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require that operations meet the prohibition on discharges required by 40 CFR for any proposed storage, composting and/or runoff control system (see s. NR 243.13(1)). DNR ensures compliance with this requirement via its approval process for reviewable structures and enforcement of the permit conditions. DNR records on approvals of reviewable CAFO structures, including design plans, are public record.

N18 Comment: (MEA) Although proposed NR 243.14(1) now requires landspreading of manure that does not cause or contribute to the non-attainment of surface or ground water standards, proposed NR 243.14(4)(c) only requires a phosphorous-based limitation in 303(d) waterbodies and exceptional resource waters. NR 243.14(4)(c) appears to undercut the more general standard of NR 243.14(1). Further, this does not meet the requirements of 40 C.F.R. 412. The federal regulation does not merely prohibit discharges of nitrogen and allow discharges of phosphorous or only prohibit discharges to exceptional waterbodies. The regulation prohibits all discharges from the facility. Since the facility includes the lands where manure is spread, a phosphorous-based standard must be applied to all fields where CAFOs are spreading manure.

Response: The no-discharge design standard in 40 CFR 412 applies to feedlot areas (see 40 CFR 412.10 and 412.11-- areas where animals are stabled, confined and fed or maintained), not areas used for the land application of CAFO manure. NR 243.14(4)(d) is intended to conform with NR 243.13(1) by identifying additional restrictions on CAFO land application practices in specific areas (303(d) waterbodies and ORWs and ERWs). Other areas may be subject to additional restrictions; however, this will be done on a case-by-case basis via the WPDES permitting process (see 243.14(4)(c)).

N19 Comment: (MEA) The first sentence of proposed NR 243.15(1) should be amended by deleting "unless department approval is received for a later submittal." As currently written, the proposed NR 243.15(1) violates the regulations implementing the CWA. Approval for a later submission is, in essence, using a compliance schedule to allow the facility greater time to comply with the no-discharge standard of performance for CAFOs. Federal law prohibits the use of a compliance schedule for standards of performance. All new CAFO sources must meet the design, installation and operation standard contained in 40 C.F.R. 412.15 from the facility's first day of operation under the WPDES permit (see 40 C.F.R. 122.47(a)). A permitting agency can only use compliance schedules in NPDES or WPDES permits in very limited situations. "The first NPDES permit issued to a new source or a new discharger **shall** contain a schedule of compliance **only when** necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised **after** commencement of construction but less than 3 years before commencement of the relevant discharge." (40 C.F.R. 122.47(a)(2), emphasis added).

Response: The allowance for submittal of plans and specifications for designed structures during the permit term is not considered a compliance schedule since it does not hold in abeyance the requirements to comply with the no-discharge standard contained in NR 243.13(1) that reflects 40 CFR 412. Neither federal nor state law requires that plans and specifications for structures that will be built during the permit term be submitted prior to permit issuance.

N20 Comment: (MEA) NR 243.15(2) and (3) could be improved by adding specific requirements for monitoring of these systems to ensure that they are in compliance with the effluent limit and water quality standards.

Response: Language has been added to NR 243.13 to include requirements to inspect designed structures and runoff control systems periodically to ensure compliance with permit conditions.

N21 Comment: (MEA) NR 243.15(3)(c) should be amended to add that the structure must meet the criteria of NR 243.13, rather than simply comply with NRCS Standard 313.

Response: s. NR 243.15(1)(b) and s. NR 243.15(3)(a) both reference the requirement for designed structures to meet the requirements of s. NR 243.13(1). In addition, s. NR 243.15(3)(c) has been modified to reflect the need for an owner or operator to document that structures are built to meet the criteria in NRCS Standard 313, Tables 1-5, and any additional requirements specified in NR 243.15(3)(d). s. NR 243.15(3)(c) and (d) are designed to address compliance with the requirements of NR 243.13 (1).

N22 Comment: (MEA) NR 243.15(3)(e)(1) and (e)(2) should delete the phrase "other qualified individual" from the list of people allowed to determine the structural integrity of earthen manure pits. This language will unnecessarily burden DNR with the requirement of determining whether an individual is qualified. DNR should simply rely on engineers and soil testing laboratories to conduct these important analyses.

Response: The allowance to have an "other qualified individual" applies only to individuals taking and analyzing soil samples. The allowance does not apply to the determination of the structural integrity of an earthen manure storage facility. As with any review process, the department determines if information regarding the integrity of a storage facility is acceptable; therefore, the department does not view it as an undue burden to determine whether an individual is qualified to take and analyze a soil sample.

N23 Comment: (MEA) We object to proposed NR 243.15(4). DNR cannot simultaneously allow permanent spray irrigation systems and ensure that there will be no runoff to waters of the state.

Response: All of s. NR 214.14, which is intended to prevent runoff of spray irrigated wastes and has been used to that effect for industrial wastewaters, has been referenced in NR 243.

N24 Comment: (MEA) Subchapter II—Other Animal Feeding Operations, applies a creative and reasonable tiered system for categorizing unacceptable practices.

Response: Comment acknowledged.

N25 Comment: (MEA) Subch. II still does not meet the federal requirements of 40 C.F.R. 122.23(2). Federal law allows a facility with less than 1,000 animal units to be designated as a CAFO and regulated through a permit (40 C.F.R. 122.23(2)(i)-(ii)). Proposed NR 243.24(3) should require the facility with a Category I unacceptable practice to apply for a WPDES permit, and the DNR should begin regulating pollutants from the facility under the permitting system.

Response: See response to comment N5.

N26 Comment: (MEA) NR 243.24(4)(d) should be amended to shorten the time period (2 months) for implementing corrective actions when there is "an imminent threat to public health or fish and aquatic life." If a threat is imminent, corrective measure should be undertaken immediately.

Response: The language in NR 243.24(4)(a)5. recognizes that due to necessary construction or changes in management practices, not all corrective measures will be able to implemented immediately. However, where warranted, DNR can require immediate implementation under ch. 281, Stats., or other authority.

N27 Comment: (WLWCA/WALCE, several counties) NR 243 does not reference local ordinances or county LWRM plans within the definition section or text in the administrative rule. At a minimum, the code should recognize where ordinances exist, and require compliance.

Response: See response to comments N32 and N50.

N28 Comment: (WLWCA/WALCE, several counties) The rule mandates an unrealistic "no discharge" standard for animal feedlots during all rainfall events less than the 25-year, 24-hour event. This is more restrictive than the performance standards in NR 151, making the two codes incompatible. It is also inconsistent with current and past technical standards for barnyard runoff control, making it impractical. Passage would make many previously permitted animal feeding operations in the state now out of compliance. The proposed standard should be modified to be consistent with NR 151.

Response: A "no discharge" requirement to animal feedlots applies to all animal feeding operations at some level. The "no discharge" design standard/effluent limitation for CAFOs in NR 243, reflects federal law for NPDES permits. For operations with less than 1,000 animal units, NR 243 references the prohibition on no direct runoff from feedlots into waters of the state contained in ch. NR 151.

N29 Comment: (WLWCA/WALCE, several counties) The rule constantly refers to "navigable waters" for applicability provisions while NR 151 refers to "waters of the state", which has a much broader definition. The rules should be consistent in how they are applied.

Response: The use of the terms "navigable waters" and "waters of the state" vary from within the code to reflect differences in how federal and state laws apply to animal feeding operations.

N30 Comment: (WLWCA/WALCE, several counties) It is unclear why Subchapter III is even needed in this rule. Any animal feeding operation less than 1,000 animal units that is out of compliance with any of the animal waste performance standards in NR 151 is already subject to the compliance provisions in the code. There would seem to be no need for the state to classify the operation as a "point source" under this code.

Response: Subchapter III provides regulatory flexibility in terms of how the department will address water quality impacts from animal feeding operations. There are a number of reasons why DNR would issue a Notice of Discharge to an animal feeding operation and not follow the implementation and enforcement provisions contained in NR 151. For example, for operations that fail to comply with a performance standard or prohibition that meet the federal definition of a point source, the department may decide to pursue issuance of a WDPES permit to implement corrective measures.

