commission funds to furnish surety bonds, in amounts the commission may determine.
13. Perform other acts that are reasonable and necessary to carry out the functions of the commission.

(b) Members or employees of the commission may request admission onto any property within the district at reasonable times to determine if mosquito breeding is present. If the owner or occupant refuses admission, the commission member or employee shall seek a warrant to inspect the property as a potential mosquito breeding ground. Commission members or employees may enter upon property to clean up stagnant pools of water or shores of lakes or streams, and may spray mosquito breeding areas with insecticides subject to the approval of the district director and the department of natural resources. The commission shall notify the property owner of any pending action under this paragraph and shall provide the property owner with a hearing prior to acting under this paragraph if the owner objects to the commission's actions.

(c) The commission shall:

1. Submit to the board of each county that is participating in the mosquito control district, at the end of each year, a complete audit of the financial transactions concluded and a progress report indicating the actions taken to control mosquitoes.
2. Publish a notice for general circulation in each of the counties in the district for bids at least 10 days prior to purchasing materials or services costing more than \$2,500. The notice shall state the nature of the work or purchase, the terms and conditions upon which the contract will be awarded, and the time and place where bids will be received, opened and read publicly. The commission may reject all bids after the reading or shall award the contract to the lowest responsible bidder. The commission may award the contract to any unit of government without the intervention of bidding, under s. [66.0131 \(2\)](#). The district business administrator shall execute all contracts in writing, and may require the contracting party to provide a bond to

ensure performance of the contract. The commission may direct the business administrator to purchase materials or services costing \$5,000 or less on the open market at the lowest price available, without securing competitive bids, if the commission declares that an emergency exists by an affirmative vote of five-sixths of the commission. In this subdivision, an "emergency" is an unforeseen circumstance that jeopardizes life or property.

3. Employ and fix the duties and compensation of a full-time or part-time entomologist to act as director of the mosquito control program, who shall develop and supervise the program.

4. Employ and fix the duties and compensation of a full-time or part-time business administrator, who shall administer the business affairs of the commission and who shall keep an account of all receipts and disbursements by date, source and amount.

(14) ADVERSE INTEREST OF COMMISSIONERS. No commissioner may have any personal or financial interest in any contract made by the commission. Any violation of this subsection resulting in a conviction shall void the contract, and shall disqualify the commissioner convicted of the violation from membership on the commission.

(15) FINANCING. On or before October 1 of each year, the commission shall require each county within the mosquito control district to contribute an amount per resident of the county to carry out the purposes of subs. (12) to (16). The commission shall determine the amount to charge per resident. The commission shall certify in writing to the clerk of each county participating in the mosquito control district, the total amount of the county's contribution to the mosquito control district.

(16) DISSOLUTION OF THE DISTRICT.

(a)

1. A county may terminate its participation in the district upon a majority vote of the board and 12 months' notice to the chairperson of the commission. If a county terminates its participation in the district, a board of appraisers as established in subd. 2. shall appraise the property of the commission.

2. The board of appraisers shall consist of 3 members, one who is appointed by the terminating county, one by the commission and one by the other 2 members of the appraisal board. If the 2 appraisers cannot agree on the appointment of the 3rd appraiser within 30 days, the commission may appoint the 3rd appraiser. The commission shall pay to the treasurer of the terminating county an amount equal to that county's share in the net assets of the commission, proportionate to the county's financial contribution to the mosquito control district. The terminating county shall remain liable for its allocated share of the contractual obligations of the mosquito control district.

(b) If the district dissolves, the commission shall sell all of its property. The proceeds of the sale remaining after payment of all debts, obligations and liabilities of the district, plus any balance in the fund, shall be divided and paid to the treasurers of the member counties in proportion to each county's financial contribution to the district. Member counties shall remain liable for unpaid debts after the dissolution of the district.

(17) WORMS, INSECTS, WEEDS, ANIMAL DISEASES, APPROPRIATION.

(a) The board may appropriate money for the control of insect and worm pests, weeds, or plant or animal diseases within the county, and select from its members a committee which, upon advice from the county agent that an emergency exists because of the destruction which is being or may be wrought to farmlands, livestock or crops in the county by any such pests, may take steps necessary to suppress and control such pests. The clerk shall within 10 days notify the department of agriculture, trade and consumer protection of such appropriation and of the members of such committee. The state entomologist and said department shall cooperate with

such committee in the execution of measures necessary for the suppression and control of such pests.

(b) When such an emergency exists the committee may draw on the contingent fund, if available, an amount not to exceed \$5,000 which shall be disbursed upon certification of the committee for the purposes specified in par. (a) as they relate to worm or insect pests; the treasurer shall pay the amounts so certified. No disbursement shall be made by the committee unless the owner of the premises affected has requested the committee to take steps to suppress or control the pests or when steps have been undertaken by another authority.

(18) LAND CLEARING AND WEED CONTROL. The board may purchase or accept by gift or grant tractors, bulldozers and other equipment for clearing and draining land and controlling weeds on same, and for such purposes to operate or lease the same for work on private lands. The board may charge fees for such service and for rental of such equipment on a cost basis.

(19) LAND CONSERVATION COMMITTEE. Each board shall create a land conservation committee.

(20) LAND CONSERVATION.

