



Daniel J. Miller
Solid Waste Manager
(715)536-9636
Fax: (715)536-6361
dmiller@co.lincoln.wi.us

**Lincoln County
Solid Waste Committee Meeting
Tuesday, November 19, 2019, at 5:00 p.m.
Service Center, Room 247/248 – 801 N. Sales Street, Merrill, WI 54452**

**Department mailing address: 801 N. Sales Street, Suite 201
Merrill, WI 54452-1632**

AGENDA

- 1) Call meeting to order
- 2) Minutes of previous meeting – October 22, 2019
- 3) Application for credit account – Domtar Paper Company, LLC
- 4) Waste tonnage and leachate report
- 5) Financial reports
- 6) Manager's report – written report
- 7) 2020 price schedule
- 8) Posting of developed portion of landfill property to trespassing
- 9) TRC engineers – Curt Madsen, Doug Genthe; to discuss staffing transitions and future work
- 10) Set/confirm next meeting date(s) – January 22, 2020 proposed
- 11) Adjourn

Distribution:

Solid Waste Committee: Mike Loka, Derek Woellner, Chris Heller, Frank Saal and Brian Hafeman
Department Heads

News Media – Notified on _____ at _____ .m. by _____

Bulletin Boards:

Lincoln County Service Center – Posted on _____ at _____ .m. by _____

While it is possible there may be a quorum of other committees present at this meeting, no other committee business will be conducted at this meeting. The Solid Waste Committee membership does not constitute a quorum of any other committees of the Board of Supervisors.

Requests for reasonable accommodations for disabilities or limitations should be made prior to the date of this meeting. You may contact the County Clerk at 715-539-1019. Please do so as early as possible so that proper arrangements can be made. Requests are kept confidential.

GENERAL REQUIREMENTS:

1. Must be held in a location which is reasonably accessible to the public.
2. Must be open to all members of the public unless the law specifically provides otherwise.

NOTICE REQUIREMENTS:

1. In addition to any requirements set forth below, notice must also be in compliance with any other specific statute.
2. Chief presiding officer or his/her designee must give notice to the official newspaper and to any members of the news media likely to give notice to the public.

MANNER OF NOTICE:

Date, time, place, and subject matter, including subject matter to be considered in a closed session, must be provided in a manner and form reasonably likely to give notice to the public.

TIME FOR NOTICE:

1. Normally, a minimum of 24 hours prior to the commencement of the meeting.
2. No less than 2 hours prior to the meeting if the presiding officer establishes there is a good cause that such notice is impossible or impractical.

EXEMPTIONS FOR COMMITTEES AND SUB-UNITS:

Legally constituted sub-units of a parent governmental body may conduct a meeting during the recess or immediately after the lawful meeting to act or deliberate upon a subject which was the subject of the meeting, provided the presiding officer publicly announces the time, place, and subject matter of the sub-unit meeting in advance of the meeting of the parent governmental body.

PROCEDURE FOR GOING INTO CLOSED SESSION:

1. Motion must be made, seconded, and carried by roll call majority vote and recorded in the minutes.
2. If motion is carried, chief presiding officer must advise those attending the meeting of the nature of the business to be conducted in the closed session, and the specific statutory exemption under which the closed session is authorized.

STATUTORY EXEMPTIONS UNDER WHICH CLOSED SESSIONS ARE PERMITTED:

1. Deliberation of judicial or quasi-judicial matters. Sec. 19.85(1)(a)
2. Considering dismissal, demotion, or discipline of any public employee or the investigation of charges against such person and the taking of formal action on any such matter; provided that the person is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action is taken. The person under consideration must be advised of his/her right that the evidentiary hearing be held in open session and the notice of the meeting must state the same. Sec. 19.85(1)(b).
3. Considering employment, promotion, compensation, or performance evaluation data of any public employee. Sec. 19.85(1)(c).
4. Considering strategy for crime detection or prevention. Sec. 19.85(1)(d).
5. Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session. Sec. 19.85(1)(e).
6. Considering financial, medical, social, or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of specific charges, which, if discussed in public would likely have an adverse effect on the reputation of the person referred to in such data. Sec. 19.85(1)(f).
7. Conferring with legal counsel concerning strategy to be adopted by the governmental body with respect to litigation in which it is or is likely to become involved. Sec. 19.85(1)(g).
8. Considering a request for advice from any applicable ethics board. Sec. 19.85(1)(h).

CLOSED SESSION RESTRICTIONS:

1. Must convene in open session before going into closed session.
2. May not convene in open session, then convene in closed session and thereafter reconvene in open session with twelve (12) hours unless proper notice of this sequence was given at the same time and in the same manner as the original open meeting.
3. Final approval or ratification of a collective bargaining agreement may not be given in closed session.

BALLOTS, VOTES, AND RECORDS:

1. Secret ballot is not permitted except for the election of officers of the body or unless otherwise permitted by specific statutes.
2. Except as permitted above, any member may require that the vote of each member be ascertained and recorded.
3. Motions and roll call votes must be preserved in the record and be available for public inspection.

USE OF RECORDING EQUIPMENT:

The meeting may be recorded, filmed, or photographed, provided that it does not interfere with the conduct of the meeting or the rights of the participants.

LEGAL INTERPRETATION:

1. The Wisconsin Attorney General will give advice concerning the applicability or clarification of the Open Meeting Law upon request.
2. The municipal attorney will give advice concerning the applicability or clarification of the Open Meeting Law upon request.

PENALTY:

Upon conviction, any member of a governmental body who knowingly attends a meeting held in violation of Subchapter IV, Chapter 19, Wisconsin Statutes, or who otherwise violates the said law shall be subject to forfeiture of not less than \$25.00 nor more than \$300.00 for each violation.