N31 Comment: (WLWCA/WALCE, several counties) The rule is unclear what incentive a county would have for providing technical assistance or managing cost-sharing grants to landowners, as described in this code. Yet the code does not seem to allow for cost-share grants directly between DNR and the landowner. Any county assistance should be state funded, which is also not clear. All of these issues need to be clarified.

Response: A county has two incentives to provide staffing support for NODs. First, staff funding provided by DATCP under ATCP 50 can be used to provide technical assistance for NODs. In fact, under ATCP 50.30, "farms discharging substantial pollution to waters of the state" is a statewide grant priority. Second, a county should be willing to assist in resolving these severe threats to water quality, given its technical expertise and responsibility granted under the statutes to manage soil and water resources. The department realizes there will be workload and funding issues related to statewide implementation of performance standards and has included a note in NR 151.09, NR 151.095 and NR 243 to recognize the need for an intergovernmental implementation strategy between DNR and its partners. Also, the applicable statutes only provide for cost-share grants to be made between DNR and local units of government, not to individuals or businesses.

N32 Comment: (WLWCA/WALCE, several counties) NR 243.01. The chapter's purpose is to identify the method used to insure producer compliance with the performance standards and prohibitions contained in NR 151. NR 243 fails to do so.

Response: Compliance with livestock performance standards and prohibitions is required as part of a CAFO's WDPES permit. For other animal feeding operations, NR 243 outlines authority, procedures and circumstances under which the department may issue an NOD to an animal feeding operation. One of the reasons for issuing an NOD to an operation is to obtain compliance with statewide livestock performance standards and prohibitions. There are other options available to the department to address operations that fail to comply with performance standards and prohibitions under s. NR 151.09 and 151.095. Local units of government also have authority to address operations that do not comply with performance standards and prohibitions (e.g., through a local ordinance). In some areas the local government's authority can be used to complement DNR's authority. A note was added to NR 243 and NR 151 that outlines DNR's intent to work with counties and other interested partners to develop a detailed inter-governmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in county LWRM plans.

N33 Comment: (WLWCA/WALCE, several counties) NR 243.13. Clearly identify that producers must comply with the conditions set forth in local ordinances and must secure any local permits required by local ordinances.

Response: See response to comment N50.

N34 Comment: (EPA) NR 243.13(2)(c) should be revised to say: "Rain causes the discharge, and the discharge is from" (See 40 CFR ss. 412.13(b) and 412.25(b).)

Response: We made the recommended change.

N35 Comment: (DATCP) NR 243.13(4). This paragraph repeats what is in NR 243.14(1). One of them should be deleted. If you need to have both, use the same terms.

Response: The duplicate language was deleted from NR 243.14(1).

(Comment cont'd.) Be more specific as to the manner in which a permittee can comply with surface water quality standards and groundwater standards. For instance, complying with water standards means following NRCS Standard 590, March 1999; and the NRCS Technical Note on Conservation Planning, Wisconsin-1, for Nutrient Management, dated October 21, 1993 and any additional permit conditions. These additional permit conditions should be explained in this section or referenced to another section.

Response: See response to comment N1.

N36 Comment: (EPA) Revise NR 243.13(5) as follows: "Any other condition needed to obtain compliance with water quality standards in chs. NR 102 to ~~104~~ 105, 207, and 140..."

Response: We made the recommended change.

N37 Comment: (chemical company) NR 243.14, Manure Management, should allow the DNR to consider manure and animal litter amendment with aluminum sulfate as a factor in activation of soluble phosphorus thus reducing available nutrients in the runoff after land application.

Response: Any addition of manure or animal litter amendments would be addressed as part of an operation's manure management plan. As a general note, the department is unlikely to approve such amendments since they merely mask the presence of a pollutant and do not address the addition of a pollutant to waters of the state.

N38 Comment: (WLWCA/WALCE, several counties) NR 243.14(1) and (2); NR 243.12(1)(a), (b), and (c); and NR 243.23(1), (2), (3) and (4). These sections identify requirements of producers but fail to identify penalties for non-compliance. Clarify.

Response. NR 243 outlines procedures to address operations that are not in compliance with code requirements. The consequences of non-compliance are contained in statutes (i.e., chs. 281 and 283, Stats.) that the department may use and should not be repeated in this rule. Penalty (fine) schedules will not be included in this rule. Repeating these details in this rule is not practical nor is it appropriate for a state administrative rule.

N39 Comment: (DATCP) NR 243.14(2). Permittees should be allowed to amend their manure management plan as needed, without department approval, provided the proposed amendments comply with permit condition; NRCS Standard 590, March 1999; and the NRCS Technical Note on Conservation Planning, Wisconsin-1, for Nutrient Management, dated October 21, 1993. These amendments should be incorporated into the permittee's current nutrient management plan and reported to the department as part of the following year's nutrient management plan.

Response: The department needs to review changes to a manure management plan to ensure compliance with WPDES permit conditions.

N40 Comment: (EPA) NR 243.14(3). Revise as follows: "OTHER NUTRIENTS. Manure and wastewater application rates specified in the manure management plan shall take into account the nutrients in the soil prior to landspreading and the nutrient levels from other sources, including commercial fertilizer, biosolids, legume credits, and other sources of manure nutrients,"

Response: We have made this change.

N41 Comment: (NRCS) NR 243.14(4)(b) Manure Management Permit Conditions -- Before the DNR seeks Wisconsin Natural Resource Board approval to publish NR 243 as a final rule, Wisconsin NRCS strongly encourages the department to incorporate the revised and updated nutrient management standard, NRCS FOTG Standard 590 Nutrient Management; DATE TO BE ADDED, to NR 243.

Response: See comment N6.

N42 Comment: (EPA) NR 243.14(4) Revise as follows: "PERMIT CONDITIONS. (a) WPDES permits shall contain soil and manure sampling...."

Response: We made the recommended change.

N43 Comment: (DATCP) NR 243.14(4)(a). This section of the code should be more standardized. Record keeping and reporting requirements should be the same for all operations. This rule should also have criteria or a system for requiring manure sampling. When does solid manure need to be sampled? Can book values be used for solid manure analysis since it is very difficult to achieve a representative sample. How often should liquid systems be sampled? These requirements should be stated here so that this rule is applied evenly across all permittees.

Response: Given the wide range of water quality concerns and operational differences between CAFO sites, record keeping and reporting requirements often vary from site to site (e.g., some operations daily haul their manure, others landspread once or twice a year). Manure sampling is required of all manure, typically in the form it is landspread, in order to get representative samples of the nutrients being applied to land. For example, manure from different sources may be combined before landspreading; preferably, the combined manure would be sampled. However, there are often complicating operational restrictions that require modification of standard sampling procedures. NR 243 is drafted to provide that flexibility. Book values are allowed when an operation is submitting its preliminary plan as part of a WPDES permit application. However, once an operation is up and running, actual manure samples are required.

N44 Comment: (DATCP) NR 243.14(4)(b). This section explains 7 pollution factors that may lead to additional restrictions being included for controlling pollutants associated with the manure incorporation requirements and restrictions on winter land spreading and distribution schedules. Section NR 243.14(4)(c) explains 4 conditions for when additional restrictions will be included for controlling pollutants. Section (b) is very subjective and should be combined into NR 243.14(4)(c). The additional restrictions must be more defined as to the department's requirements.

Response: See response to comment N1.

N45 Comment: (EPA) NR 243.14(5) Be advised that for CAFOs subject to 40 CFR part 412, the effluent limitations guidelines and new source performance standards in 40 CFR part 412 apply to discharges or potential discharges from manure stacks. If a discharge from a manure stack in compliance with s. NR 243.13(2) would cause, have a reasonable potential to cause, or contribute to a violation of a water quality standard, then 40 CFR s. 122.44(d) requires the establishment of a water quality-based effluent limitation for said discharge.

Response: A specific reference to s. NR 243.13(1), which prohibits discharges from resulting in a violation of water quality standards, has been included in NR 243.14(5).

N46 Comment: (DATCP) NR 243.15(3)(a). Replace the word "specifications" with the word "criteria."

Response: We made the recommended change.

N47 Comment: (DATCP) NR 243.15(3)(e)1. This does not appear to add requirements beyond those included in the previously referenced NRCS Technical Standard 313--it could be deleted.