(a) *Soil and water conservation.* Each board is responsible for developing and implementing a soil and water conservation program, that is specified under ch. [92](#), through its land conservation committee.

(b) *Committee powers and duties.* The land conservation committee created by the board has the powers and duties that are specified for that committee under ch. [92](#).

(c) *Appropriation of funds.* The board may appropriate funds for soil and water conservation and for other purposes that relate to land conservation.

(d) *Land use and land management.* The board may enact ordinances under s. [92.11](#) that regulate land use and land management practices to promote soil and water conservation.

(21) CONSERVATION CONGRESS. The board may appropriate money to defray the expenses of county delegates to the annual convention and other activities of the Wisconsin conservation congress.

(22) BILLBOARD REGULATION. The board may regulate, by ordinance, the maintenance and construction of billboards and other similar structures on premises abutting on highways maintained by the county so as to promote the safety of public travel thereon. Such ordinances shall not apply within cities, villages and towns which have enacted ordinances regulating the same subject matter.

(23) COUNTY NATURAL BEAUTY COUNCILS. The board may create a county natural beauty council as a committee of the board, composed of such board members, public members and governmental personnel as the board designates. The council shall advise governmental bodies and citizens in the county on matters affecting the preservation and enhancement of the county's natural beauty, and aid and facilitate the aims and objectives of the natural beauty council described in s. [144.76 \(3\) \(intro.\)](#), 1973 stats.

(24) LIME TO FARMERS. The board may manufacture agricultural lime and sell and distribute it at cost to farmers and may acquire lands for such purposes.

[59.70\(25\)](#) (25) INTERSTATE HAZARDOUS LIQUID PIPELINES. A county may not require an operator of an interstate hazardous liquid pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.

History: [1995 a. 201](#) ss. [108](#), [109](#), [133](#), [150](#), [161](#), [163](#), [172](#), [214](#) to [216](#), [218](#) to [221](#), [437](#) to [442](#), [438](#), [449](#) to [451](#), [455](#), [456](#); [1995 a. 227](#); [1997 a. 35](#); [1999 a. 150](#) s. [672](#); [2005 a. 149](#); [2011 a. 146](#), [150](#); [2013 a. 14](#), [165](#); [2015 a. 55](#); [2015 a. 197](#) s. [51](#).

The authority of a county to enact and enforce a minimum standards housing code is discussed. 59 Atty. Gen. 248.

Section 59.07 (49) [now s. 59.70 (22)] authorizes billboard regulations relating solely to highway safety. 61 Atty. Gen. 191.

The county board may delegate relatively broad powers to the land conservation committee in connection with the lease or purchase of real property for the purposes of soil and water conservation, but such property transactions are subject to the approval of the county board. [74 Atty. Gen. 227](#).

A board established under s. 59.07 (135) [now s. 59.70 (2)] is restricted to performing advisory, policy-making, or legislative functions. [77 Atty. Gen. 98](#).

Section 59.07 (135) (L) [now 59.70 (2) (L)] authorizes counties that are responsible units of government to levy taxes for capital and operating expenses incurred in the operation of the county's recycling program only upon local governments that are not responsible units of government. Counties may levy taxes for both operating and capital expenses incurred in connection with any other form of solid waste management activity only on local governments participating in that activity. [80 Atty. Gen. 312](#).

Section 59.18 (2) (b) transfers the authority to supervise the administration of county departments from boards and commissions to department heads appointed by the county administrator. Section 59.18 (2) therefore entirely negates sub. (2) insofar as it provides that the board may "employ" a system manager. In a county with a county administrator, the solid waste management board is purely an advisory body to the county administrator and to the county board and a policy-making body for the solid waste management department as a whole. [OAG 1-12](#).

60.22 General powers and duties. The town board:

- (1) CHARGE OF TOWN AFFAIRS.** Has charge of all affairs of the town not committed by law to another body or officer or to a town employee.
- (2) CHARGE OF ACTIONS.** Has charge of any action or legal proceeding to which the town is a party.
- (3) VILLAGE POWERS.** If authorized under s. [60.10 \(2\) \(c\)](#), may exercise powers relating to villages and conferred on village boards under ch. [61](#), except those powers which conflict with statutes relating to towns and town boards.
- (4) JURISDICTION OF CONSTABLE.** Shall determine the jurisdiction and duties of the town constable. A town constable who is given law enforcement duties by the town board, and who meets the definition of a law enforcement officer under s. [165.85 \(2\) \(c\)](#), shall comply with the minimum employment standards for law enforcement officers established by the law enforcement standards board and shall complete training under s. [165.85 \(4\) \(a\) 1](#).
- (5) PURSUE CERTAIN CLAIMS OF TOWN.** Shall demand payment of penalties and forfeitures recoverable by the town and damages incurred by the town due to breach of official bond, injury to property or other injury. If, following demand, payment is not made, the board shall pursue appropriate legal action to recover the penalty, forfeiture or damages.

History: [1983 a. 532](#); [1987 a. 237](#); [2013 a. 214](#).

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. *U.S. Oil, Inc. v. City of Fond du Lac*, [199 Wis. 2d 333](#), [544 N.W.2d 589](#) (Ct. App. 1995), [95-0213](#).