Lincoln County
Solid Waste Committee Meeting
Tuesday, October 22, 2019
Service Center, room 247/248
801 N. Sales Street, Merrill, WI 54452

1. **Meeting called to order** at 5:00 p.m. by Committee Chairman Hafeman.
Others present: Woellner, Heller & Loka. Saal was excused. Dan Miller was also present.
2. **Minutes of September 18, 2019** were approved as printed by Motion/Second (M/S) – Heller/Loka; all ayes.
3. **Application for credit account – Gruett Construction** – Miller reported on the references received for the application and recommended approval. M/S – Loka/Heller to approve the credit account for Gruett Construction. Motion carried; all ayes.
4. **Waste tonnage and leachate reports** – Miller explained the reports and highlighted the waste volume and leachate findings for the Committee. Garbage volume is up about 6.44% from major haulers over last year at this time and 4.8% overall. Advanced Disposal was not called out in the report as they just began bringing waste on September 3rd. They hauled 1,497 tons in September but volumes should drop to about 500 tons per month through the winter.

Leachate production is still up over last year due to a continued wet year with about 2,156,169 more gallons produced over last year and 2,319,769 more gallons hauled to the treatment plants. This equates to an increase of about \$84k in hauling and treatment costs from the previous year. Hafeman directed the reports be placed on file.

5. **Financial Reports** – Miller went through Statement of Operations and Cash Flow Statements for the month of September and year to date. We invoiced \$233,238 in September and expensed \$49,914. Cash flow was positive for September and year to date. The non-reserved cash balance stands at \$1,185,075 to use for future capital expenses. The reserved balance stands at \$5.356 million for closure and long term care expenses. Total pooled cash then stands at \$6.54 million in both accounts. M/S – Woellner/Heller to accept the financial reports and to place them on file. Motion carried; all ayes.
6. **Manager's report** – Miller highlighted the written report with the committee. Hafeman directed it be placed on file.
7. **Set/confirm next meeting date(s)** - The committee agreed to November 19, 2019 at 5:00 p.m. at the Service Center in Merrill as the next meeting date and time. Miller will secure a room.
8. **Adjourn** - at 5:10 p.m. by M/S - Heller/Loka; motion carried, all ayes.

Minutes prepared by Dan Miller, Solid Waste Manager

TONNAGE

	11/1/17 - 10/31/18	11/1/18 - 10/31/19	INC/DEC	PERCENTAGE
Cleanwood	87.57	78.81	-8.76	-10.00%
Contaminated soil	9,637.75	2,782.36	-6,855.39	-71.13%
Fly Ash	1,457.43	75.71	-1,381.72	-94.81%
Garbage	27,095.63	28,361.30	1,265.67	4.67%
Roofing	1,075.41	847.14	-228.27	-21.23%

GARBAGE TONNAGE REPORT

CUSTOMER	TONS		INC/DEC	PERCENTAGE INC/DEC
	11/1/17- 10/31/18	11/1/18 - 10/31/19		
Cash	3,179.78	3,267.95	88.17	2.77%
B & B Container	5,655.43	6,399.55	744.12	13.16%
Baumgart	8,436.61	8,753.54	316.93	3.76%
City of Merrill	1,799.02	1,820.62	21.60	1.20%
City of Tomahawk	888.72	887.57	-1.15	-0.13%
DC Disposal	518.07	581.36	63.29	12.22%
Dengel Dumpsters	326.21	578.63	252.42	77.38%
Eagle Waste	553.87	704.99	151.12	27.28%
Harley	447.79	344.32	-103.47	-23.11%
Schulz's	100.49	82.84	-17.65	-17.56%
Town of Bradley	293.83	319.08	25.25	8.59%
Waste Management	839.05	651.16	-187.89	-22.39%
	23,038.87	24,391.61	1,352.74	5.87%

LEACHATE NOVEMBER 2017 - OCTOBER 2018

MONTH	MERRILL PCA	RECIR PH 3 Mod 2	RECIR PH 4 MOD 1A	TOTAL RECIRCULATED	TOTAL GALLONS
November (2017)	30,669	100,100	0	100,100	253,174
December	12,137	96,200	0	96,200	157,255
January (2018)	6,206	24,417	106,600	106,600	137,224
February	6,110	24,542	101,400	101,400	132,052
March	36,525	177,986	102,700	102,700	317,211
April	61,108	355,149	70,200	70,200	486,457
May	55,050	220,561	129,300	144,300	419,912
June	49,050	258,082	120,000	130,000	437,132
July	6,189	116,219	132,600	143,900	266,309
August	23,607	94,499	105,800	113,100	231,206
September	54,906	422,221	98,100	104,000	581,127
October	47,626	634,669	101,200	106,100	788,395
Total Gallons	389,185	2,499,668	1,067,900	1,318,600	4,207,453

LEACHATE NOVEMBER 2018 - OCTOBER 2019

MONTH	MERRILL	PCA	RECIR PH 3 Mod 2	RECIR PH 4 MOD 1A	RECIR PH 4 MOD 1B	TOTAL RECIRCULATED	TOTAL GALLONS
November (2018)	62,583	488,038	4,100	98,900	0	103,000	653,621
December	13,094	52,213	5,300	89,600	0	94,900	160,207
January (2019)	20,357	82,717	4,400	33,400	64,900	102,700	205,774
February	7,053	90,959	0	25,200	47,600	72,800	170,812
March	0	458,319	1,600	5,900	41,500	49,000	507,319
April	27,669	619,173	3,000	12,600	48,100	63,700	710,542
May	19,851	600,098	8,200	49,000	55,600	112,800	732,750
June	0	494,600	6,800	49,300	48,900	105,000	599,600
July	0	281,724	5,000	62,600	53,600	121,200	402,924
August	0	309,350	3,200	60,000	48,600	111,800	421,150
September	0	369,604	400	75,000	43,600	119,000	488,604
October	0	493,609	2,500	80,900	38,800	122,200	615,809
Total Gallons	150,607	4,340,405	44,500	642,400	491,200	1,178,100	5,669,112