Response: NR 243.15(3)(e)1 outlines requirements for whomever will conduct sampling not contained in NRCS Technical Standard 313.

N48 Comment: (WLWCA/WALCE, several counties) NR 243.15(4) and NR 243.16(2). Add language stating that the requirements of local ordinances must be adhered to and all locally required permits must be secured.

Response: See response to comment N50.

N49 Comment: (DATCP) NR 243.15(6). This should include conditions or guidelines by which the department will determine the applicable code.

Response: Factors the department will use in determining the applicable code and requirements for composting have been included in the code.

N50 Comment: (WLWCA/WALCE, several counties) NR 243.15(7)(b). Language should be added stating that abandonment must comply with the requirements of NR 243.15(7)(b) or the requirements of a local ordinance, whichever is more restrictive.

Response: DNR cannot require compliance with local ordinances. A note was added beneath NR 243.11(1) stating that permittees are responsible for obtaining all necessary state and local permits and approvals in addition to the requirements outlined in NR 243. In addition, the department's WPDES permit application package emphasizes that other permits and approvals may be required by DNR or by local town or county ordinances.

N51 Comment: (DATCP) NR 243.15(7)(b). Delete or make reference to NR 151.05 that addresses abandonment of idle manure storage facilities. Inclusion here is redundant.

Response: We have retained language regarding abandonment of manure storage facilities for clarification purposes. Also, DNR may place additional restrictions or conditions, beyond those in ch. NR 151.05, on abandonment of CAFO structures or systems based on water quality concerns.

N52 Comment: (EPA) NR 243.16. Be advised that for CAFOs subject to 40 CFR part 412, the effluent limitations guidelines and new source performance standards in 40 CFR part 412 apply to discharges of "industrial wastes" such as milkhouse wastewater, egg wash water, and silage leachate. If a discharge of "industrial waste" in compliance with s. NR 243.13(2) would cause, have a reasonable potential to cause, or contribute to a violation of a water quality standard, then 40 CFR s. 122.44(d) requires the establishment of a water quality-based effluent limitation for said discharge.

Response: A specific reference to s. NR 243.13(1) has been included in ss. NR 243.16 (1) and (2). NR 243.13(1) prohibits discharges from resulting in a violation of water quality standards. The application of other NR codes for storage and land application of wastes is designed to ensure compliance with water quality standards.

N53 Comment: (EPA) Where "industrial wastes" such as milkhouse wastewater, egg wash water, or silage leachate are applied on land separate from or mixed with manure, the USEPA, Region 5, expects that the "industrial wastes" will be subject to a landspreading plan which establishes controls in accordance with s. NR 243.14 or any more stringent conditions established in or pursuant to chapters NR 213 or 214.

Response: In accordance with state land application requirements for industrial wastes, the application of NR 214 to landspreading activities and NR 213 to the design of storage structures, in addition to the requirements of s. NR 243.13(1), is designed to ensure compliance with water quality standards.

N54 Comment: (DATCP) NR 243.16(2). This should be explicit by stating that other types of waste when compromising more than 10 percent of the design storage volume or 25,000 gallons, shall be subject to other codes. Lesser amounts would be at the discretion of the department. These thresholds are consistent with NRCS Technical Guide Standard 313.

Response: The department has added criteria that will be considered when determining applicable requirements for combined wastes. The department will consider NRCS standards and other NR codes when placing conditions on combined wastes at CAFOs. While NRCS standards are considered when addressing water quality impacts from CAFOs, they are not the controlling authority.

N55 Comment: (WLWCA/WALCE, several counties) NR 243.21. Add language that acknowledges that local units of government exist.

Response: See response to comment N32.

N56 Comment: (farmer) Beef cattle should be able to graze corn stalks in winter months.

N57 Comment: (WI Cattlemen's Assn.) This section could outlaw grazing corn stalks in certain situations. It should not pertain to running of beef cattle in corn fields. If it does not cover grazing of

beef cattle, then say that it doesn't. Don't leave it open to interpretation. EPA recently indicated that it did not intend to include such grazing operations

Response: NR 243 and NR 151 do not universally prohibit the grazing of cattle on crop residue during winter months. However, there may be certain fields where compliance with the performance standards or prohibitions or the conditions of a WPDES permit would restrict this practice (e.g., grazing on corn stalks results in a failure to maintain adequate sod cover on stream banks).

To be considered a pasturing operation under ch. NR 243, vegetative cover must be maintained over all of the grazing area and must serve as the primary food source for the animals. Supplemental feeding is very limited and any that does occur cannot result in loss of vegetative cover around the feeding area. Operations that graze beef cattle on crop residue are unlikely to be considered true pasturing operations since they probably won't be able to meet the requirement of maintaining vegetative cover over all of the grazing area. While not a true pasture, this practice does not automatically qualify a field as a feedlot unless certain other conditions are met. An example is an operation where cattle graze on corn stalks in a small area for an extended period of time. At some point, the corn stalks can no longer sustain the cattle, requiring the use of significant amounts of supplemental feed. In essence, the corn field becomes a feedlot. Water quality impacts are often a concern any time animals are concentrated in a small area that is devoid of vegetation for an extended period of time. However, if the operation rotates the animals throughout a number of fields so that supplemental feeding is not necessary, this scenario is unlikely to be considered a feedlot. The determination of whether such operations are subject to feedlot requirements will likely be made on a case-by-case basis because of variability in field conditions (e.g., topography, proximity to surface waters). Operations that graze beef cattle on crop residue where the field(s) qualify as a feedlot would need to obtain a WPDES permit if they have 1,000 animal units or more.

N58 Comment: (DATCP) NR 243.23(3). "New livestock facilities" should be defined.

Response: NR 243 references NR 151.095 which addresses the definition of "new livestock facilities."

N59 Comment: (EPA) NR 243.24. This section should be revised so that in addition to the method for making a determination already described, the DNR can make a determination of a Category I unacceptable practice based on information obtained from the owner or operator through the exercise of authority Wisconsin established pursuant to the Clean Water Act, Section 402(b)(2)(B).

Response: We made the change.

N60 Comment: (WLWCA/WALCE, several counties) NR 243.24 and 24(3). These sections appears to specifically exclude local units of government from making an unacceptable practice determination. If this is an oversight, correct it. If it is not, explain why local units of government are specifically excluded from this process.

Response: For the purposes of ch. NR 243, the department does make the determination of an unacceptable practice. NR 243.24 states that the department can make a determination that an unacceptable practice exists at an operation based on investigative efforts by a local unit of government. This is intended to acknowledge that in many instances, local and department efforts to address unacceptable practices under NR 243 will be coordinated. This does not preclude a county or other local unit of government from making similar determinations under its own authority to implement performance standards and prohibitions (e.g., using a local ordinance). In addition, references to NR 151 contained in NR 243 allow local units of government to make other determinations associated with performance standard and prohibition compliance efforts under NR 243. A note was also added stating DNR's intent to work with counties and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in county LWRM plans.

N61 Comment: (WLWCA/WALCE, several counties) NR 243.24(1)(b). The definition of a Category II unacceptable practice is a very confusing concept and should be clarified.

Response: Language regarding category II (now category III) unacceptable practices was clarified.

N62 Comment: (WLWCA/WALCE, several counties) NR 243.24(3)(b). This section is confusing and must be clarified.

Response: The language regarding the categories of unacceptable practices has been modified for clarity. In addition, a note has been added outlining the department's intent to work with counties and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in county land and water resources management plans.

N63 Comment: (DATCP) NR 243.24(4)(b). Requiring corrective measures to be included in the NOD letter has often been premature. The development of corrective options often requires considerable evaluation and planning. Alternately the letter could better define the unacceptable practices to be corrected.

Response: Language has been added stating that NOD letters can be amended should corrective options change significantly based on evaluation and planning.

N64 Comment: (DATCP) NR 243.24(5)(b). This refers to "total cost." This term should be better defined to clarify if it includes labor, opportunity costs, management, etc. We presume that capitol and out-of-pocket costs are the intended definition.

Response: Required cost sharing is based on eligible costs under the programs listed, and may be a subset of the items included in the total cost. Under DNR rules, not all of the costs items listed in the total cost will even be eligible. For example, practices normally and customarily used in raising livestock and growing crops are not eligible at all for cost sharing. This may well include some labor costs, such as additional time to scrape a concrete lot or additional time to plow on the contour as opposed to up and down the slope. Once eligible items are identified, the cost share rate is applied to determine the amount of required cost share.