A town with village powers has the authority to adopt ordinances authorizing its plan commission to review and approve industrial site plans before issuing a building permit. An ordinance regulating development need not be created with a particular degree of specificity other than is necessary to give developers reasonable notice of the areas of inquiry that the town will examine in approving or disapproving proposed sites. *Town of Grand Chute v. U.S. Paper Converters, Inc.* [229 Wis. 2d 674](#), [600 N.W.2d 33](#) (Ct. App. 1999), [98-2797](#).

A town board exercising village powers is not entitled to purchase land and contract for construction when doing so would conflict with statutes relating to towns and town boards. The village board power to acquire land and construct buildings under s. 61.34 (3) is in direct conflict with s. 60.10 (2) (e) and (f), which relates to towns and town boards and which confers that power of authorization on the town meeting. *Town of Clayton v. Cardinal Construction Company, Inc.* [2009 WI App 54](#), [317 Wis. 2d 424](#), [767 N.W.2d 605](#), [08-1793](#).

The line distinguishing general police power regulation from zoning ordinances is far from clear. The question of whether a particular enactment constitutes a zoning ordinance is often a matter of degree. Broad statements of the purposes of zoning and the purposes of an ordinance are not helpful in distinguishing a zoning ordinance from an ordinance enacted pursuant to non-zoning police power. The statutorily enumerated purposes of zoning are not the exclusive domain of zoning regulation. A more specific and analytically helpful formulation of the purpose of zoning, at least in the present case, is to separate incompatible land uses. Multiple factors are considered and discussed. *Zwiefelhofer v. Town of Cooks Valley*, [2012 WI 7](#), [338 Wis. 2d 488](#), [809 N.W.2d 362](#), [10-2398](#).

Permitting general town regulation of shorelands under village powers conflicts with the statutory scheme of ss. 59.692 and 281.31, which, by their plain language, appear to deliberately exclude towns from having shoreland zoning authority, except in the circumstance identified in

s. 59.692 (2) (b). *Hegwood v. Town of Eagle Zoning Board of Appeals*, [2013 WI App 118](#), [351 Wis. 2d 196](#), [839 N.W.2d 111](#), [12-2058](#).

61.34 Powers of village board.

(1) GENERAL GRANT. Except as otherwise provided by law, the village board shall have the management and control of the village property, finances, highways, streets, navigable waters, and the public service, and shall have power to act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language.

(2) COOPERATION WITH OTHER MUNICIPALITIES. The village board, in behalf of the village, may join with other villages or cities in a cooperative arrangement for executing any power or duty in order to attain greater economy or efficiency, including joint employment of appointive officers and employees.

(3) ACQUISITION AND DISPOSAL OF PROPERTY. The village board may acquire property, real or personal, within or outside the village, for parks, libraries, recreation, beautification, streets, water systems, sewage or waste disposal, harbors, improvement of watercourses, public grounds, vehicle parking areas, and for any other public purpose; may acquire real property within or contiguous to the village, by means other than condemnation, for industrial sites; may improve and beautify the same; may construct, own, lease and maintain buildings on such property for instruction, recreation, amusement and other public purposes; and may sell and convey such property. Condemnation shall be as provided by ch. [32](#).

(3m) ACQUISITION OF EASEMENTS AND PROPERTY RIGHTS. Confirming all powers granted to the village board and in furtherance thereof, the board is expressly authorized to acquire by gift, purchase or condemnation under ch. [32](#) any and all property rights in lands or waters, including rights of access and use, negative or positive easements, restrictive covenants, covenants running with the land, scenic easements and any rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public or for any public purpose, including the exercise of powers granted under ss. [61.35](#) and [62.23](#); and may sell and convey such easements or property rights when no longer needed for public use or protection.

(4) VILLAGE FINANCES. The village board may levy and provide for the collection of taxes and special assessments; may refund any tax or special assessment paid, or any part thereof, when satisfied that the same was unjust or illegal; and generally may manage the village finances. The village board may loan money to any school district located within the village or within which the village is wholly or partially located in such sums as are needed by such district to meet the immediate expenses of operating the schools thereof, and the board of the district may borrow money from such village accordingly and give its note therefor. No such loan shall be made to extend beyond August 30 next following the making thereof or in an amount exceeding one-half of the estimated receipts for such district as certified by the state superintendent of public instruction and the local school clerk. The rate of interest on any such loan shall be determined by the village board.

61.34(5) (5) CONSTRUCTION OF POWERS. For the purpose of giving to villages the largest measure of self-government in accordance with the spirit of [article XI, section 3](#), of the constitution it is hereby declared that this chapter shall be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof.

History: [1983 a. 192](#); [1987 a. 395](#); [1995 a. 27, 378](#); [1997 a. 27](#).

Cross-reference: See s. [118.105](#) for control of traffic on school premises.

When a municipality's power to contract is improperly or irregularly exercised and the municipality receives a benefit under the contract, it is estopped from asserting the invalidity of the contract. Village of McFarland v. Town of Dunn, [82 Wis. 2d 469, 263 N.W.2d 167](#) (1978).

A village was authorized under ss. 30.77 (3) and 61.34 (1) to enact an ordinance granting exclusive temporary use of a portion of a lake for public water exhibition licensees. State v. Village of Lake Delton, [93 Wis. 2d 78, 286 N.W.2d 622](#) (Ct. App. 1979).

