

## ARTICLE IV. PERFORMANCE STANDARDS

### Sec. 95.129. Intent.

(a) Article X of this chapter, the various district use regulations, sets forth (subject to the general provisions and similar separate sections of this chapter) specific permitted uses, or general classes of uses, permitted by this chapter in each such district, based upon commonly accepted expectancies existent at the time of adoption of this chapter, of the impact those specific or classes of uses normally have upon their own land, on surrounding properties, and in some cases on the neighborhood or community at large.

(b) However, it is the intent of this section that no existing use be considered conforming, and no new use be granted a zoning permit, even if a listed permitted use, unless the use is also able to comply with all of the following standards of this article, which are imposed upon all land, water and air uses within the jurisdiction of this chapter.

### Sec. 95.130. Compliance.

(a) The performance standards enumerated in this article are designed to limit, restrict and prohibit the adverse effects of uses, in most cases outside their premises, or the district line if so regulated by certain zoning districts, but in matters related to soil erosion or potential pollution of surface water or groundwater, also the premises of the use.

(b) The use of all buildings, structures, lands, air and waters shall, in addition to complying with the use and area regulations of each district and of other regulations of this chapter, also comply with the following standards in this article.

### Sec. 95.131. Procedure.

(a) *Zoning permit application.* Any applicant for a zoning permit under this chapter shall be supplied with a copy of this article, and the applicant as part of the permit process shall certify by sworn statement contained within the application form that the use subject to the permit application will be operated in accordance with the performance standards set forth in this article.

(b) *ETZ Committee review.* Uses subject to ETZ Committee review of their building, site and operational plans pursuant to article V of this chapter, or uses subject to issuance of a conditional grant type of zoning permit pursuant to article VI, if so requested by the ETZ Committee, shall supply specific additional information in the way of plans, specifications, data or reports, such as by disinterested professionally qualified persons, addressing any specific standard about which the ETZ Committee has concern, to assure the ETZ Committee beyond the certification required in subsection (a) of this section that the use will in fact be able to meet the certification.

(c) *Determination of violation.* The zoning administrator shall investigate any observed or reported violation of the performance standards and shall reach a conclusion whether a violation is present or not at the time of inspection. If no violation is observable at inspection time due to the periodic nature of the operation, the zoning administrator may require the operator of the use to

announce a reasonable opportunity when the administrator may be present to observe or to conduct tests to ascertain compliance or violation of the standards. In case of suspected contamination of the underground waters, the administrator may require the owner or operator to conduct a soil probe or similar test and to share the test report results with the zoning administrator.

(d) *Termination of violation.* All violations as ascertained in subsection (c) shall be terminated within 30 days after notice. Violations not terminated within 30 days shall be deemed a separate violation for each day of existence and subject to fines as set forth in section 95.121.

(e) *Imminent danger violations.* Notwithstanding the protection extended to uses existing before the adoption of this chapter by article XII, and the provisions of subsection (d), uses which are found to be violating performance standards related to soil erosion, where the erosion is substantial and extends off the offending property, especially into public waterways or drainage facilities, or uses that are found to be violating standards related to surface water or groundwater pollution where the zoning administrator believes the danger is substantial to private or public personal health, safety and welfare, the zoning administrator is empowered to treat such specific violations under the terms of subsection (c) subject to the following:

- (1) *Rapid compliance.* Where the zoning administrator finds that the violation is posing a progressively more dangerous threat to personal or public health, safety or welfare the longer the violation continues, the administrator may require immediate corrective action, including temporary stop-gap measures to lessen the rate of pollution, to be followed later by more permanent solutions.
- (2) *Mitigation versus compliance.* Where an existing use that is legal nonconforming under this chapter as set forth in article XII is found under this article to be committing an imminent danger violation, and full compliance is not possible given the nonconforming circumstances, the zoning administrator may call upon other regulatory agencies also having jurisdiction or may negotiate temporary corrective measures that, while not achieving full compliance, result in mitigating the violation out of the imminent danger category.

#### **Sec. 95.132. Point of measurement.**

(a) No land or building in any district shall be operated in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosive or other hazard; noise or vibration, smoke, dust, dirt or other form of air pollution; water pollution; electrical, radioactive or other disturbances; glare; or other substance, condition or element (referred to as "dangerous or objectionable elements") in such amount as to adversely affect the surrounding area or premises; provided that any use permitted by this chapter may be undertaken and maintained if it conforms to the regulations of this section limiting dangerous and objectionable elements at the specified point or points of the determination of their existence.

(b) The determination of the existence of any dangerous and objectionable elements shall be made at:

- (1) The point where such elements shall be most apparent for fire and explosion hazards, for radioactivity and electrical disturbances, or for smoke and other forms of air pollution.

- (2) The property lines of the use creating such elements for noise, vibration, glare and odors, except the district lines of the AG, RR-10, RR, and M-I districts for noise and odor for permitted agricultural and industrial uses.

**Sec. 95.133. Performance standards to be enforced.**

(a) *Air pollution.* No activity shall emit any fly ash, dust, fumes, vapors, smoke, mists or gases in such quantities as to cause soiling or danger to the health of persons, animals, vegetation or other forms of property. No activity shall emit any liquid or solid particles in concentrations exceeding 0.3 grain per cubic foot of the conveying gas nor any color visible smoke equal to or darker than number 2 on the Ringelmann Chart described in Wis. Adm. Code NR ch. 431 and amendments thereto.

(b) *Electromagnetic emissions.* No activity shall emit electrical, radioactive or other electromagnetic disturbances outside its premises that are dangerous to plant or animal life as determined by applicable federal or state regulation or which adversely affect the use of neighboring premises such as by interfering with the use or enjoyment of common household and business equipment such as radio, television, telephone, computer or facsimile operations.

