

CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

By-law No. 173-2004

A BY-LAW TO REGULATE MANURE STORAGEES, LIVESTOCK OPERATIONS AND MANURE MANAGEMENT IN THE MUNICIPALITY OF CHATHAM-KENT

WHEREAS the Council of the Corporation of the Municipality of Chatham-Kent deems it necessary in the public interest to regulate manure storages, livestock operations, and the management of manure;

AND WHEREAS, pursuant to Section 128 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended, by-laws may be enacted by local municipal Councils for prohibiting and regulating matters that, in the opinion of Council, could become or cause public nuisances;

AND WHEREAS Council is of the opinion that manure storage, livestock operations and the management of manure could become or cause public nuisances;

NOW THEREFORE the Council of the Corporation of the Municipality of Chatham-Kent hereby enacts as follows:

SCOPE

1. This by-law shall not apply to new livestock operations or to expanding livestock operations that are or, after expansion, will be comprised of a sufficient number of livestock to generate more than 300 nutrient units annually.

DEFINITIONS

2. In this by-law:

“Abandoned Manure Storage” means a manure storage that has not been in use for two years or more.

“Abandoned Well” means a well that has been covered, filled or left unused and from which water is not taken or not intended to be taken or is impractical to take, and which has or should be decommissioned in accordance with government regulations but does not include wells that are not currently used or are only occasionally used and that are properly constructed, maintained and protected and pose no risk to groundwater quality.

“Alter” means any alteration in a bearing wall or partition or column, beam, girder or other supporting member of a building or structure or any increase in the area or volume of a building or structure. The words "altered" and "alteration" shall have a corresponding meaning.

“Building” includes any structure whether temporary or permanent, used or built for any purpose other than a lawful boundary, wall or fence. Any enclosure, awning, bin, bunk or other container, or platform, used upon any land or in conjunction with or connected to any structure for any purpose shall be deemed a building.

“*Building Code*” means O.Reg. 403/97, as amended.

“*Building Code Act*” means *Building Code Act, 1992*, S.O. 1992, c.23, as amended.

“Consultant in Agriculture” means a practicing agricultural professional who has been certified in accordance with Part X of O.Reg. 277/03.

“Council” means the Council of the Corporation of the Municipality of Chatham-Kent.

“Erect” includes build, construct, or reconstruct, alter, enlarge and relocate and without limiting the generality of the foregoing, shall be taken to include any associated physical operation such as excavating, grading, berming, piling, cribbing, filling or draining, structurally altering any existing building or structure by an addition, deletion, enlargement or extension.

“Livestock” means cattle, horses, swine, sheep, chickens, turkeys, geese, goats, ducks, mink, emu, ostriches, rabbits, fox, buffalo and any other domesticated animal used for consumption, propagation, or intended for profit.

“Livestock Facility” means buildings and structures used for the housing, feeding or keeping of livestock.

“Livestock Operation” means the raising or keeping of livestock with or without buildings, structures or manure storage facilities.

“Manure” means a substance principally composed of livestock feces and urine, and may include some bedding material and water.

“Minimum Distance Separation II” means the requirements published under this name in March 1995 by the Ontario Ministry of Agriculture, Food and Rural Affairs to replace the Minimum Distance Separation Formula II of the Agricultural Code of Practice and MDS II shall have a like meaning.

“Municipality” means the Corporation of the Municipality of Chatham-Kent.

“NMAN” ” has the same meaning as defined in O.Reg. 267/03, as amended.

“Nutrient Unit” has the same meaning as defined in O.Reg. 267/03, as amended.

“OMAF” means the Ontario Ministry of Agriculture and Food.

“Operator” means a person who owns or has charge, management or control of a regulated livestock operation.

“Permitted Manure Storage” means an earthen, steel or concrete type storage facility used for the storage of liquid manure and includes a facility for the storage of dry manure.

“Person” includes any association, partnership, agent or trustee and the heirs, executors or other legal representative of a person.

“Regulated Livestock Operation” means a livestock operation to which this by-law applies.

“Renovation” means the repair and restoration of a livestock facility or manure storage to good condition within existing external walls and dikes but shall not include its replacement.

“Site” means a parcel of land that is capable of being legally conveyed.