The delegation of village powers to a non-governmental entity is discussed. Save Elkhart Lake v. Elkhart Lake Village, [181 Wis. 2d 778, 512 N.W.2d 202](#) (Ct. App. 1993).

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. U.S. Oil, Inc. v. City of Fond du Lac, [199 Wis. 2d 333, 544 N.W.2d 589](#) (Ct. App. 1995), [95-0213](#).

It was not a violation of this section, s. 236.45, or the public purpose doctrine for a municipality to assume the dual role of subdivider of property it owned and reviewer of the plat under ch. 236. Town of Beloit v. Rock County, [2001 WI App 256, 249 Wis. 2d 88, 637 N.W.2d 71, 00-1231](#).

Affirmed on other grounds, [2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344, 00-1231](#).

One who deals with a municipality does so at his or her own risk and may be subject to any provisions of law that might prevent him or her from being paid by a municipality even though the services are rendered. Unless the power to bind the municipality financially has been specifically delegated, the only entity with the statutory authority to contract is the municipality. Holzbauer v. Safway Steel Products, Inc. [2005 WI App 240, 288 Wis. 2d 250, 711 N.W.2d 672, 04-2058](#).

The line distinguishing general police power regulation from zoning ordinances is far from clear. The question of whether a particular enactment constitutes a zoning ordinance is often a matter of degree. Broad statements of the purposes of zoning and the purposes of an ordinance are not helpful in distinguishing a zoning ordinance from an ordinance enacted pursuant to non-zoning police power. The statutorily enumerated purposes of zoning are not the exclusive domain of zoning regulation. A more specific and analytically helpful formulation of the purpose of zoning, at least in the present case, is to separate incompatible land uses. Multiple factors are considered and discussed. Zwiefelhofer v. Town of Cooks Valley, [2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362, 10-2398](#).

State statutory enabling legislation is required to authorize enactment of typical rent control ordinances. 62 Atty. Gen. 276.

Local units of government may not create and accumulate unappropriated surplus funds.

However, a local unit of government may maintain reasonable amounts necessary in the exercise of sound business principles to meet the immediate cash flow needs of the municipality during the current budgetary period or to accumulate needed capital in non-lapsing funds to finance specifically identified future capital expenditures. [76 Atty. Gen. 77](#).

Article VIII, section 5 restricts the state from levying taxes to create a surplus having no public purpose. Although the constitutional provision does not apply directly to municipalities, the same

limitation applies indirectly to them because the state cannot delegate more power than it has. [76 Atty. Gen. 77](#).

Conflicts between state statutes and local ordinances in Wisconsin. 1975 WLR 840.

92.11 Regulation of local soil and water resource management practices.

(1) PROPOSED ORDINANCES. To promote soil and water conservation or nonpoint source water pollution abatement, a county, city, village or town may enact ordinances for the regulation of land use, land management and pollutant management practices.

(2) APPLICABILITY; CONTENTS.

(a) An ordinance enacted under this section may be applicable throughout the county or to any part of the county, including both incorporated and unincorporated areas.

(b) An ordinance enacted under this section may prohibit land uses and land management practices which cause excessive soil erosion, sedimentation, nonpoint source water pollution or storm water runoff.

(3) PRESENTATION; NOTICE; HEARING; COUNTY BOARD ADOPTION. Any ordinance proposed by the land conservation committee under this section shall be presented to the county board together with a report on the need for the ordinance and its expected economic and environmental impact. Within 2 weeks after its receipt, the county board shall publish the proposed ordinance as a class 2 notice, under ch. [985](#), in a newspaper having general circulation throughout the county and make the report available for public inspection. The county board shall hold one or more public hearings on the proposed ordinance before taking final action. The county board shall adopt, adopt with revisions or disapprove the ordinance.

(4) REFERENDUM; LOCAL APPROVAL REQUIRED.

(a) *Definition.* As used in this subsection, "affected area" means the entire town, all of a village within the county or all of a city within a county if an ordinance adopted under this section or a revision to an ordinance adopted under this section is applicable to any part of the town, village or city.

(b) *Referendum required.* No ordinance adopted under this section and no revision to an ordinance adopted under this section may take effect in any affected area in that county unless the ordinance or revision is approved by referendum.

(c) *Wording of ballot question; procedure.* The county board shall include the wording of the question to be placed before the electors in the referendum as a part of the ordinance adopted under this section or the revision to an ordinance adopted under this section. Upon the adoption of the ordinance or revision the county board shall forward a copy of the ordinance or revision to the county clerk who shall cause the question to be placed before the voters of the affected area in the next spring or general election occurring not less than 70 days after the adoption of the ordinance or revision. The form of the ballot shall correspond substantially to the form prescribed under s. [5.64 \(2\)](#).

(d) *Approval; disapproval.* If the question placed before the electors in the referendum is approved by a majority of all votes cast on that subject in an affected area in that county, the ordinance adopted under this section or the revision to an ordinance adopted under this section takes effect in that affected area. Otherwise, the ordinance or revision does not take effect in that affected area.

(5) ENFORCEMENT.