(c) *Fire and explosive hazards.* All activities involving the manufacturing, utilization, processing or storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion with adequate firefighting and fire suppression equipment and devices that are standard in the industry. All materials that range from active to intense burning shall be manufactured, utilized, processed and stored only in completely enclosed buildings that have incombustible exterior walls and an automatic fire extinguishing system. The aboveground storage capacity of materials that produce flammable or explosive vapors shall not exceed the following:

<i>Closed Cup Flash Point (degrees Fahrenheit)</i>	<i>Gallons</i>
Over 187	40,000
105—187	20,000
Below 105	10,000

(d) *Glare and heat.* No activity shall emit glare or heat that is visible or measurable at the boundaries of the lot on which the principal use is located. All operations producing intense glare or heat shall be conducted within a completely enclosed building. Exposed sources of light shall be shielded so that the direct rays are not visible outside their premises.

(e) *Noise.*

- (1) At the points of measurement specified in section 95.132, the maximum sound pressure level radiated in each standard octave band by any use or facility (other than transportation facilities or temporary construction work) shall not exceed the values for octave bands lying within the several frequency limits given in Table I after applying the corrections shown in Table II. The sound pressure level shall be measured with a sound level meter and associated octave band analyzer conforming to standards prescribed by the American Standards Association, Inc., New York, N.Y. (American Standard Sound Level Meters for Measurement of Noise and Other Sounds, 224.3-1944, American Standards Association, Inc.,

New York, N.Y., and American Standard Specification for an Octave-Band Filter Set for the Analysis of Noise and Other Sounds, 224.10-1953, or its latest approved revision, American Standards Association, Inc., New York, N.Y. shall be used.)

TABLE I

<i>Frequency Ranges Containing Standard Octave Bands in Cycles Per Second</i>	<i>Octave Band Sound Pressure Level in Decibels re 0.0002 dyne/cm</i>
20—75	65
<i>Frequency Ranges Containing Standard Octave Bands in Cycles Per Second</i>	<i>Octave Band Sound Pressure Level in Decibels re 0.0002 dyne/cm</i>
75—150	55
150—300	50
300—600	45
600--1,200	40
1,200--2,400	40
Above 2,400	35

(2) If the noise is not smooth and continuous and is not radiated between the hours of 10:00 p.m. and 6:00 a.m., one or more of the corrections in Table II shall be applied to the octave band levels given in Table I.

TABLE II

<i>Type of Location of Operation or Character of Noise</i>	<i>Correction in Decibels</i>
a. Daytime operation only .....	5
b. Noise source operates less than:	
1. 20% of any 1-hour period .....	5
2. 5% of any 1-hour period .....	10
c. Noise of impulsive character (hammering, etc.) .....	-5
d. Noise of periodic character .....	-5
e. Property is located in any M district and is not within 200 feet of any R district .....	10

\*Apply one of these corrections only.

(f) *Odors.* Except for agricultural uses in the AG, RR-10, RR and S/R districts, no activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious or unhealthful outside their premises. The guide for determining odor measurement and control shall be Wis. Admin. Code NR ch. 431.

(g) *Vibrations.* No activity in any district except the M-1 and OME districts shall emit vibrations that are discernible without instruments outside its premises. No activity in the M-1 and OME districts shall emit vibrations that exceed the following displacement measured with a three-component measuring system:

<i>Frequency (Cycles per Second)</i>	<i>Displacement (Inches)</i>	
	<i>Outside the Premises</i>	<i>Outside the District</i>
0 to 10	0.0020	0.0004
10 to 20	0.0010	0.0002
20 to 30	0.0006	0.0001
30 to 40	0.0004	0.0001
40 to 50	0.0003	0.0001
50 and over	0.0002	0.0001

(h) *Soil capability regulations.* In addition to any other applicable use, site or sanitary regulation, the following restrictions or regulations shall apply to the following soils as shown on the operational soil survey maps prepared by the U.S.D.A. Soil Conservation Service for the county and which are on file with the zoning administrator.

(1) *Farm drainage systems.* Farm drainage systems may be installed on the following soils, which soils are subject to a flooding hazard and which have generally unsuitable soil characteristics for an operative drainage system, only if installed in accordance with sound conservation practices as set forth by the U.S. Soil Conservation Service standards:

- a. Ad--Altdorf muck silt loam.
- b. CbA--Cable silt loam.
- c. Ch--Cathro muck.
- d. Da--Dancy sandy loam.
- e. Fh--Fordum silt loam.
- f. Gr--Greenwood peat.
- g. MfA--Marshfield silt loam.
- h. Mn--Minocqua sandy loam.
- i. Ne--Newson mucky loamy sand.

j. Se--Seeleville muck.

k. ShA--Sherry silt loam.

(i) *Water quality protection.*

(1) *Surface and substandard waters protected.* No activity shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that would be likely to run off, seep, percolate or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness or be harmful to human, animal, plant or aquatic life.

(2) *Minimum standards.* In addition to subsection (i)(1) of this section, no activity shall discharge any liquid, gaseous or solid materials so as to exceed or contribute toward the exceeding of the minimum standards and those other standards and the application of those standards set forth in Wis. Admin. Code NR ch. 102 for all navigable waters in the town.

(3) *Animal waste and grazing practices.* Spreading of manure or fertilizer on frozen ground and establishment of concentrated outdoor animal confinements shall be prohibited where such activities would cause direct runoff into a drainage way or watercourse. In any case, grazing animals shall not be permitted within 50 feet of such waterways.