N65 Comment: (WAL) P. 12 Bottom line and P. 14 Line 8. The location and methods of manure spreading should be reported.

Response: Ss. NR 243.14 (1) and (4) require the reporting of location and method of manure spreading.

N66 Comment: (WAL) NRCS technical guides are always being revised. The most up to date version (after review) should be used and we should not be locked into older versions by including the dates in this rule. (Also applies to NR 154.)

Response: S. 227.21, Wis. Stats., requires state administrative rules to reference technical standards to "the specific issue or issues of the publication in which they appear." We are required by law to reference the specific date of the publication. References regarding design of manure storage facilities (NRCS Standard 313) and abandonment of manure storage facilities (NRCS Standard 360) have been updated to reflect the most up to date version of these standards. There have not been significant substantive changes to these standards. To incorporate an updated standard after rule promulgation, the change must go through the rule making process.

N67 Comment: (WAL) P. 15. Manure spreading should be prohibited within 75 feet of lakes and ORW/ERW or 50 feet of wetlands or streams. There is a nutrient and a public health element here that must be considered. (Also applies to NR 154.)

Response: The key issue is not necessarily where manure is applied, but that it is applied appropriately. A number of BMPs or management options would be as effective, if not more effective, in protecting water quality than mandatory setbacks (e.g., achieve a soil loss rate of "T" or less, reduced application rates, vegetated buffers, use of manure injection or incorporation requirements and restrictions on landspreading manure on frozen and snow covered ground). Which practices are appropriate given water quality concerns and operational restrictions at a given operation are considered on a case-by-case basis as part of the WPDES permitting process and associated approval of a CAFO's manure management plan.

N68 Comment: (WAL) P. 17. Add spreading locations to planning process.

Response: A manure management plan under NR 243 requires that operations take into account spreading locations and places additional restrictions on landspreading in certain location (e.g., highly sloped fields, areas close to streams).

N69 Comment: (WAL) P. 27 Lines 23-25. Does this protect headwaters? It should.

Response: While the requirements of NR 243 do not specifically identify protection of headwaters, DNR can address impacts to headwaters on a case-by-case basis depending on water quality concerns.

N70 Comment: (farmer) There is no designation on animal units according to size. Regarding dairy cows, there is an extreme size difference in breeds, ranging from about 850 pounds up to about 1,500 pounds. The rules appear to consider all breeds of dairy cows to be 1.4 animal units, regardless of size. In our situation, that can be a very big problem; we would be getting very close to the CAFO regulations when we are milking 400 Jerseys, which, in reality, is only 400 animal units.

Response: The animal unit equivalencies for dairy cows meets federal law.

NR 243.21 WPDES Requirement For Less Than 1,000 Animal Units

N71 Comment: (WI Livestock Breeders) This section should not pertain to wintering of beef cattle in corn fields.

Response: See comment N57.

N72 Comment: (individual) Manure lagoons are point sources of pollution. Sewage from a single family house on 1-5 acres is an acceptable amount of pollution—it can be filtered out. A manure lagoon of 1-5 acres collecting waste from 100-500-1,000 animal units is not an acceptable situation and is most positively a point source of pollution. Infiltration from these lagoons is horizontal as well as vertical. Karst geology allows anything and everything on the land to reach groundwater.

Response: Point sources are defined in accordance with federal law which includes animal feeding operations with 1,000 animal units or more. Operations with less than 1,000 animal units are considered point sources under limited conditions with respect to impacts on surface waters. Federal law does not define point sources as pollution with respect to discharges to groundwater, unless there is a hydrologic connection to surface water. However, it is the intent of NR 243 and NR 151 to address impacts on groundwater and surface water from animal feeding operations of all size.

N73 Comment: (farmer) If you want to look at it as a point source, I have a manure pit next to the stream, but it is not causing a problem. The way it is constructed, we can safely take the manure out where and when we need it. I have good control of our application process that way. We use concrete pits, pits with liners, and clay pits. Samples were tested to ensure that there will be no leakage with tiles underneath that can be tested.

Response: Individual structures at agricultural operations are not identified as point sources, except on a case-by-case basis where water quality concerns are documented.

1 ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
2 REPEALING AND RECREATING RULES
3

4 The Natural Resources Board proposes an order to repeal and recreate ch. NR 243
5 relating to animal feeding operations

6
7 WT-13-00
8

9 Analysis Prepared by Department of Natural Resources
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11 Statutory Authority: ss. 227.11(2), 281.16, 281.19, 281.41, 281.65, 283.001, 283.11,
12 283.13, 283.31, 283.37, Stats.

13
14 Statutes Interpreted: ss. 281.11, 281.12, 281.16, 281.19, 281.20, 281.41, 281.65,
15 281.96, 281.97, 281.98, 283.001, 283.01, 283.11, 283.13, 283.19, 283.31, 283.37, 283.53,
16 283.55, 283.59, 283.63, 283.83 Stats.
17

18 Chapter NR 243 is a repealed and recreated rule under which the department will
19 administer the regulatory program for animal feeding operations. Chapter NR 243 is
20 being repealed and recreated in response to the need for modification and clarification of
21 current regulations for concentrated animal feeding operations, 1997 Wisconsin Act 27
22 and 1999 Wisconsin Act 9. These statutes require changes to the department's nonpoint
23 source water pollution abatement program and to the department of agriculture, trade and
24 consumer protection's soil and water resources management program. Creation of new
25 rules, repeal and recreation of existing rules and modification of existing rules are an
26 integral part of promulgating a series of inter-related administrative rules to implement a
27 re-design of Wisconsin's nonpoint source programs as set forth in these statutes. The rule
28 actions included in the re-design effort are: repeal and recreation of chapter NR 120,
29 Priority Watershed and Priority Lake Program; creation of chapter NR 151, Runoff
30 Management; creation of chapter NR 152, Model Ordinances for Construction Site
31 Erosion Control and Storm Water Management; creation of chapter NR 153, Targeted
32 Runoff Management Grant Program; creation of chapter NR 154, Best Management
33 Practices and Cost-share Conditions; creation of chapter NR 155, Urban Nonpoint Source
34 Water Pollution Abatement and Storm Water Management Grant Program; revision of
35 chapter NR 216, Storm Water Discharge Permits and repeal and recreation of chapter NR
36 243, Animal Feeding Operations. The department of agriculture, trade and consumer
37 protection is revising ATCP 50, Soil and Water Resource Management, to incorporate
38 changes in its programs.
39

40 Pursuant to 40 CFR part 122 and ch. 283, Stats., concentrated animal feeding operations,
41 animal feeding operations with 1000 animal units or more, are point sources which are
42 subject to the WPDES permit program. The proposed changes to ch. NR 243 better
43 reflect current federal regulations and provide modification and clarification to the
44 application, manure management, plan and specification and other requirements

1 pertaining to concentrated animal feeding operations. In addition, the proposed changes
2 establish applicable performance standards and prohibitions proposed in ch. NR 151 as
3 standard WPDES permit conditions and provide more detail regarding other permit
4 conditions which may be included in permits. More detail is also provided regarding
5 permitting and plan and specification review procedures.

6
7 Currently, the sections of ch. NR 243 which cover other animal feeding operations, those
8 operations with less than 1000 animal units, establish factors the department considers in
9 issuing a notice of discharge or a permit to animal feeding operations that discharge
10 pollutants to waters of the state. The proposed changes to ch. NR 243 identify categories
11 of unacceptable practices for which the department may issue a notice of discharge or
12 take other actions. These categories include unacceptable practices which meet the
13 definition of a point source under federal law, unacceptable practices which result in a
14 discharge to waters of the state and discharges to waters of the state associated with
15 noncompliance with applicable performance standards or prohibitions in ch. NR 151. In
16 addition, the proposed changes outline the process for issuing a notice of discharge and
17 the process for installing corrective measures as well as other implementation and
18 permitting conditions.