**Lincoln County Solid Waste
Statement of Operations - October 2019**

	Oct-19	YTD 2019	Budget for 2019	% of Budget Received
Operating Revenues				
Total Public Charges for Services	\$ 172,961.43	\$ 1,333,846.42	1,760,000	75.79%
Total Intergovernmental Charges for Services	13,993.69	99,642.49	162,000	61.51%
Miscellaneous Revenues	1,255.73	9,361.96	8,000	117.02%
Total Operating Revenues	\$ 188,210.85	\$ 1,442,850.87	1,930,000	74.76%
				% of Budget Available
Operating Expenses				
Salaries/Fringes	\$ 29,573.04	\$ 278,349.25	370,833	24.94%
Committee Per Diem	70.00	1,012.02	2,500	59.52%
Auditing Services			3,900	100.00%
Bank Fees	1,996.25	7,712.27	9,000	14.31%
Engineering Expenses	1,793.73	35,010.12	60,000	41.65%
Leachate Management	10,237.57	99,258.05	110,000	9.77%
Groundwater Treatment		8,599.80	16,000	46.25%
Clay Testing		15.00	500	97.00%
Hazardous Waste Disposal			1,000	100.00%
Hazardous Waste Reimb Cost	309.25	887.35	1,000	11.27%
Safety Program		355.49	450	21.00%
Site Maintenance	628.88	7,389.73	20,000	63.05%
Utilities Services	359.31	4,848.83	7,500	35.35%
Scale Maintenance	325.00	1,604.00	1,600	-0.25%
Equipment Maintenance	1,941.21	11,236.24	35,000	67.90%
Insurance	2,944.82	13,408.59	16,000	16.20%
Telephone	18.72	190.93	400	52.27%
Printing Allocation	107.82	992.01	1,000	0.80%
Travel/Training	48.14	648.36	600	-8.06%
Committee Travel			200	100.00%
Regulatory Fees	71,504.35	322,071.81	375,000	14.11%
Hiring Costs	80.00	80.00		
Office Supplies	10.37	1,205.37	2,000	39.73%
Postage		297.94	600	50.34%
Janitorial Supply	569.76	2,663.89	3,000	11.20%
Fuel	4,519.60	32,750.87	35,000	6.43%
Publications		205.88	250	17.65%
Miscellaneous Expense		438.00	3,000	85.40%
Cash Over/Short	12.00	(6.00)		
Road Maintenance			5,000	100.00%
Bio Pile Expense	3,213.00	5,813.00	5,000	-16.26%
Recyclables Miscellaneous Expense	3,962.91	18,090.43	20,000	9.55%
Subtotal of Operating Expenses	134,225.73	855,129.23	1,106,333	22.71%
Net Operating Income (Loss)				
Excluding Non-Cash Items	53,985.12	587,721.64		
Non-Cash Operating Expenses				
Depreciation*	10,833.33	108,333.33	130,000	16.67%
Depletion*	58,333.33	583,333.33	700,000	16.67%
Future Closure/LTC*	37,500.00	375,000.00	450,000	16.67%
Total Non-Cash Operating Expenses	\$ 106,666.67	\$ 1,066,666.67	\$ 1,280,000.00	16.67%
Total Operating Income (Loss)	(52,681.55)	(478,945.03)		
Nonoperating Revenues/Expenses				
Investment Interest	14,432.12	305,369.84	69,600	438.75%
Non-Operating transfer Out		(200,000.00)	(200,000)	0.00%
Total Nonoperating Revenues/Expenses	\$ 14,432.12	\$ 105,369.84	\$ (130,400.00)	
Net Income (Loss)		\$ (373,575.19)		

* prior year estimates

**Lincoln County Solid Waste
Cash Flow Statement For 2019
Including Year To Date Totals**

Cash Flow From Operating Activities	October-19	YTD Totals
From public entities	\$ 197,101.47	\$ 1,389,732.54
From other Governmental Agencies	10,110.36	93,020.20
From other County Departments	180.00	288.00
To employees for compensation and fringe benefits	(29,643.04)	(292,563.76)
To vendors for goods and services	(105,001.11)	(834,485.17)
Net cash provided by (used in) operating activities	\$ 72,747.68	\$ 355,991.81

Cash Flow from Capital and related financing activities

Acquisition of Capital Assets		
Equipment		
Machinery & Equip		
Investments		
Additional deposit required by DNR		(99,511.71)
WIP Landfill	(300,037.63)	(300,037.63)
Siting Agreement Payment		
Town of Merrill		(16,666.00)
Net cash used for capital and related financing activities	(300,037.63)	(416,215.34)

Increase (Decrease) in cash and cash equivalents	\$ (60,223.53)
Non-Reserved Cash Balance (1/1/19)	1,017,972.71
Non-Reserved Cash Balance as of 10/31/2019	\$ 957,749.18

***Reserved Cash Balance (1/1/19)**

Long Term Care Investments	\$ 2,988,842.35	
Closure Investments	1,996,365.06	
Total (1/1/19)	\$ 4,985,207.41	
Additional Investment Deposit	99,511.71	
Interest Received	288,633.81	
Total Reserved Cash (10/31/2019)		\$ 5,373,352.93

Total Cash for Lincoln County Solid Waste (10/31/2019)	\$ 6,331,102.11
---	------------------------

*Reserved Cash is held in a trust account at US Bank by the Wisconsin Department of Natural Resources.