(a) The county board shall by ordinance prescribe administrative procedures and provide personnel necessary for the enforcement of any ordinance enacted under this section. Ordinances

enacted under this section may be enforced through civil forfeiture or through issuance of an injunction by the circuit court in an action initiated by the county or land conservation committee. The court may award reasonable attorney fees to any plaintiff in a successful action for enforcement through injunction.

(b) At least one year before the county or land conservation committee may initiate an action for enforcement, the land conservation committee shall make a reasonable effort to contact the landowner or land user in person and to furnish the landowner or land user all of the following:

1. An explanation orally and in writing of the reasons for the excessive soil erosion.
2. A management plan which, if followed, would reduce soil erosion to a rate established as acceptable by the land conservation committee. The management plan shall, with reasonable limits, set forth all of the options which are available to the landowner or land user to achieve acceptable soil erosion rates.
3. An explanation of the financial aids and technical assistance which are available to the landowner or land user. These may include, but are not necessarily limited to, cost-sharing, loans, tax incentives and technical assistance available from the land conservation committee and other agencies.

(6) BOARD OF ADJUSTMENT. The county board shall provide for the appointment of a board of adjustment in any county which adopts an ordinance under this section.

92.11(7) (7) CONSTRUCTION. Any ordinance enacted under this section shall be liberally construed in favor of the county. It shall be construed as setting minimum requirements for the purposes stated and not as a limitation on other powers granted the county board and land conservation committee.

History: [1981 c. 346](#); [1987 a. 27](#); [1993 a. 246](#); [1999 a. 182](#); [2011 a. 75](#).

An ordinance passed under this section may be applicable to incorporated as well as unincorporated areas of the county. [77 Atty. Gen. 87](#).

92.15 Local regulation of livestock operations.

(1) In this section:

(a) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.

(b) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(2) Notwithstanding ss. [92.11](#) and [92.17](#), a local governmental unit may enact regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. [281.16 \(3\)](#).

(3)

(a) Notwithstanding ss. [92.11](#) and [92.17](#), a local governmental unit may enact regulations of livestock operations that exceed the performance standards, prohibitions, conservation practices and technical standards under s. [281.16 \(3\)](#) only if the local governmental unit demonstrates to the satisfaction of the department of agriculture, trade and consumer protection or the department of natural resources that the regulations are necessary to achieve water quality standards under s. [281.15](#).

(b) The department of agriculture, trade and consumer protection and the department of natural resources shall, by rule, specify procedures for review and approval of proposed local governmental unit regulations under par. (a).

(4) A local governmental unit may not apply a regulation under sub. (2) or (3) to a livestock operation that exists on October 14, 1997, unless the local governmental unit determines, using the rules promulgated under s. [281.16 \(3\) \(e\)](#), that cost-sharing is available to the owner or operator of the livestock operation under s. [92.14](#) or [281.65](#) or from any other source.

(5) Any livestock operation that exists on October 14, 1997, and that is required to obtain a permit under s. [283.31](#) or that receives a notice of discharge under ch. [283](#) may continue to operate as a livestock operation at the same location notwithstanding s. [59.69 \(10\) \(am\)](#) or [62.23 \(7\) \(h\)](#) or any zoning ordinance enacted under s. [59.69](#), [60.61](#), [60.62](#), [61.35](#) or [62.23 \(7\)](#), if the livestock operation is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. [59.69](#), [60.61](#), [60.62](#), [61.35](#) or [62.23 \(7\)](#) on October 14, 1997.

History: [1997 a. 27](#); [1999 a. 9](#); [2011 a. 170](#).

Cross-reference: See also ch. [NR 151](#), Wis. adm. code.

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- [NR 243.13](#) Standard WPDES permit requirements for large CAFOs.
- [NR 243.14](#) Nutrient management.
- [NR 243.141](#) Manure stacking.
- [NR 243.142](#) Responsibility for large CAFO manure and process wastewater.
- [NR 243.15](#) Design, submittal and approval of proposed facilities or systems.
- [NR 243.16](#) Evaluations of previously constructed facilities or systems.
- [NR 243.17](#) Operation and maintenance.
- [NR 243.18](#) Combined wastes.
- [NR 243.19](#) Inspections, record keeping and reporting.
- Subchapter III — Other Animal Feeding Operations
- [NR 243.21](#) Purpose.
- [NR 243.23](#) General requirements for animal feeding operations.
- [NR 243.24](#) Department discharge determination and NODs.
- [NR 243.25](#) NOD enforcement.
- [NR 243.26](#) WPDES permits for medium and small CAFOs.
- Subchapter IV — CAFO Enforcement
- [NR 243.31](#) Enforcement.

Note: Ch. NR 243 as it existed on June 30, 2007 was repealed and a new Ch. NR 243 was created, [Register April 2007 No. 616](#), eff. 7-1-07.

Chapter NR 204

Domestic Sewage Sludge Management

- [NR 204.01](#) Purpose.
- [NR 204.02](#) General.
- [NR 204.03](#) Definitions.
- [NR 204.04](#) Exceptional quality sludge.
- [NR 204.05](#) Permit issuance.
- [NR 204.06](#) Reporting and monitoring requirements.
- [NR 204.07](#) Land application of sludge.
- [NR 204.08](#) Landfill disposal.
- [NR 204.09](#) Alternative uses of sludge.
- [NR 204.10](#) Storage facilities.
- [NR 204.11](#) Sludge management plan.
- [NR 204.12](#) Grit and screenings disposal.