19

1 SECTION 1. Chapter NR 243 is repealed and recreated to read:

2

Chapter NR 243

3

ANIMAL FEEDING OPERATIONS

4

Subchapter I – General

5

NR 243.01 Purpose

6

NR 243.02 Applicability

7

NR 243.03 Definitions

8

NR 243.04 Rainfall events

9

Subchapter II – Requirements for Concentrated Animal Feeding Operations

10

NR 243.11 Concentrated animal feeding operations

11

NR 243.12 WPDES permit application requirements

12

NR 243.13 Standard WPDES permit requirements for concentrated animal feeding operations

13

NR 243.14 Manure management

14

NR 243.15 Submittal and approval of plans and specifications for designed structures or systems

15

NR 243.16 Industrial, combined and other process wastes

16

17

Subchapter III – Other Animal Feeding Operations

18

NR 243.21 Purpose

19

NR 243.22 Definitions

20

NR 243.23 General requirements for animal feeding operations

21

NR 243.24 Department determination of unacceptable practices

22

NR 243.25 Enforcement

23

NR 243.26 WPDES permit applications

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Subchapter I – General

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NR 243.01 Purpose. (1) The purpose of this chapter is to implement design standards and accepted manure management practices for concentrated animal feeding operations. This chapter also establishes the criteria under which the department may issue a notice of discharge or a permit to other animal feeding operations which discharge pollutants to waters of the state or fail to comply with applicable performance standards and prohibitions in ch. NR 151. For other animal feeding operations, it is the intent of the department that a permit would be issued only when it can be demonstrated that an

1 operation has a discharge of pollutants to waters of the state. The authority for
2 promulgation of this chapter is in chs. 281 and 283, Stats.

3 (2) The department recognizes the unique nature of the state's agricultural
4 industry and the industry's declared interest in protecting and preserving the state's
5 natural resources. The department also recognizes the benefit of manure applied to land
6 for its fertilizer and soil conditioning value, and encourages the management and use of
7 these materials in such a manner. Only those animal feeding operations which improperly
8 manage their wastes and as a result cause ground or surface water pollution or which fail
9 to comply with applicable performance standards and prohibitions or those operations
10 subject to the requirements for concentrated animal feeding operations will be regulated
11 under this chapter. It is not the intent of the department to require that all animal feeding
12 operations obtain a permit.

13 **NR 243.02 Applicability.** The provisions of this chapter are applicable to
14 concentrated animal feeding operations as defined in s. NR 243.11 and other animal
15 feeding operations which discharge pollutants to waters of the state as determined under
16 subch. II.

17 **NR 243.03 Definitions.** The following definitions are applicable to terms used in
18 this chapter. Definitions of other terms and meanings of abbreviations are in ch. NR 205.

19 (1) "Accepted management practices" means practices, techniques or measures
20 through which runoff, manure, milking center waste and other waste streams associated
21 with an animal feeding operation are handled, stored, utilized or otherwise controlled in a
22 manner which is intended to achieve compliance with livestock performance standards
23 and prohibitions established in ch. NR 151 and water quality objectives established under
24 chs. 281 and 283, Stats. These practices, techniques or measures are in ch. NR 154 and
25 ch. ATCP 50 and may also include additional practices and procedures as approved by
26 the department on a case-by-case basis.

27 (2) "Animal feeding operation" means a feedlot or facility, other than a pasture,
28 where animals have been, are or will be fed, confined, maintained or stabled for a total of
29 45 days or more in any 12-month period. Two or more animal feeding operations under

- 1 common ownership or common management are a single operation if at least one of the
2 following is true:
- 3 (a) The operations are adjacent.
- 4 (b) The operations utilize common systems for the landspreading of manure or
5 other wastes, including a manure management plan or landspreading acreage.
- 6 (c) Manure, barnyard runoff or other wastes are commingled in a common storage
7 facility prior to landspreading.
- 8 (3) "Animal unit" means a unit of measure used to determine the total number of
9 single animal types or combination of animal types, as specified in s. NR 243.11, which
10 are fed, confined, maintained or stabled in an animal feeding operation.
- 11 (4) "ASTM" means the American society for testing and materials.
- 12 (5) "Chronic rainfall event" means a series of wet weather conditions that
13 preclude the removal of manure or wastes from a properly designed, operated and
14 maintained retention structure.
- 15 (6) "Combined animal units" means any combination of animal types calculated
16 by adding the number of single animal types as multiplied by the equivalency factors as
17 specified in s. NR 243.11.
- 18 (7) "Compost" has the meaning specified under s. NR 500.03(44).
- 19 (8) "Composting" has the meaning specified under s. NR 500.03(45).
- 20 (9) "Concentrated animal feeding operation" means an animal feeding operation
21 which feeds, confines, maintains or stables 1,000 animal units or more.
- 22 (10) "Contaminated runoff" means that portion of manure, wastes or raw
23 materials and precipitation from animal feeding operations that transports pollutants such
24 as organic matter, suspended solids or nutrients.
- 25 (11) "Corrective measures" means accepted management practices or technical
26 standards specified in ch. NR 154 or ch. ATCP 50, designed to address an unacceptable
27 practice or other practices determined by the department to be necessary to protect water
28 quality.
- 29 (12) "DATCP" means department of agriculture, trade and consumer protection.
- 30 (13) "Department" means the Wisconsin department of natural resources.

1 (14) "Designed structures" means groundwater monitoring systems, runoff control
2 structures, permanent spray irrigation or other land application systems, manure or waste
3 storage facilities or other manure or waste transfer or treatment systems.

4 (15) "Diversion" means a structure built to divert part or all of the water from an
5 existing waterway into a different channel.

6 (16) "Dry lot" means a facility for growing ducks in confinement with no access
7 to external swimming areas.

8 (17) "Exceptional resource water" means any surface water, or portion thereof, in
9 s. NR 102.11.

10 (18) "Grassed waterway" means a natural or constructed waterway or outlet
11 shaped or graded and established in suitable vegetation as needed for the conveyance of
12 runoff from a field, diversion or other structure.

13 (19) "Livestock performance standards and prohibitions" means performance
14 standards and prohibitions contained in ss. NR 151.05, 151.06, 151.07 and 151.08.

15 (20) "Manure" means a material that consists primarily of excreta from livestock,
16 poultry or other animals

17 (21) "Milking center waste" means all wastes generated at a milking center or
18 milkhouse including waste milk, detergents, acids, sanitizers, manure, bedding materials
19 and footbath chemicals.

20 (22) "NOD" means notice of discharge.

21 (23) "NRCS" means the Wisconsin natural resources conservation service.

22 (24) "Outstanding resource water" means any surface water, or portion thereof, in
23 s. NR 102.10.

24 (25) "Pasture" means an area of land where animals graze or otherwise seek feed
25 in a manner that maintains the vegetative cover over all of the grazing area and where the
26 vegetative cover is the primary food source for the animals.

27 (26) "Permanent runoff control systems" means constructions and devices
28 installed to permanently control, divert or retard surface runoff water.

29 (27) "Permit" means a WPDES permit for the discharge of pollutants issued by
30 the department under ch. 283, Stats.

1 (28) "Raw materials" means materials typically stored at an agricultural operation
2 such as pesticides, herbicides, fertilizers, silage, haylage, grain and other feed sources.

3 (29) "Source water protection area" means an area delineated by the department
4 for a public water system or including numerous public water systems, whether the
5 source is ground water or surface water or both, as part of the state source water
6 assessment program approved by the U.S. environmental protection agency under 42
7 USC 300j-13.

8 (30) "Storage facility" means an excavated or diked pond, walled structure or
9 platform designed for containment of manure.

10 (31) "303(d) listed waters" means the list of impaired waters in the state
11 developed by the department pursuant to 33 USC 1313 and 40 CFR s. 130.7.

12 (32) "25-year, 24-hour rainfall event" means a rainfall event measured in terms of
13 the depth of rainfall occurring within a 24-hour period and having an expected recurrence
14 interval of once in 25 years.

15 (33) "Unacceptable practice" means a practice that causes or has caused the
16 discharge of pollutants to waters of the state or that results in an operation's failure to
17 comply with livestock performance standards and prohibitions outlined in ch. NR 151.

18 (34) "Wastewater treatment strip" means a constructed strip or area of vegetation
19 for reducing sediment, organic matter and other pollutants contained in runoff designed in
20 accordance with NRCS Standard 635, dated July 2001. NRCS Standard 635, dated July
21 2001, is incorporated by reference for this chapter.