“Third Party Review” means a review of a nutrient management plan by qualified OMAF staff or by a Consultant in Agriculture and which review must include confirmation that the nutrient management plan meets the requirements of the *Nutrient Management Act, 2002*, as amended, O.Reg. 267/03, as amended, and the associated protocols.

“Tillable Hectares” means the total area of land including pasture that can be worked or cultivated.

“Tillable Land Base” means the number of Tillable Hectares available for the spreading of Manure.

GENERAL PROHIBITIONS

3. No person shall erect or use or cause or permit the erection or use of a manure storage other than a permitted manure storage except as provided in section 23.
4.
 - (a) No person shall erect or use or cause or permit the erection or use of any new or newly expanded livestock facility, livestock operation, permitted manure storage or any part thereof and no persons shall alter or cause or permit the alteration of any existing livestock facility, livestock operation, permitted manure storage or any part thereof except in conformity with the provisions of this by-law. Where a zoning by-law requires a greater setback for a livestock facility or livestock operation, the zoning by-law setback shall prevail. For the purposes of this section, a new livestock facility or livestock operation includes an existing livestock operation that has been newly acquired by conveyance or otherwise.
 - (b) Subsection 3(a) shall not apply to the expansion of an existing manure storage where there is no increase in the number of livestock units in the livestock operation served by such manure storage provided the manure storage is in compliance with the requirements of MDS II.
5.
 - (a) No person shall carry on a regulated livestock operation except in compliance with the provisions of this by-law.
 - (b) Every operator shall enter into a compliance agreement with the municipality substantially in the form attached hereto as Schedule "B" and shall ensure that the regulated livestock operation to which an agreement applies is carried on in compliance with the terms and conditions of the agreement.
 - (c) Subsections 4(a) and 4(b) shall not apply to regulated livestock operations that were lawfully in existence as of the date of the passing of this by-law so long as they continue without an increase in the number of livestock units or any other change or alteration.

REQUIREMENT FOR BUILDING PERMITS

6. No person shall erect or use or cause or permit the erection or use of any new or newly expanded livestock facility, permitted manure storage or any part thereof and no person shall alter or cause or permit the alteration of any existing livestock facility, permitted manure storage or any part thereof unless a building permit has been issued therefor by the Chief Building Official.
7. No permit for a livestock facility or permitted manure storage shall be issued unless the applicant has complied with the requirements of this by-law, the Municipality's Building By-law, the *Building Code Act*, the *Building Code* and any other applicable law.
8. In addition to the information expressly required by this By-law, every applicant for a building permit under section 5, above, shall provide any other information deemed necessary by the Chief Building Official in order to fully evaluate the proposed construction.

NUTRIENT MANAGEMENT PLANS

9. A nutrient management plan shall be completed:
 - (a) for a new livestock facility or manure storage to serve a regulated livestock operation, or
 - (b) for an expanding livestock facility or manure storage for any livestock operation that, after expansion, is or will become a regulated livestock operation.
10. Every nutrient management plan shall be prepared using OMAF's NMAN program in accordance with the requirements set out in Part III of O. Reg. 267/03 and its associated protocols, except that:

- (a). the person preparing the Nutrient Management Plan is not required to be qualified under Part X of O. Reg. 267/03;
 - (b). any identification numbers to be assigned will given by the Municipality;
 - (c). the provisions relating to Short-Form Plans in O.Reg. 267/03 do not apply; and
11. Prior to the issuance of a Building Permit, the operator shall satisfy the Municipality that the nutrient management plan has under gone Third Party Review and that any concerns identified by the Third Party Review have been addressed.
 12. A Nutrient Management Plan ceases to be of force and effect and shall be renewed in accordance with O.Reg. 267/03, as amended.
 13. Every operator shall notify the Municipality within 30 days of any new or amended Manure Application Agreements or any change in tillable land base and shall renew the nutrient management plan for his/her regulated livestock operation within 6 months of any change in land base or increase in livestock units.
 14. Every renewal of Nutrient Management Plan shall be subjected to Third Party Review.
 15. Every operator shall maintain a tillable land base for spreading manure as determined by their nutrient management plan.
 16. Nutrient management plans shall be submitted to the Municipality together with signed Manure Application Agreements substantially in the form set out in Schedule "A" with persons, other than the operator, whose lands will be used for the spreading of Manure.
 17. The spreading of manure on land shall be done in accordance with O.Reg. 267/03, as amended, and its associated protocols.
 18. No person shall erect a livestock facility or manure storage unless the separation distances comply with the Minimum Distance Separation II (MDS II) formula or the local zoning by-law, whichever is greater.
 19. Notwithstanding Section 16, above, every person who obtains a minor variance pursuant to the Planning Act, R.S.O. 1990, c.P13, as amended, with respect to separation distance requirements in the local zoning by-law shall be deemed to be in compliance with MDS II for the purposes of this by-law.