UNAUTHORIZED ENTRY

BEYOND THIS POINT

AFTER NORMAL HOURS OF

OPERATION CONSTITUTES

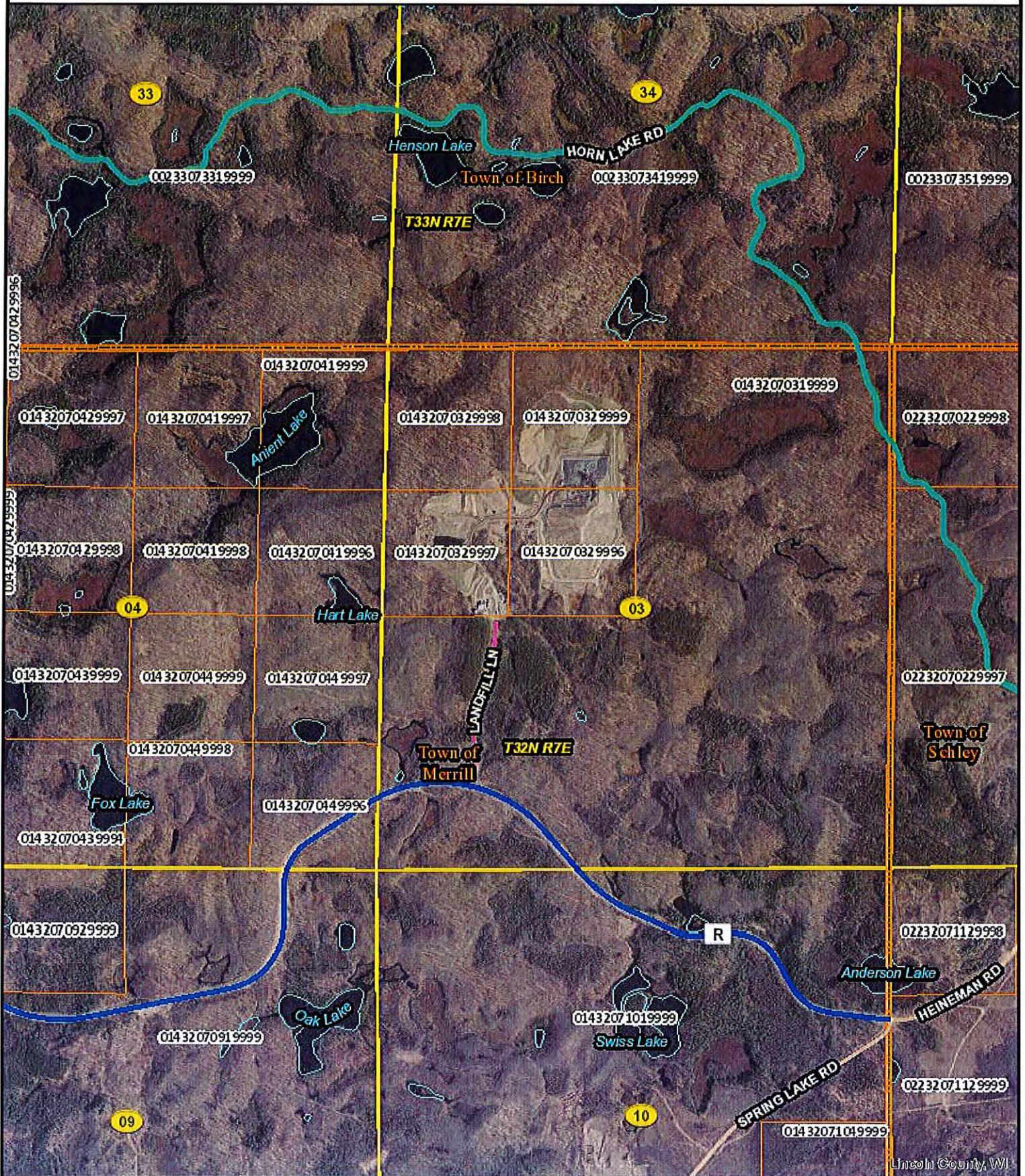
TRESPASSING

**PER SECTION 943.13 OF THE WISCONSIN
STATE STATUTES. VIOLATORS WILL BE
PROSECUTED.**

**THIS PROPERTY IS POSTED BY ORDER OF
THE LINCOLN COUNTY SOLID WASTE
COMMITTEE.**

SIGNED BY: _____

Lincoln County Landfill Proposed Area for Closure



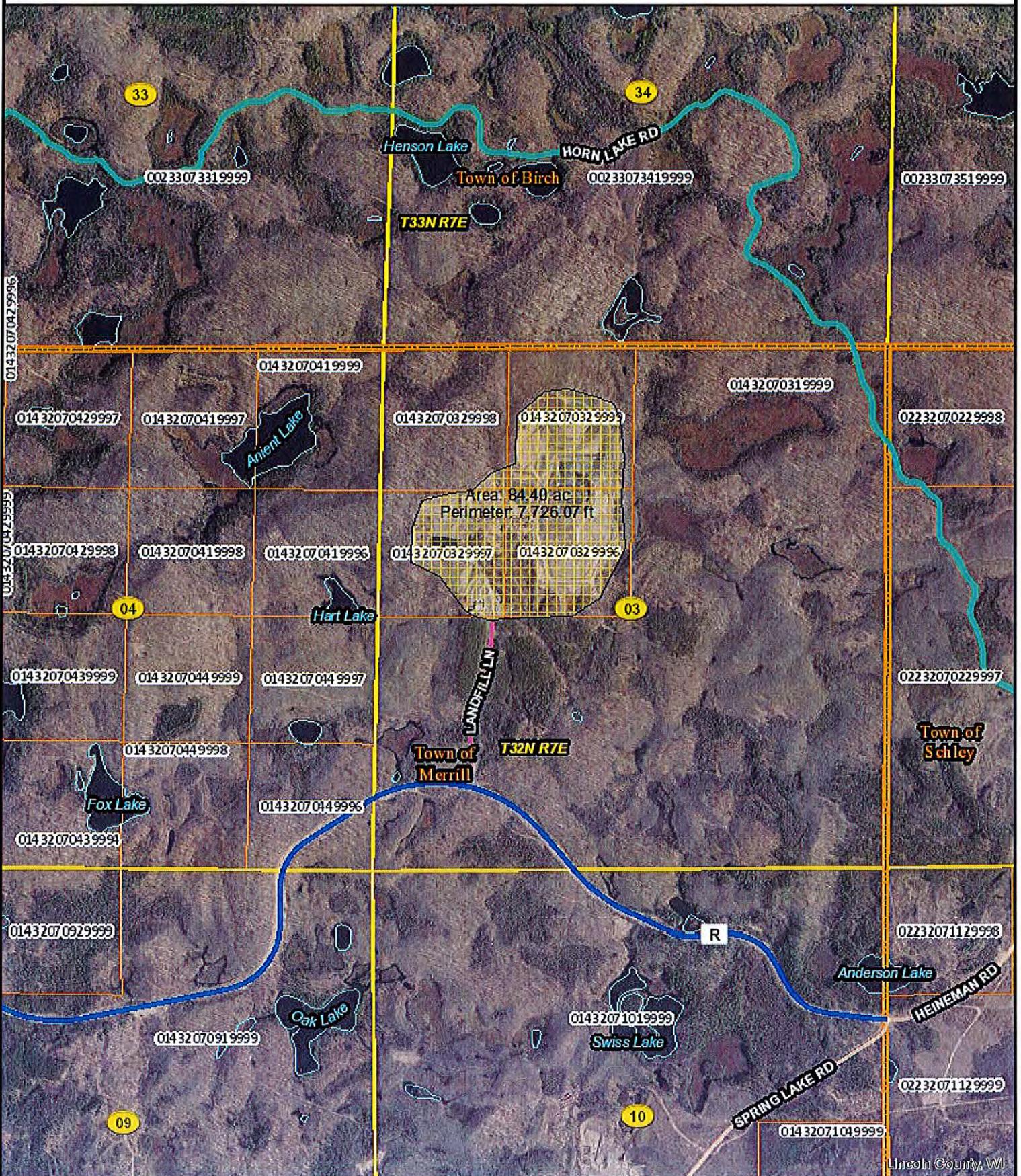
Author: Public
Date Printed: 11/8/2019



The information depicted on this map is a compilation of public record information including aerial photography and other base maps. No warranty is made, express or implied, as to the accuracy of the information used. The data layers are a representation of current data to the best of our knowledge and may contain errors. It is not a legally recorded map and cannot be substituted for field-verified information. Map may be reproduced with permission of the Lincoln County Land Services Department. Errors should be reported to Land Services Department, 801 North Sales St, Merrill, WI, 54452. Copyright © 2015 Phone (715) 539-1049.

Lincoln County, WI

Lincoln County Landfill Proposed Area for Closure



Author: Public
 Date Printed: 11/8/2019



The information depicted on this map is a compilation of public record information including aerial photography and other base maps. No warranty is made, express or implied, as to the accuracy of the information used. The data layers are a representation of current data to the best of our knowledge and may contain errors. It is not a legally recorded map and cannot be substituted for field-verified information. Map may be reproduced with permission of the Lincoln County Land Services Department. Errors should be reported to Land Services Department, 801 North Sales St, Merrill, WI, 54452. Copyright © 2015 Phone (715) 539-1049.

Lincoln County, WI

943.13 Trespass to land.

(1e) In this section:

(aL) "Carry" has the meaning given in s. 175.60 (1) (ag).

(ar) "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(az) "Implied consent" means conduct or words or both that imply that an owner or occupant of land has given consent to another person to enter the land.

(b) "Inholding" means a parcel of land that is private property and that is surrounded completely by land owned by the United States, by this state or by a local governmental unit or any combination of the United States, this state and a local governmental unit.

(bm) "Licensee" means a licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g).

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

(cm) "Nonresidential building" includes a nursing home as defined in s. 50.01 (3), a community-based residential facility as defined in s. 50.01 (1g), a residential care apartment complex as defined in s. 50.01 (6d), an adult family home as defined in s. 50.01 (1), and a hospice as defined in s. 50.90 (1).

(cr) "Open land" means land that meets all of the following criteria:

1. The land is not occupied by a structure or improvement being used or occupied as a dwelling unit.
2. The land is not part of the curtilage, or is not lying in the immediate vicinity, of a structure or improvement being used or occupied as a dwelling unit.
3. The land is not occupied by a public building.
4. The land is not occupied by a place of employment.

(cv) "Out-of-state licensee" has the meaning given in s. 175.60 (1) (g).

(d) "Place of employment" has the meaning given in s. 101.01 (11).

(e) "Private property" means real property that is not owned by the United States, this state or a local governmental unit.

(h) "Special event" means an event that is open to the public, is for a duration of not more than 3 weeks, and either has designated entrances to and from the event that are locked when the event is closed or requires an admission.