22 Note: Copies of this document may be inspected at the offices of the department,
23 DATCP, NRCS, county land conservation departments, the secretary of state and the
24 revisor of statutes, Madison, WI.

25 (35) "Waters of the state" has the meaning specified under s. 283.01(20), Stats.

26 (36) "Water quality management area" has the meaning in s. NR 151.015(24).

27 (37) "Wet lot" means a facility for raising ducks which is open to the environment
28 with a small portion of shelter area, and with external swimming areas or open water runs
29 to which ducks have free access.

30 (38) "WPDES" means the Wisconsin pollutant discharge elimination system.

1 **NR 243.04 Rainfall events.** The design rainfall amount and probable intensity of
2 25-year, 24-hour rainfall events for locations in Wisconsin shall be determined from the
3 data in table 1, or for a particular location, the determination may be made on the basis of
4 more recent rainfall probability data verified by a government agency and approved by
5 the department for this purpose.

TABLE I
Probable 24-Hour Rainfall Events, In Inches of rain, for counties in
Wisconsin

| | 25-year | | 25-year |
|-------------|---------|-------------|---------|
| Adams | 4.7 | Marathon | 4.5 |
| Ashland | 4.3 | Marinette | 4.1 |
| Barron | 4.6 | Marquette | 4.6 |
| Bayfield | 4.4 | Menominee | 4.3 |
| Brown | 4.3 | Milwaukee | 4.5 |
| Buffalo | 4.8 | Monroe | 4.8 |
| Burnett | 4.6 | Oconto | 4.2 |
| Calumet | 4.4 | Oneida | 4.3 |
| Chippewa | 4.7 | Outagamie | 4.4 |
| Clark | 4.7 | Ozaukee | 4.4 |
| Columbia | 4.7 | Pepin | 4.8 |
| Crawford | 5.0 | Pierce | 4.8 |
| Dane | 4.8 | Polk | 4.7 |
| Dodge | 4.6 | Portage | 4.5 |
| Door | 4.1 | Price | 4.4 |
| Douglas | 4.4 | Racine | 4.6 |
| Dunn | 4.7 | Richland | 4.9 |
| Eau Claire | 4.7 | Rock | 4.7 |
| Florence | 4.1 | Rusk | 4.6 |
| Fond du Lac | 4.5 | St. Croix | 4.7 |
| Forest | 4.2 | Sauk | 4.8 |
| Grant | 5.0 | Sawyer | 4.5 |
| Green | 4.8 | Shawano | 4.4 |
| Green Lake | 4.6 | Sheboygan | 4.4 |
| Iowa | 4.9 | Taylor | 4.6 |
| Iron | 4.3 | Trempealeau | 4.8 |
| Jackson | 4.8 | Vernon | 4.9 |
| Jefferson | 4.6 | Vilas | 4.3 |
| Juneau | 4.7 | Walworth | 4.6 |
| Kenosha | 4.6 | Washburn | 4.5 |
| Kewaunee | 4.2 | Washington | 4.5 |
| LaCrosse | 4.9 | Waukesha | 4.6 |
| Lafayette | 4.9 | Waupaca | 4.5 |
| Langlade | 4.3 | Waushara | 4.6 |
| Lincoln | 4.4 | Winnebago | 4.5 |
| Manitowoc | 4.3 | Wood | 4.6 |

1 **Subchapter II – Requirements for Concentrated Animal Feeding Operations**

2 **NR 243.11 Concentrated animal feeding operations. (1) APPLICABILITY.**

3 The provisions of this subchapter are applicable to existing concentrated animal feeding
4 operations, proposed expansions of existing animal feeding operations that will become
5 concentrated animal feeding operations and newly proposed concentrated animal feeding
6 operations.

7 Note: Operations are responsible for obtaining all necessary state and local
8 permits and approvals in addition to those outlined in this subchapter.

9 (2) CALCULATION OF ANIMAL UNITS. The determination as to whether an
10 existing, proposed or expanded operation meets the criteria of a concentrated animal
11 feeding operation shall be based on the total number of animal units at the operation. The
12 total number of animal units for a given type of animal shall be calculated by multiplying
13 the number of animals for each animal type by the appropriate equivalency factor from
14 table 2, and summing the products. The number of combined animal units shall be the
15 sum of the number of animal units for each animal type. For animal types not listed in
16 table 2, the equivalency to animal units shall be based on live animal weights. In these
17 cases, 1,000 pounds of live weight is equivalent to one animal unit. Based on the
18 provisions of this subchapter and information provided as part of an operation's
19 application for a WPDES permit, as required in s. NR 243.12, the department shall
20 determine whether a WPDES permit needs to be issued to an operation.

21 Note: Stormwater construction site permit procedures and requirements outlined
22 in ch. NR 216 may apply to construction activities.

23 (3) ADDITIONAL INFORMATION. If requested by the department, owners or
24 operators indicating that their operation will have 900 animal units or more shall submit
25 additional information regarding how the estimated number of animal units was
26 calculated in accordance with table 2.

| TABLE 2 Number of Animal Types Equivalent to 1000 Animal Units and Animal Equivalency Factors | | |
|---|--|---------------------------------|
| Number Equivalent To 1,000 Animal Units | Animal Type | Animal Equivalency Factor |
| | DAIRY CATTLE: | |
| 700 | Milking and Dry Cows | 1.4 |
| 910 | Heifers (800 to 1200 lbs) | 1.1 |
| 1670 | Heifers (400 to 800 lbs) | 0.6 |
| 5000 | Calves (under 400 lbs) | 0.2 |
| | BEEF CATTLE: | |
| 1000 | Steers or Cows (600 lbs to Mkt) | 1.0 |
| 2000 | Calves (under 600 lbs) | 0.5 |
| 700 | Bulls | 1.4 |
| | SWINE: | |
| 2500 | Pigs (55 lbs to Mkt) | 0.4 |
| 10000 | Pigs (up to 55 lbs) | 0.1 |
| 2500 | Sows | 0.4 |
| 2000 | Boars | 0.5 |
| | SHEEP: | |
| 10000 | Per Animal | 0.1 |
| | HORSES: | |
| 500 | Per Animal | 2.0 |
| | DUCKS: | |
| 5000 | Per Bird (Wet Lot) | 0.2 |
| 100000 | Per Bird (Dry Lot) | 0.01 |
| | CHICKENS: | |
| 100000 | Layers | 0.01 |
| 200000 | Broilers | 0.005 |
| 100000 | Broilers (continuous overflow watering) | 0.01 |
| 30000 | Layers or Broilers (liquid manure system) | 0.033 |
| | TURKEYS: | |
| 55000 | Per Bird | 0.018 |
| | COMBINED ANIMAL UNITS: | |
| 1000 | Calculated Total | |

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NR 243.12 WPDES permit application requirements. (1) All concentrated animal feeding operations are required to be covered by a WPDES permit. Pursuant to s. 283.37(2), Stats., a complete application for a WPDES permit shall be filed by a concentrated animal feeding operation in accordance with the following requirements:

(a) Any person owning or operating an existing concentrated animal feeding operation that is not already covered by a WPDES permit shall immediately file an application for a WPDES permit with the department.

1 (b) Any person who is proposing to own or operate a concentrated animal feeding
2 operation shall file an application for a WPDES permit at least 12 months prior to the
3 intended date on which the operation would become a concentrated animal feeding
4 operation.

5 (c) Operations that currently hold a WPDES permit shall reapply at least 180 days
6 prior to the expiration date of their current WPDES permit.

7 (2) In order for the department to consider a WPDES permit application complete
8 and begin processing the application, operations shall submit all of the following
9 information:

10 (a) For operations applying for the first time:

11 1. The location of the existing or proposed site on plat maps, aerial photographs
12 and soil survey maps.

13 2. A scaled drawing of existing and proposed animal housing, manure storage or
14 composting facilities, runoff control structures, groundwater monitoring and water supply
15 wells, treatment systems, loafing and outside lot areas, feed storage structures and other
16 raw materials storage areas. Existing features shall be clearly delineated from proposed
17 features.