REGULATIONS FOR MANURE STORAGE

20. Every manure storage shall be designed, sited and constructed in accordance with O.Reg. 267/03, as amended, and its associated protocols and shall comply with the said regulation and protocols in every respect.

GENERAL PROVISIONS

21. Nothing in this by-law shall relieve any person from the obligation to comply with the requirements of the *Building Code Act, 1992*, S.O. 1992, c.23, the municipality's Zoning By-law or any other by-law of the municipality or the obligation to obtain any other licence, permit, authority or approval lawfully required by a governmental authority.
22. Where a livestock facility or manure storage was lawfully established prior to the passing of this by-law, and is of a type permitted by this by-law, but is not in compliance with the regulations prescribed in this by-law, the said facility or storage may be enlarged, repaired or renovated provided that:

- (a) the enlargement, extension, expansion of capacity, repair or renovation does not increase the level of non-compliance of the livestock facility or manure storage with this by-law's regulations; and
 - (b) all other applicable provisions of this by-law and the Zoning By-law are complied with.
23. Where a livestock facility or manure storage was lawfully erected prior to the passing of this by-law and is of a type not permitted by this by-law, the said facility or storage may be repaired or renovated provided that:
- (a) the repair or renovation does not involve any change in use or an increase in the number of livestock units; and
 - (b) All other applicable regulations in this by-law and the Zoning By-law are complied with.
24. Where a livestock facility or manure storage, that does not conform with the requirements of the by-law, has been destroyed to the extent of more than fifty percent (50%) of its value as of the date of damage, it shall not be restored except in conformity with the requirements of this by-law and the Zoning By-law unless such restoration is completed on the existing foundation and the capacity is not increased.
25. Every operator shall maintain all components of a permitted manure storage, including all fences, to a safe standard.
26. Every operator shall drain any abandoned manure storage, in his/her charge, management or control, of liquid and manure.

PENALTY

27. Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a penalty as provided in the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended, exclusive of costs and every such fine shall be recoverable under the said Act.

MISCELLANEOUS PROVISIONS

28. This by-law shall be administered by such person or persons as shall be appointed from time to time by by-law of the Municipality.
29. The following Schedules are attached to and form part of this by-law:
- Schedule "A" Manure Application Agreement
 - Schedule "B" Compliance Agreement
30. If any section, clause or provision of this by-law, including anything contained in the schedules attached hereto, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall be deemed to be severable and shall not affect the validity of the remainder of this by-law.
31. Except as otherwise provided, where any by-law, other than a zoning by-law, of the municipality conflicts with this by-law, the terms of this by-law shall prevail.
32. By-law -2002, as amended, is hereby repealed.
33. This by-law may be cited as the "Manure Management By-law, 2004".
34. This by-law shall become effective on the date of the final passing hereof.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED this 14th day of July 2004.

SIGNED

DIANE GAGNER, Mayor

SIGNED

ELINOR MIPLIN, Clerk

SCHEDULE "A"

MANURE APPLICATION AGREEMENT

THIS AGREEMENT made in duplicate this ___day of_____, 2002

BETWEEN:

OPERATOR'S NAME

(hereinafter referred to as the "Operator")

-and-

LANDOWNER'S NAME

(hereinafter referred to as the "Landowner")

WHEREAS the Operator has applied to expand a livestock operation located at "address" in the Municipality of Chatham-Kent;

AND WHEREAS By-law -2004 of the Municipality of Chatham-Kent (the "by-law") provides for the preparation of a nutrient management plan prior to the issuance of a building permit;

AND WHEREAS the Landowner's lands legally described as (*insert legal description of lands*) are included in the said enhanced nutrient management plan as land upon which the Operator intends to spread manure;

AND WHEREAS the By-law requires the Operator to enter into manure application agreements with the owners of lands upon which the Operator intends to spread manure;