(1m) Whoever does any of the following is subject to a Class B forfeiture:

(a) Enters any enclosed, cultivated or undeveloped land of another, other than open land specified in par. (e) or (f), without the express or implied consent of the owner or occupant.

(am) Enters any land of another that is occupied by a structure used for agricultural purposes without the express or implied consent of the owner or occupant.

(b) Enters or remains on any land of another after having been notified by the owner or occupant not to enter or remain on the premises. This paragraph does not apply to a licensee or out-of-state licensee if

the owner's or occupant's intent is to prevent the licensee or out-of-state licensee from carrying a firearm on the owner's or occupant's land.

(c)

1. While carrying a firearm, enters or remains at a residence that the actor does not own or occupy after the owner of the residence, if he or she has not leased it to another person, or the occupant of the residence has notified the actor not to enter or remain at the residence while carrying a firearm or with that type of firearm. In this subdivision, "residence," with respect to a single-family residence, includes the residence building and the parcel of land upon which the residence building is located, and "residence," with respect to a residence that is not a single-family residence, does not include any common area of the building in which the residence is located or any common areas of the rest of the parcel of land upon which the residence building is located.

1m. While carrying a firearm, enters or remains in a common area in a building, or on the grounds of a building, that is a residence that is not a single-family residence if the actor does not own the residence or does not occupy any part of the residence, if the owner of the residence has notified the actor not to enter or remain in the common area or on the grounds while carrying a firearm or with that type of firearm. This subdivision does not apply to a part of the grounds of the building if that part is used for parking and the firearm is in a vehicle driven or parked in that part.

2. While carrying a firearm, enters or remains in any part of a nonresidential building, grounds of a nonresidential building, or land that the actor does not own or occupy after the owner of the building, grounds, or land, if that part of the building, grounds, or land has not been leased to another person, or the occupant of that part of the building, grounds, or land has notified the actor not to enter or remain in that part of the building, grounds, or land while carrying a firearm or with that type of firearm. This subdivision does not apply to a part of a building, grounds, or land occupied by the state or by a local governmental unit, to a privately or publicly owned building on the grounds of a university or college, or to the grounds of or land owned or occupied by a university or college, or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of a building, grounds, or land used as a parking facility.

3. While carrying a firearm, enters or remains at a special event if the organizers of the special event have notified the actor not to enter or remain at the special event while carrying a firearm or with that type of firearm. This subdivision does not apply, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the special event grounds or building used as a parking facility.

4. While carrying a firearm, enters or remains in any part of a building that is owned, occupied, or controlled by the state or any local governmental unit, excluding any building or portion of a building under s. 175.60 (16) (a), if the state or local governmental unit has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. This subdivision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility.