[NR 204.13](#) Sludge management program standards and requirements based upon federal regulations.

[NR 204.14](#) Fact sheets.

[NR 204.15](#) Variances.

Note: Chapter NR 204 as it existed on December 31, 1995 was repealed and a new chapter was created effective January 1, 1996.

Chapter NR 214

Land Treatment Of Industrial Liquid Wastes, By-Product Solids And Sludges

Subchapter I — General

[NR 214.01](#) Purpose.

[NR 214.02](#) Applicability.

[NR 214.03](#) Definitions.

[NR 214.04](#) Prohibitions.

[NR 214.05](#) Additional limitations.

[NR 214.06](#) Exemptions from requirements of this chapter.

[NR 214.07](#) Exemptions from groundwater standards.

[NR 214.08](#) Abandonment.

[NR 214.09](#) Sampling and analytical methods.

[NR 214.10](#) General permits.

Subchapter II — Requirements for Specific Land Treatment Systems

[NR 214.12](#) Absorption pond systems.

[NR 214.13](#) Ridge and furrow systems.

[NR 214.14](#) Spray irrigation systems.

[NR 214.15](#) Overland flow systems.

[NR 214.16](#) Subsurface absorption systems.

[NR 214.17](#) Landspreading systems for liquid wastes and by-product solids.

[NR 214.18](#) Sludge spreading systems.

Subchapter III — Site Investigation and Monitoring

[NR 214.20](#) Soil investigation requirements.

[NR 214.21](#) Groundwater monitoring requirements.

Note: Chapter NR 214 as it existed on June 30, 1990 was repealed and a new ch. NR 214 was created effective July 1, 1990.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., [Register, August, 1997, No. 500](#).

Chapter NR 812

Well Construction And Pump Installation

Subchapter I — General

[NR 812.01](#) Purpose.

[NR 812.02](#) Applicability.

[NR 812.03](#) Cooperation with the department.

[NR 812.04](#) Contracts for noncomplying installations.

[NR 812.05](#) Disposal of pollutants; injection prohibition.

[NR 812.06](#) Drinking water standards.

[NR 812.07](#) Definitions.

[NR 812.08](#) Water well, heat exchange drillhole, reservoir and spring location.

[NR 812.09](#) Department approvals.

Subchapter II — New Water Well and Heat Exchange Drillhole Construction and Reconstruction and Filling and Sealing of Wells and Drillholes

[NR 812.10](#) Well and heat exchange driller and well constructor requirements.

[NR 812.11](#) Well and heat exchange drillhole construction equipment & materials.

[NR 812.12](#) General drilled type well and heat exchange drillhole construction requirements.

[NR 812.13](#) Drilled wells terminating in unconsolidated formations i.e., usually sand or gravel or both.

[NR 812.14](#) Drilled wells in bedrock formations.

[NR 812.15](#) Flowing wells.

[NR 812.16](#) Gravel-pack well construction.

[NR 812.17](#) Well casing and heat exchange pipe, liner pipe and materials.

[NR 812.18](#) Welding procedures.

[NR 812.19](#) Well plumbness and alignment.

[NR 812.20](#) Grouting and sealing.

[NR 812.21](#) Liners.

[NR 812.22](#) Finishing operations.

[NR 812.23](#) Driven point (sand/point) wells.

[NR 812.24](#) Dug type well design and construction.

[NR 812.25](#) Springs.

[NR 812.26](#) Well and drillhole filling and sealing.

Subchapter III — Requirements for New Pump Installations and Water Treatment

[NR 812.27](#) Pump installer requirements.

[NR 812.28](#) Pump installation equipment and supply pipe.

[NR 812.29](#) Height of finished well.

[NR 812.30](#) Vermin-proof well caps and seals.

[NR 812.31](#) Pitless adapters and pitless units.

[NR 812.32](#) Pumps.

[NR 812.33](#) Water storage vessels.

[NR 812.34](#) Sample faucets.

[NR 812.35](#) Yard hydrants.

[NR 812.36](#) Pits.

[NR 812.37](#) Water treatment.

[NR 812.38](#) Injection of fertilizers or pesticides for agricultural purposes.

[NR 812.39](#) High capacity well water level and water usage measurement.

[NR 812.40](#) Above ground pumphouses.

[NR 812.41](#) Disinfection, flushing and sampling.

Subchapter IV — Standards for Existing Installations

[NR 812.42](#) Criteria for evaluation.

Subchapter V — Variances

[NR 812.43](#) Variances.

Subchapter VI — Property Transfer Well Inspections.

[NR 812.44](#) Property Transfer Well Inspections.

Subchapter VII — Citations

[NR 812.45](#) Citations.

Note: Chapter NR 112 as it existed on September 30, 1975 was repealed and a new Chapter NR 112 was created effective October 1, 1975. Chapter NR 112 as it existed on January 31, 1991 was repealed and a new Chapter NR 112 was created effective February 1, 1991; Chapter NR 112 was renumbered Chapter NR 812 under s. 13.93 (2m) (b) 1., Stats., [Register, September, 1994, No. 465](#).

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**Appendix B
Bibliography**

Appendix ??