18 3. A preliminary manure management plan describing how manure and other
19 types of waste, such as milking center waste, are proposed to be stored and landspread.
20 The preliminary manure management plan shall include:

21 a. A narrative overview of the operation's manure management including
22 anticipated amounts and types of manure and waste produced on an annual basis and
23 method of landspreading or other methods of disposal or treatment.

24 b. Information and calculations on acreage needed for utilization of manure and
25 other types of waste based on nitrogen and phosphorus budgets for existing and planned
26 crop rotations and other criteria to minimize entry of nutrients to groundwater and surface
27 waters as specified in NRCS Standard 590, dated March 1999, and the NRCS Technical
28 Note on Conservation Planning, WI-1, for Nutrient Management, dated October 21, 1993.
29 NRCS Standard 590, dated March 1999, and the NRCS Technical Note on Conservation

1 Planning, WI-1, for Nutrient Management, dated October 21, 1993, are incorporated by
2 reference for this chapter.

3 Note: Copies of these documents may be inspected at the offices of the
4 department, DATCP, NRCS, county land conservation departments, the secretary of state
5 and the revisor of statutes, Madison, WI.

6 c. Additional information the department determines is necessary to identify
7 possible water quality impacts associated with an operation's landspreading activities.

8 4. A description of existing and proposed manure storage or composting facilities.
9 Plans and specifications for new manure storage or composting facilities or proposed
10 modifications to existing manure storage or composting facilities shall also be submitted.
11 Upon approval by the department, plans and specifications for proposed storage or
12 composting facilities may be submitted during the term of the permit. In addition,
13 evaluations of existing manure storage or composting facilities not previously reviewed
14 and approved by the department shall be submitted.

15 5. A description of existing and proposed runoff control systems, groundwater
16 monitoring systems, permanent spray irrigation systems or other landspreading or
17 treatment systems. Plans and specifications for new systems or proposed modifications to
18 existing systems shall be submitted. Upon approval by the department, plans and
19 specifications for proposed systems may be submitted during the term of the permit. In
20 addition, evaluations of existing systems not previously reviewed and approved by the
21 department shall be submitted.

22 6. Any other information requested by the department that is necessary to comply
23 with the requirements of ch. NR 150.

24 (b) For operations submitting a reissuance application:

25 1. Information on changes to the operation that have occurred during the current
26 permit term and changes that are anticipated during the upcoming permit term.

27 2. The location of the existing site and proposed modifications to the site on plat
28 maps, aerial photographs and soil survey maps.

29 3. Scaled drawing of existing and proposed animal housing, manure storage or
30 composting facilities, runoff control structures, groundwater monitoring and water supply

1 wells, treatment systems, loafing and outside lot areas and feed storage structures.

2 Existing features shall be clearly delineated from proposed features.

3 4. An updated manure management plan reflecting changes that have occurred at
4 the operation since the previous permit issuance or reissuance.

5 5. A description of existing and proposed manure storage or composting facilities.

6 6. A description of existing and proposed runoff control systems, groundwater
7 monitoring systems, permanent spray irrigation systems or other landspreading or
8 treatment systems.

9 7. Any other information requested by the department that is necessary to comply
10 with the requirements of ch. NR 150.

11 (3) Application information shall be submitted along with a completed form 3400-
12 25, including a completed animal unit calculation worksheet. The department shall take
13 action on a complete application pursuant to s. NR 200.10.

14 Note: Applications can be obtained at regional offices of the department or the
15 department's bureau of watershed management, 101 S. Webster St., P.O. Box 7921,
16 Madison, WI 53707.

17 **NR 243.13 Standard WPDES permit requirements for concentrated animal**
18 **feeding operations.** (1) Pursuant to s. 283.31, Stats., the department shall include
19 conditions in a WPDES permit that are necessary to achieve compliance with surface
20 water and groundwater quality standards contained in chs. NR 102 to 105, 207 and 140.
21 The department shall also include conditions in permits that are consistent with the
22 following requirements:

23 (a) Owners or operators of concentrated animal feeding operations permitted
24 under a WPDES permit shall comply with the livestock performance standards and
25 prohibitions prescribed in ch. NR 151.

26 Note: Concentrated animal feeding operations are not eligible for cost sharing
27 under ch. NR 153 and 154, nor is cost sharing necessary, for compliance with the
28 livestock performance standards and prohibitions.

29 (b) Beginning on the effective date of the WPDES permit, there may be no
30 discharge of pollutants to navigable waters from any manure storage areas, composting

1 areas, outdoor animal lots, milking center waste treatment or containment systems,
2 leachate containment systems, raw materials storage areas or other areas of the operation,
3 except under the following circumstances:

- 4 1. The discharge occurs as a result of a 25-year, 24-hour rainfall event or greater;
- 5 or
- 6 2. The discharge occurs as a result of a chronic rainfall event; and
- 7 3. Rain causes the discharge and the discharge is from a facility, structure or area
8 which is properly designed and maintained to contain manure and other wastes from the
9 operation and the rain from up to and including a 25-year, 24-hour rainfall event.

10 (c) If a discharge to waters of the state occurs, including a discharge allowed
11 under par. (b), groundwater and surface water quality standards may not be exceeded.

12 (d) All land application of manure and other wastes shall be done in a manner that
13 does not cause or contribute to the non-attainment of surface water and groundwater
14 quality standards.

15 (2) Permittees shall submit a proposed monitoring and inspection program,
16 including periodic inspection of designed structures, in accordance with the terms and
17 conditions of the WPDES permit to determine compliance with sub. (1).

18 (3) The duration of WPDES permits shall comply with s. 283.53, Stats.

19 **NR 243.14 Manure management.** (1) **MANURE MANAGEMENT PLANS.** In
20 accordance with the conditions of their WPDES permit, owners or operators of
21 concentrated animal feeding operations shall develop and submit a final manure
22 management plan to the department for review and approval detailing the amounts,
23 timing, locations and other aspects regarding the disposal of manure and other wastes. At
24 a minimum, the land application of manure and other wastes shall be done in accordance
25 with applicable criteria for minimizing entry of nutrients into groundwater and surface
26 waters contained in NRCS Standard 590, dated March 1999, and the NRCS Technical
27 Note on Conservation Planning, WI-1, for Nutrient Management, dated October 21, 1993.
28 Manure management plans shall identify fields or areas of fields where the land
29 application of manure is prohibited or restricted in accordance with these criteria or as
30 specified in a WPDES permit.

1 Note: In accordance with s. NR 243.12, preliminary manure management plans
2 must be submitted as part of a WPDES permit application.

3 (2) AMENDMENTS. The final manure management plan shall be reviewed and
4 amended by the permittee, if necessary, on an annual basis to reflect changes in
5 operations. The management plan may also be amended at any time provided the
6 proposed amendments are approved in writing by the department. An amendment may
7 not be put into effect until the department has reviewed and approved the amendment.

8 (3) OTHER NUTRIENTS. Manure and waste application rates specified in a
9 manure management plan shall take into account soil nutrient levels prior to
10 landspreading, nutrient levels from other sources, including commercial fertilizers,
11 biosolids, legume credits and other sources of manure, that are expected to be applied or
12 have already been applied to land where manure will be landspread.

13 (4) PERMIT CONDITIONS. (a) WPDES permits shall contain manure and soil
14 sampling, record keeping and reporting requirements associated with the land application
15 of manure or other methods of disposal.

16 (b) At a minimum, WPDES permits shall contain requirements consistent with the
17 following:

18 1. Applicable criteria for minimizing entry of nutrients into groundwater and
19 surface waters from NRCS Standard 590, dated March 1999, and the NRCS Technical
20 Note on Conservation Planning, WI-1, for Nutrient Management, dated October 21, 1993.

21 2. Manure may not be spread on fields with a separation to groundwater of less
22 than 10 inches.

23 3. Manure may not be spread on fields with soils less than 10 inches over
24 fractured bedrock.

25 4. Surface applied manure may not pond on or run off of the intended site at any
26 time.

27 5. Manure may not be applied on frozen or snow covered ground on fields with
28 shallow soils that are 20 inches thick or less over fractured bedrock.