5. While carrying a firearm, enters or remains in any privately or publicly owned building on the grounds of a university or college, if the university or college has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. This subdivision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility.

(e) Enters or remains on open land that is an inholding of another after having been notified by the owner or occupant not to enter or remain on the land.

(f) Enters undeveloped private land from an abutting parcel of land that is owned by the United States, this state or a local governmental unit, or remains on such land, after having been notified by the owner or occupant not to enter or remain on the land.

(1s) In determining whether a person has implied consent to enter the land of another a trier of fact shall consider all of the circumstances existing at the time the person entered the land, including all of the following:

(a) Whether the owner or occupant acquiesced to previous entries by the person or by other persons under similar circumstances.

(b) The customary use, if any, of the land by other persons.

(c) Whether the owner or occupant represented to the public that the land may be entered for particular purposes.

(d) The general arrangement or design of any improvements or structures on the land.

(2)

(am) A person has received notice from the owner or occupant within the meaning of sub. (1m) (b), (e) or (f) if he or she has been notified personally, either orally or in writing, or if the land is posted. Land is considered to be posted under this paragraph under either of the following procedures:

1. If a sign at least 11 inches square is placed in at least 2 conspicuous places for every 40 acres to be protected. The sign must provide an appropriate notice and the name of the person giving the notice followed by the word "owner" if the person giving the notice is the holder of legal title to the land and by the word "occupant" if the person giving the notice is not the holder of legal title but is a lawful occupant of the land. Proof that appropriate signs as provided in this subdivision were erected or in existence upon the premises to be protected prior to the event complained of shall be prima facie proof that the premises to be protected were posted as provided in this subdivision.

2. If markings at least one foot long, including in a contrasting color the phrase "private land" and the name of the owner, are made in at least 2 conspicuous places for every 40 acres to be protected.

(bm)

1. In this paragraph, "sign" means a sign that states a restriction imposed under subd. 2. that is at least 5 inches by 7 inches.

2.

a. For the purposes of sub. (1m) (c) 1m., an owner of a residence that is not a single-family residence has notified an individual not to enter or remain in a part of that building, or on the grounds of that building, while carrying a firearm or with a particular type of firearm if the owner has posted a sign that is located in a prominent place near all of the entrances to the part of the building to which the restriction applies or near all probable access points to the grounds to which the restriction applies and any individual entering the building or the grounds can be reasonably expected to see the sign.

am. For the purposes of sub. (1m) (c) 2., 4., and 5., an owner or occupant of a part of a nonresidential building, the state or a local governmental unit, or a university or a college has notified an individual not to enter or remain in a part of the building while carrying a firearm or with a particular type of firearm if the owner, occupant, state, local governmental unit, university, or college has posted a sign

that is located in a prominent place near all of the entrances to the part of the building to which the restriction applies and any individual entering the building can be reasonably expected to see the sign.

b. For the purposes of sub. (1m) (c) 2., an owner or occupant of the grounds of a nonresidential building or of land has notified an individual not to enter or remain on the grounds or land while carrying a firearm or with a particular type of firearm if the owner or occupant has posted a sign that is located in a prominent place near all probable access points to the grounds or land to which the restriction applies and any individual entering the grounds or land can be reasonably expected to see the sign.

c. For the purposes of sub. (1m) (c) 3., the organizers of the special event have notified an individual not to enter or remain at the special event while carrying a firearm or with a particular type of firearm if the organizers have posted a sign that is located in a prominent place near all of the entrances to the special event and any individual attending the special event can be reasonably expected to see the sign.

(3) Whoever erects on the land of another signs which are the same as or similar to those described in sub. (2) (am) without obtaining the express consent of the lawful occupant of or holder of legal title to such land is subject to a Class C forfeiture.

(3m) An owner or occupant may give express consent to enter or remain on the land for a specified purpose or subject to specified conditions and it is a violation of sub. (1m) (a) or (am) for a person who received that consent to enter or remain on the land for another purpose or contrary to the specified conditions.

(4) Nothing in this section shall prohibit a representative of a labor union from conferring with any employee provided such conference is conducted in the living quarters of the employee and with the consent of the employee occupants.

(4m)

(am) This section does not apply to any of the following:

1. A person entering the land, other than the residence or other buildings or the curtilage of the residence or other buildings, of another for the purpose of removing a wild animal as authorized under s. 29.885 (2), (3) or (4).

2. A hunter entering land that is required to be open for hunting under s. 29.885 (4m) or 29.889 (7m).

3. A person entering or remaining on any exposed shore area of a stream as authorized under s. 30.134.

4. An assessor and an assessor's staff entering the land, other than a building, agricultural land or pasture, or a livestock confinement area, of another if all of the following apply:

a. The assessor or the assessor's staff enters the land in order to make an assessment on behalf of the state or a political subdivision.

b. The assessor or assessor's staff enters the land on a weekday during daylight hours, or at another time as agreed upon with the land owner.

c. The assessor or assessor's staff spends no more than one hour on the land.

d. The assessor or assessor's staff does not open doors, enter through open doors, or look into windows of structures on the land.

e. The assessor or the assessor's staff leaves in a prominent place on the principal building on the land, or on the land if there is not a principal building, a notice informing the owner or occupant that the assessor or the assessor's staff entered the land and giving information on how to contact the assessor.

f. The assessor or the assessor's staff has not personally received a notice from the owner or occupant, either orally or in writing, not to enter or remain on the premises.

(bm) Subsection (1m) (c) 2. and 4. does not apply to a law enforcement officer employed in this state by a public agency to whom s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3. applies, to a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), to whom s. 941.23 (2) (b) 1. to 3. applies, or to a former officer, as defined in s. 941.23 (1) (c), to whom s. 941.23 (2) (c) 1. to 7. applies if the law enforcement officer, the qualified out-of-state law enforcement officer, or the former officer is in or on the grounds of a school, as defined in s. 948.61 (1) (b).

(5) Any authorized occupant of employer-provided housing shall have the right to decide who may enter, confer and visit with the occupant in the housing area the occupant occupies.