Bibliography

Bedrock Geology of Portage County Map

<http://ww3.co.portage.wi.us/groundwater/undrstnd/geol2.htm>

Center for Disease Control (CDC) Reference

<http://www.cdc.gov/nchs/products/ad.htm>

Depth to Bedrock Map, Wisconsin and Portage County

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TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT, SAFETY OF PUBLIC WATER SYSTEMS (SAFE DRINKING WATER ACT)Q:\COMP\ENVIR2\SDWA

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Soil Attenuation of Contaminants Map, Portage County, Wisconsin

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Soil Attenuation/ Soil Filtering Capability, Portage County, Wisconsin:

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Wisconsin Stat. 66.0119

<https://docs.legis.wisconsin.gov/statutes/statutes/66/I/0119>

Wisconsin Stats. 9211

<http://docs.legis.wisconsin.gov/statutes/statutes/92.pdf>

[Groundwater Collaboration Workgroup¹]

Exempted stockpiling or stacking locations shall comply with the criteria for animal waste found in Table 10 of the USDA Natural Resources Conservation Service Technical Standard 313, hereby incorporated by reference. See “USDA NRCS Standard 313, Table 10” attached to this ordinance.

¹ http://dnr.wi.gov/topic/Groundwater/collaborationWorkgroup.html#final_report.html

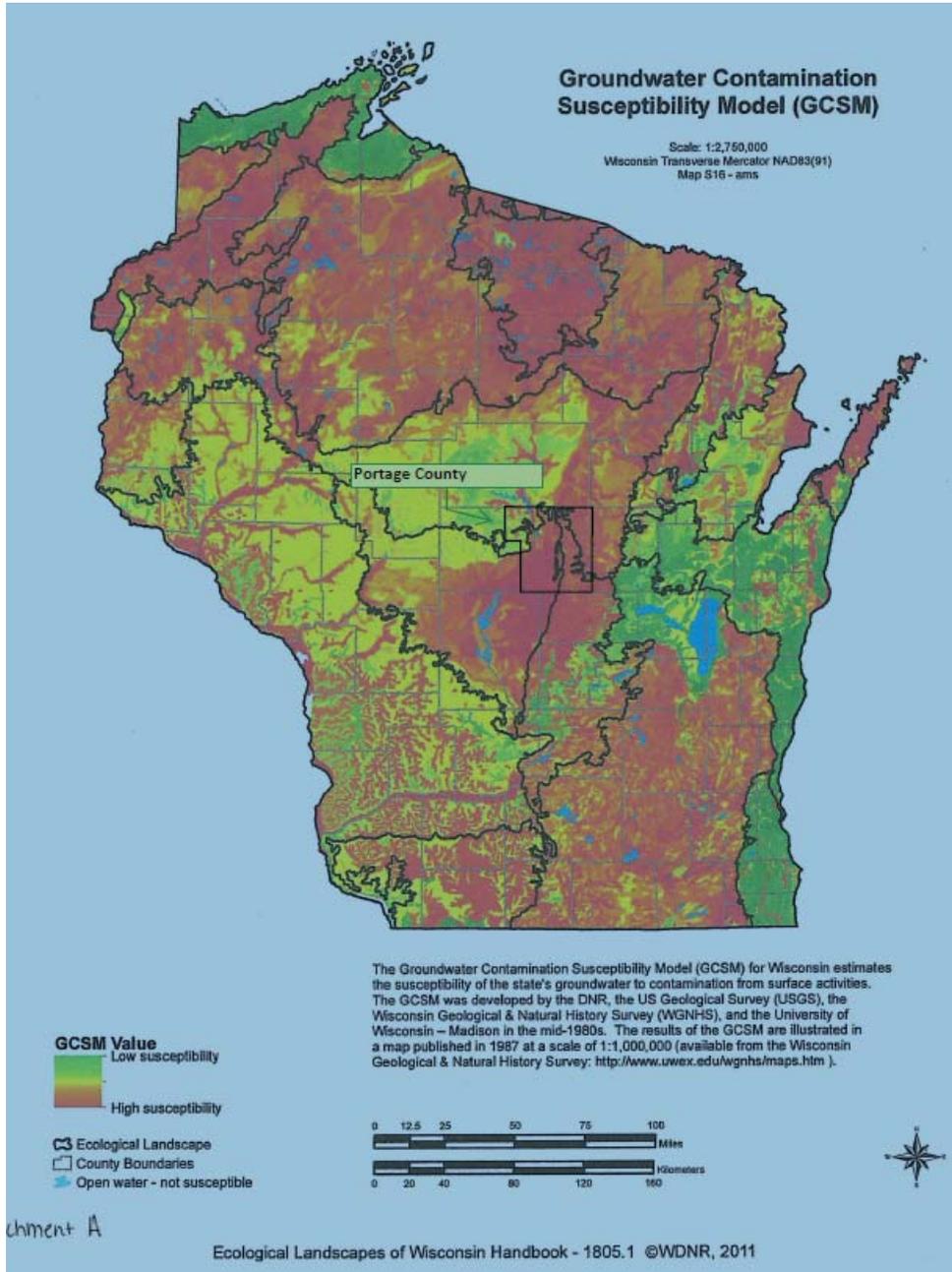
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Appendix C
Maps

Appendix ??