AND WHEREAS the Landowner is willing to enter into this Agreement;

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. The landowner agrees to permit the Operator to incorporate the lands of the Landowner described in Schedule "A" ("Subject Lands") to this agreement in the enhanced nutrient management plan required by the Municipality of Chatham-Kent and to apply manure on the Subject Lands. The permission granted in this section is granted exclusively to the Operator and the Landowner agrees not to give permission to any other person to use the Subject Lands for the application of manure or sewage sludge during the term of this agreement.
2. This agreement shall be for a term of five (5) years, commencing on _____ and ending on _____.
3. The Operator agrees to apply manure to the subject lands only in accordance with the nutrient management plan into which the subject lands have been incorporated and in accordance with O.Reg.267/03, as amended.

) *OPERATOR*
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) per: _____
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) per: _____
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SCHEDULE "B"

COMPLIANCE AGREEMENT

THIS AGREEMENT made in duplicate this ___day of_____, 2002

BETWEEN:

OPERATOR'S NAME

(hereinafter referred to as the "Operator")

-and-

**THE CORPORATION OF THE MUNICIPALITY OF
CHATHAM-KENT**

(hereinafter referred to as "Chatham-Kent")

-and-

LANDOWNER'S NAME

(hereinafter referred to as the "Landowner")

WHEREAS the Operator has applied to establish or expand a livestock operation located at "address" in the Municipality of Chatham-Kent;

AND WHEREAS the Landowner owns the lands on which the livestock operation is to be established or expanded;

AND WHEREAS By-law -2004 of the Municipality of Chatham-Kent (the "by-law") provides for conditions to be met prior to the issuance of a building permit for the establishment or expansion of a livestock operation;

AND WHEREAS one such requirement is to enter into this Agreement;

AND WHEREAS the Operator and the Landowner are willing to enter into this Agreement;

NOW THEREFORE this Agreement witnesseth that in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. The Operator undertakes and agrees to complete a nutrient management plan in accordance with the requirements of the By-law and to provide Chatham-Kent with a copy of the said nutrient management plan for production to any interested party at the municipal office of the Municipality of Chatham-Kent.
2. The Operator agrees to comply with the provisions of the nutrient management plan referred to in clause 1, above.

- 3. The Operator hereby irrevocably consents to the employees and/or agents of Chatham-Kent entering upon the lands covered by the nutrient management plan referred to in clause 1, above, and into any structure thereon, other than a structure actually used as a dwelling within the meaning of the *Building Code Act, 1992*, S.O. 1992, c.23, for the purposes of inspections in relation to ensuring compliance with the provisions of the nutrient management plan and the By-law.
- 5. This Agreement shall be subject to all existing and future provincial legislation and municipal by-laws with respect to Enhanced nutrient management plans and the parties agree that this Agreement shall be amended to the higher or lower standard(s), as applicable as dictated by such legislation or by-laws.
- 6. The Operator agrees to obtain as part of their standard property insurance coverage on the said lands pollution liability insurance up to Two Million Dollars per occurrence, acceptable to Chatham-Kent.
- 7. In the event of non-compliance with the nutrient management plan that requires action on part of Chatham-Kent, the cost of any such corrective or remedial action shall be the responsibility of the Operator and in the event of non-payment of these costs by the Operator, after reasonable written demand by Chatham-Kent, such costs shall be added to the tax rolls and collected in like manner as property taxes under the appropriate provisions of the *Municipal Act, 2001*.
- 8. This Agreement shall enure to the benefit and be binding upon the successors and assigns of the Operator and Chatham-Kent.
- 9. The Landowner and the Operator hereby consent, for purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, to the release of personal information collected pursuant the Chatham-Kent's Nutrient Management By-law.

IN WITNESS WHEREOF Chatham-Kent and the Operator have respectively hereunto affixed their signatures and/or their corporate seals duly attested by the hands of their proper signing officers in that behalf this day of , 20 .

SIGNED, SEALED & DELIVERED)	THE CORPORATION OF THE
)	MUNICIPALITY OF CHATHAM-KENT
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)	<u>per:</u> _____
)	DIANE GAGNER, MAYOR
)	
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)	<u>per:</u> _____
)	ELINOR MIFLIN, CLERK
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) *OPERATOR*
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