History: 1971 c. 317; 1977 c. 173, 295; 1979 c. 32; 1983 a. 418; 1987 a. 27; 1989 a. 31; 1993 a. 342, 486; 1995 a. 45, 451; 1997 a. 248; 1999 a. 9; 2003 a. 33; 2009 a. 68; 2011 a. 35; 2013 a. 162; 2013 a. 165 s. 114; 2013 a. 166 ss. 76, 77; 2015 a. 23.

The arrest of abortion protesters trespassing at a clinic did not violate their free speech rights. *State v. Horn*, 139 Wis. 2d 473, 407 N.W.2d 854 (1987).

Administrative code provisions requiring hunters to make reasonable efforts to retrieve game birds killed or injured do not exempt a person from criminal prosecution under sub. (1) (b) [now sub. (1m) (b)] for trespassing upon posted lands to retrieve birds shot from outside the posted area. 64 Atty. Gen. 204.

**SUBCHAPTER III
MISAPPROPRIATION**

943.20 Theft.

(1) ACTS. Whoever does any of the following may be penalized as provided in sub. (3):

(a) Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property.

(b) By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his or her possession or custody by virtue of his or her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his or her own use within the meaning of this paragraph.

(c) Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of such property.

(d) Obtains title to property of another person by intentionally deceiving the person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.

(e) Intentionally fails to return any personal property which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.

(2) DEFINITIONS. In this section:

(ac) "Adult at risk" has the meaning given in s. 55.01 (1e).

(ad) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).

(ae) "Individual at risk" means an elder adult at risk or an adult at risk.

(ag) "Movable property" is property whose physical location can be changed, without limitation including electricity and gas, documents which represent or embody intangible rights, and things growing on, affixed to or found in land.

(am) "Patient" has the meaning given in s. 940.295 (1) (L).

(b) "Property" means all forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a chose in action or other intangible rights.

(c) "Property of another" includes property in which the actor is a co-owner and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife.

(cm) "Resident" has the meaning given in s. 940.295 (1) (p).

(d) Except as otherwise provided in this paragraph, "value" means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less. If the property stolen is a document evidencing a chose in action or other intangible right, "value" means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. If the property stolen is scrap metal, as defined in s. 134.405 (1) (f), or "plastic bulk merchandise container" as defined in s. 134.405 (1) (em), "value" also includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal or plastic bulk merchandise container. If the thief gave consideration for, or had a legal interest in, the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.

(3) PENALTIES. Whoever violates sub. (1):

(a) If the value of the property does not exceed \$2,500, is guilty of a Class A misdemeanor.

(bf) If the value of the property exceeds \$2,500 but does not exceed \$5,000, is guilty of a Class I felony.

(bm) If the value of the property exceeds \$5,000 but does not exceed \$10,000, is guilty of a Class H felony.

(c) If the value of the property exceeds \$10,000 but does not exceed \$100,000, is guilty of a Class G felony.

(cm) If the value of the property exceeds \$100,000, is guilty of a Class F felony.

(d) If any of the following circumstances exists, is guilty of a Class H felony:

1. The property is a domestic animal.

3. The property is taken from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing or the proximity of battle.

4. The property is taken after physical disaster, riot, bombing or the proximity of battle has necessitated its removal from a building.

5. The property is a firearm.

6. The property is taken from a patient or resident of a facility or program under s. 940.295 (2) or from an individual at risk.

(e) If the property is taken from the person of another or from a corpse, is guilty of a Class G felony.

(4) USE OF PHOTOGRAPHS AS EVIDENCE. In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

History: 1977 c. 173, 255, 447; 1983 a. 189; 1987 a. 266; 1991 a. 39; 1993 a. 213, 445, 486; 2001 a. 16, 109; 2005 a. 388; 2007 a. 64; 2011 a. 194; 2017 a. 287.

Cross-reference: Misappropriation of funds by contractor or subcontractor as theft, see s. 779.02 (5).

If one person takes property from the person of another, and a 2nd person carries it away, the evidence may show a theft from the person under subs. (1) (a) and (3) (d) 2. [now sub. (3) (e)], either on a theory of conspiracy or of complicity. *Hawpetoss v. State*, 52 Wis. 2d 71, 187 N.W.2d 823 (1971).

Theft is a lesser included offense of robbery. *Moore v. State*, 55 Wis. 2d 1, 197 N.W.2d 820 (1972).

Attempted theft by false representation (signing another's name to a car purchase contract) is not an included crime of forgery (signing the owner's name to a car title to be traded in). *State v. Fuller*, 57 Wis. 2d 408, 204 N.W.2d 452 (1973).

Under sub. (1) (d), it is not necessary that the person who parts with property be induced to do so by a false and fraudulent scheme; the person must be deceived by a false representation that is part of such a scheme. *Schneider v. State*, 60 Wis. 2d 765, 211 N.W.2d 511 (1973).

In abolishing the action for breach of promise to marry, the legislature did not sanction either civil or criminal fraud by the breaching party against the property of a duped victim. Restrictions on civil actions for fraud are not applicable to related criminal actions. *Lambert v. State*, 73 Wis. 2d 590, 243 N.W.2d 524 (1976).

Sub. (1) (a) should be read in the disjunctive so as to prohibit both the taking of, and the exercise of unauthorized control over, property of another. The sale of stolen property is thus prohibited. *State v. Genova*, 77 Wis. 2d 141, 252 N.W.2d 380 (1977).

The state may not charge a defendant under sub. (1) (a) in the disjunctive by alleging that the defendant took and carried away or used or transferred. *Jackson v. State*, 92 Wis. 2d 1, 284 N.W.2d 685 (Ct. App. 1979).

Circumstantial evidence of owner nonconsent was sufficient to support a jury's verdict. *State v. Lund*, 99 Wis. 2d 152, 298 N.W.2d 533 (1980).

Section 943.20 (1) (e) does not unconstitutionally imprison one for debt. *State v. Roth*, 115 Wis. 2d 163, 339 N.W.2d 807 (Ct. App. 1983).

A person may be convicted under s. 943.20 (1) (a) for concealing property and be separately convicted for transferring that property. *State v. Tappa*, 127 Wis. 2d 155, 378 N.W.2d 883 (1985).

A violation of sub. (1) (d) does not require proof that the accused personally received property. *State v. O'Neil*, 141 Wis. 2d 535, 416 N.W.2d 77 (Ct. App. 1987).