Maps

Groundwater Contamination Susceptibility Model (GCSM)



Portage County High Nitrates in Private Wells

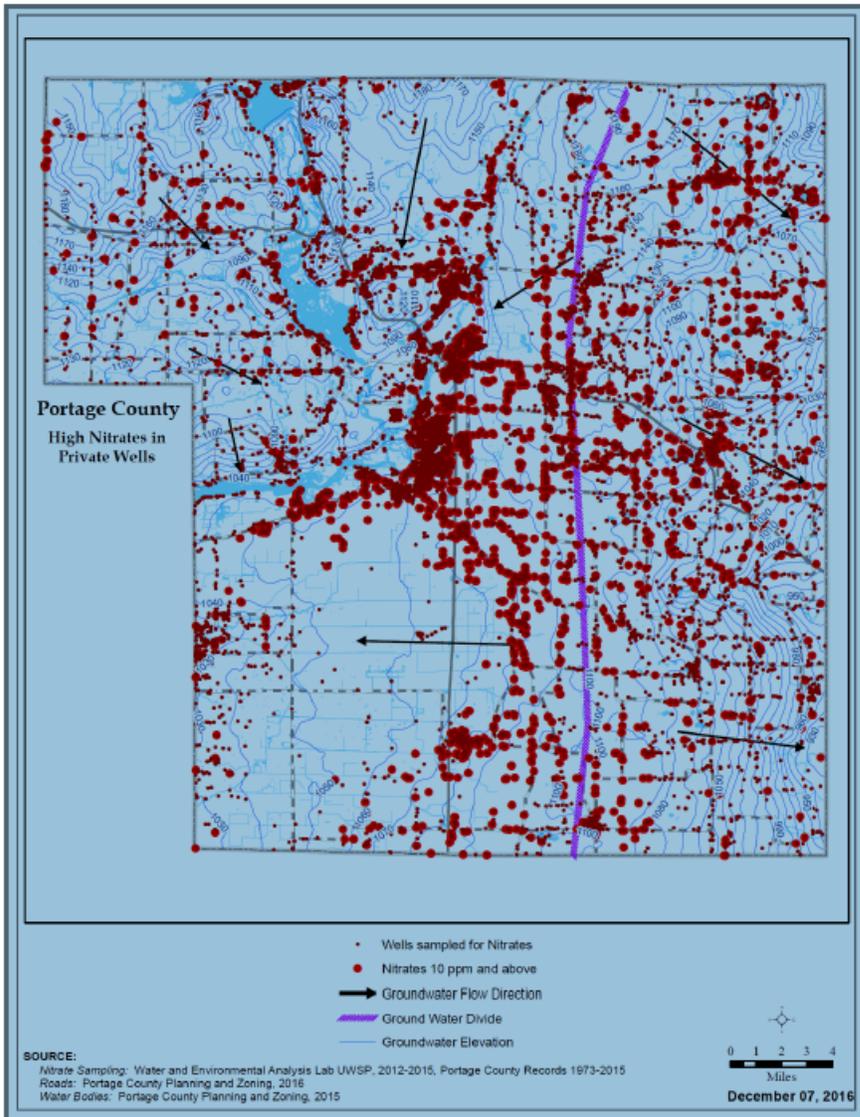
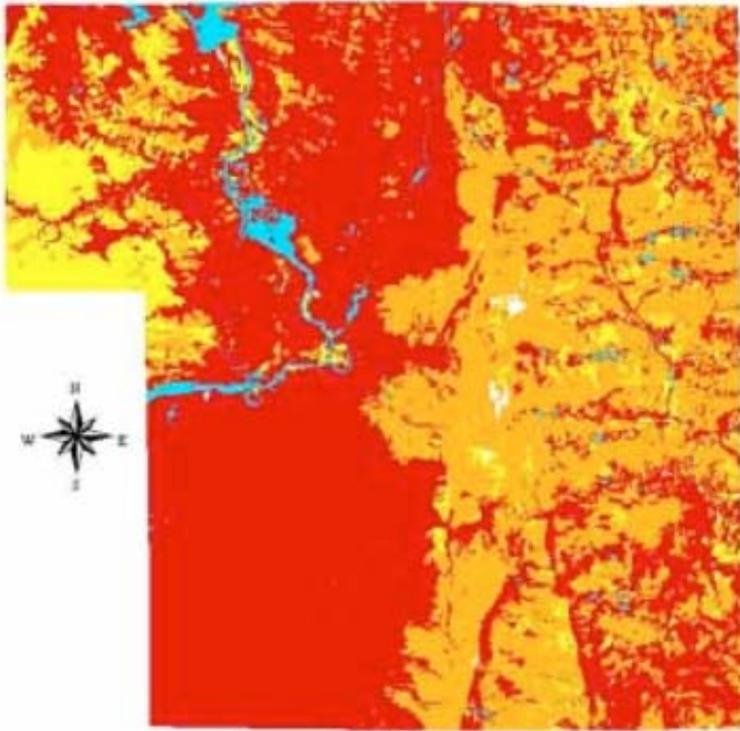


Figure 16. Nitrate Frequency in Portage County, WI Between 1973-2015

Soil Attenuation of Contaminants

Portage County, Wisconsin



Attenuation Potential