"Obtains title to property," as used in sub. (1) (d), includes obtaining property under a lease by fraudulent misrepresentation. *State v. Meado*, 163 Wis. 2d 789, 472 N.W.2d 567 (Ct. App. 1991).

The federal tax on a fraudulently obtained airline ticket was properly included in its value for determining whether the offense was a felony under sub. (3). *State v. McNearney*, 175 Wis. 2d 485, N.W.2d (Ct. App. 1993).

The definition of "bailee" under s. 407.102 (1) is not applicable to sub. (1) (b); definitions of "bailment" and are "bailee" discussed. *State v. Kuhn*, 178 Wis. 2d 428, 504 N.W.2d 405 (Ct. App. 1993).

When the factual basis for a plea to felony theft does not establish the value of the property taken, the conviction must be set aside and replaced with a misdemeanor conviction. *State v. Harrington*, 181 Wis. 2d 985, 512 N.W.2d 261 (Ct. App. 1994).

The words "uses," "transfers," "conceals," and "retains possession" in sub. (1) (b) are not synonyms describing the crime of theft but describe separate offenses. A jury must be instructed that there must be unanimous agreement on the manner in which the statute was violated. *State v. Seymour*, 183 Wis. 2d 683, 515 N.W.2d 874 (1994).

Theft from the person includes theft of a purse from the handle of an occupied wheelchair. *State v. Hughes*, 218 Wis. 2d 538, 582 N.W.2d 49 (Ct. App. 1998), 97-0638.

When the victim had pushed her purse against a car door with her leg and the defendant's action caused her to fall back, dislodging the purse, his act of taking it constituted taking property from the victim's person under sub. (3) (d) 2. [now sub. (3) (e)]. *State v. Graham*, 2000 WI App 138, 237 Wis. 2d 620, 614 N.W.2d 504, 99-1960.

Multiple convictions for the theft of an equal number of firearms arising from one incident did not violate the protection against double jeopardy. *State v. Trawitzki*, 2001 WI 77, 244 Wis. 2d 523, 628 N.W.2d 801, 99-2234.

Agency is not necessarily an element of theft by fraud when the accused obtains another person's property through an intermediary. *State v. Timblin*, 2002 WI App 304, 259 Wis. 2d 299, 657 N.W.2d 89, 02-0275.

Multiple charges and multiple punishments for separate fraudulent acts was not multiplicitous. *State v. Swinson*, 2003 WI App 45, 261 Wis. 2d 633, 660 N.W.2d 12, 02-0395.

A party to a business transaction has a duty to disclose a fact when: 1) the fact is material to the transaction; 2) the party with knowledge of the fact knows the other party is about to enter into the transaction under a mistake as to the fact; 3) the fact is peculiarly and exclusively within the knowledge of one party, and the mistaken party could not reasonably be expected to discover it; and 4) on account of the objective circumstances, the mistaken party would reasonably expect disclosure of the fact. If a duty to disclose exists, failure to disclose is a representation under sub. (1) (d). *State v. Ploeckelman*, 2007 WI App 31, 299 Wis. 2d 251, 729 N.W.2d 784, 06-1180.

The intent of the "from the person" penalty enhancer under sub. (3) (e) was to cover circumstances that made stealing particularly dangerous and undesirable. Although the cash register the defendant was attempting to steal was not connected to the manager at the register, at the time of the attempted theft the manager was within arm's reach of the defendant while the defendant was smashing the register and was in constructive possession of the money when the attempted theft occurred even if the money was not physically touching her person. The manager's constructive possession of the money made this a particularly dangerous and undesirable theft. *State v. Tidwell*, 2009 WI App 153, 321 Wis. 2d 596, 774 N.W.2d 650, 08-2846.

The market value to the telephone company of the services that a prisoner's scam fraudulently obtained was the correct measure of the value of the stolen property in this case. *State v. Steffes*, 2012 WI App 47, 340 Wis. 2d 576, 812 N.W.2d 529, 11-0691. Affirmed on other grounds. 2013 WI 53, 347 Wis. 2d 683, 832 N.W.2d 101, 11-0691.

There is no requirement under that at least one co-conspirator expressly promise that he or she will pay for fraudulently obtained property. Under sub. (1) (d), a false representation "includes a promise made with intent not to perform if it is part of a false and fraudulent scheme." Because "includes" is not restrictive, other conduct aside from an express promise falls under the umbrella of a "false representation." Providing fictitious business names and stolen personal identifying information to a phone company with the intent of setting up temporary phone numbers constitutes a false representation. *State v. Steffes*, 2013 WI 53, 347 Wis. 2d 683, 832 N.W.2d 101, 11-0691.

Applied electricity that a telephone company uses to power its network is included within the definition of "property" found in sub. (2) (b). *State v. Steffes*, 2013 WI 53, 347 Wis. 2d 683, 832 N.W.2d 101, 11-0691.

Section 971.36 (3) (a) and (4) allow for aggregation of the value of property alleged stolen when multiple acts of theft are prosecuted as one count. Reading sub. (1) (a) and s. 971.36 (3) (a) and (4) together, multiple acts of theft occurring over a period of time may, in certain circumstances, constitute one continuous offense that is not complete until the last act is completed. *State v. Elverman*, 2015 WI App 91, 366 Wis. 2d 169, 873 N.W.2d 528, 14-0354.

A landlord who failed to return or account for a security deposit ordinarily could not be prosecuted under this section. 60 Atty. Gen. 1.

State court rulings that unauthorized control was sufficient to support a conviction under sub. (1) (d) were not an unlawful broadening of the offense so as to deprive the defendant of notice and the opportunity to defend. *Hawkins v. Mathews*, 495 F. Supp. 323 (1980).

Sub. (1) (b) was intended to target those entrusted with the property of another who retain or use that property in a way that does not comport with the owner's wishes. The statute applies only to those who are entrusted with custody or possession or money or property. It does not apply to a breach of contract case over whether a purchaser has met contractual conditions for obtaining a refund. *Azamat v. American Express Travel Related Services Company, Inc.* 426 F. Supp. 2d 888 (2006).