29 (c) The department may also include conditions in the WPDES that are in addition
30 to or in place of the criteria in par. (b), when necessary to protect water quality. These

1 conditions may include additional restrictions on nitrogen and phosphorus loadings or
2 other nutrients and pollutants associated with the manure and other wastes, incorporation
3 requirements, restrictions on winter landspreading and distribution schedules. The
4 department may consider nutrient management conditions contained in ch. ACTP 50 as
5 well as the following factors when developing permit conditions or reviewing and
6 approving the manure management plan or any proposed amendments to an approved
7 manure management plan:

- 8 1. Potential impacts on and impairments to waters of the state due to
9 overapplication or runoff of the manure.
- 10 2. Soil limitations such as permeability, infiltration rate, drainage class and
11 flooding hazard.
- 12 3. Volume and water content of the waste material.
- 13 4. Available storage capacity and method of application.
- 14 5. Nutrient requirements of the crop or crops to be grown on the fields utilizing
15 the manure.
- 16 6. The presence of subsurface drainage tile systems.
- 17 7. Potential impacts to waters identified as source water protection areas.

18 (d) Conditions contained in the WPDES permit for manure management plans
19 shall include additional restrictions or management practices for manure or combined
20 wastes beyond the conditions of par. (b) under any of the following:

- 21 1. For all WPDES permits, when necessary to control phosphorus loadings in a
22 manner that will not contribute to the impairment of a 303(d) listed water.
- 23 2. For a new WPDES permit, when necessary to control phosphorus loadings in a
24 manner that will not alter the background quality of outstanding or exceptional resource
25 waters identified in ch. NR 102.
- 26 3. For a reissued or modified WPDES permit, where the operation has
27 significantly increased loadings or application of manure to fields impacting an
28 outstanding or exceptional resource water since the previous permit issuance. The
29 additional phosphorus restrictions are for the purpose of maintaining the background
30 quality of the outstanding or exceptional resource water.

1 4. When necessary to control any nutrient or pollutant associated with the
2 operation's manure for the purpose of complying with surface water quality standards or
3 groundwater standards.

4 Note: Also see s. NR 217.04(1)(a)5.

5 (e) The owner or operator shall be responsible for all manure from the operation
6 in accordance with conditions contained in the WPDES permit and the approved manure
7 management plan, except under the following conditions and with prior written approval
8 from the department:

9 1. The manure is processed and distributed as a commercial product pursuant to a
10 Wisconsin commercial fertilizer license issued by DATCP and the operation generating
11 the manure does not land apply the manure. The amount of manure managed in such a
12 manner shall be reported to the department on an annual basis unless specified otherwise
13 in the conditions of the WPDES permit.

14 2. The manure is accepted by another operation permitted under a WPDES permit
15 with a department approved manure management plan, or equivalent, and the operation
16 generating the manure does not land apply the manure. The amount of manure managed
17 in such a manner shall be reported to the department on an annual basis unless specified
18 otherwise in the conditions of the WPDES permit.

19 3. The manure is composted and the department determines that the land
20 application or disposal of the manure is more appropriately regulated under ch. NR 518.
21 The amount of manure managed in such a manner shall be reported to the department on
22 an annual basis unless specified otherwise in the conditions of the WPDES permit.

23 (5) MANURE STACKING. Stacking of manure outside of a department approved
24 manure storage facility is not allowed, unless prior written department approval is
25 obtained by a permittee. The department shall review requests to stack manure on a case-
26 by-case basis. All approved stacks shall, at a minimum, meet the specifications in NRCS
27 Standard 313, dated June 2001, for unconfined manure stacks and requirements in NR
28 243.13(1). NRCS Standard 313, dated June 2001, is incorporated by reference for this
29 chapter. The department may require additional restrictions needed to protect water
30 quality, which include acceptable time periods for stacking, how long the manure stacks

1 may remain in place, size of manure stacks, stack siting restrictions based on slope and
2 soil conditions, loading and resting requirements of stacking sites and site monitoring
3 requirements. Manure may not be stacked in a water quality management area.

4 Note: Copies of this document may be inspected at the offices of the department,
5 DATCP, NRCS, county land conservation departments, the secretary of state and the
6 revisor of statutes, Madison, WI.

7 **NR 243.15 Submittal and approval of plans and specifications for designed**
8 **structures or systems.** (1) GENERAL. (a) *Submittal and construction.* In accordance
9 with s. NR 243.12, plans and specifications for proposed designed structures or systems
10 shall be submitted as part of the permit application unless written department approval is
11 received for a later submittal. Plans and specifications shall also be submitted during the
12 term of the permit if construction of a new designed structure or system or a modification
13 to an existing designed structure or system is proposed during the term of the permit.
14 Submittal of plans and specifications shall meet the requirements in s. NR 108.04(2). An
15 owner or operator may not commence construction of runoff control structures,
16 permanent spray irrigation or other land application systems, groundwater monitoring
17 systems, manure storage facilities, or other manure treatment or transfer systems until
18 plans and specifications have been approved by the department in writing.

19 Note: In accordance with s. NR 108.04, submittals shall occur at least 90 days
20 prior to the anticipated date upon which the owner or operator plans to commence
21 construction.

22 Note: Department approval may be in addition to any local or county approvals
23 needed. Also, a storm water construction WPDES permit may be required prior to
24 construction pursuant to ch. NR 216.

25 (b) *General design and maintenance requirements.* Owners or operators of
26 concentrated animal feeding operations shall, at a minimum, design, install and maintain
27 structures or systems to meet the requirements in s. NR 243.13(1) and accepted
28 management practices.

29 (c) *Alternative practices.* 1. When the owner or operator responsible for the
30 concentrated animal feeding operation demonstrates that accepted management practices

1 or those practices specified in this section are more stringent than necessary to avoid a
2 detrimental effect on water quality, the department may approve alternative practices.
3 This demonstration may be made during the permit issuance process under ch. 283,
4 Stats., or during the plan review process under s. 281.41, Stats. The department may only
5 approve alternative practices if the design and operation of the alternative practices
6 achieves compliance with the requirements of s. NR 243.13(1).

7 2. For construction of proposed structures, the department may require that
8 accepted management practices or those practices specified in this section be superseded
9 by additional discharge limitations or design requirements, if the limitations or design
10 requirements are necessary for water quality protection.

11 3. The department may require additional practices, conditions or permittee
12 actions based on department review of submitted evaluations of previously constructed
13 structures or systems, including the installation of groundwater monitoring, increased
14 inspection frequency or system or structure replacement, upgrade or closure.

15 (2) RUNOFF CONTROL. (a) *General.* Owners or operators of concentrated
16 animal feeding operations shall control contaminated runoff in accordance with the
17 requirements specified in s. NR 243.13(1). Compliance with these requirements shall be
18 achieved by designing, installing, operating and maintaining permanent runoff control
19 systems that are consistent with accepted management practices such as wastewater
20 treatment strips, sediment basins, waste storage facilities, roof runoff management,
21 grassed waterways and clean water diversions.

22 (b) *Evaluations of constructed runoff control systems.* 1. All operations applying
23 for a WPDES permit shall submit an evaluation of constructed runoff control systems not
24 previously approved by the department, as part of their application for a WPDES permit.
25 At a minimum, evaluations shall:

26 a. Include available post-construction documentation including the date and
27 materials of construction.

28 b. Address the ability of the systems to meet the requirements of s. NR 243.13(1)
29 and accepted management practices.

1 2. The department may require an evaluation of a constructed runoff control
2 system previously reviewed and approved by the department based on factors including
3 the age of the system, identified environmental impacts and physical location of the
4 system to waters of the state.

5 (3) MANURE STORAGE. (a) *General.* Owners or operators of concentrated
6 animal feeding operations which have selected storage as part of a manure management
7 system shall design storage facilities that, at a minimum, meet the design criteria
8 contained in NRCS Standard 313, September 1998, and the requirements of s. NR
9 243.13(1). Plans and specifications submitted by the owner or operator for department
10 approval shall include a written management and site assessment, operation and
11 maintenance plan and relevant calculations for any proposed manure storage facility.

12 (b) *Storage capacity and maintenance.* Storage structures shall be designed to
13 provide storage capacity that is consistent with the operation's department approved
14 manure management plan. Permittees shall operate and maintain manure storage facilities
15 to prevent overtopping and discharges to waters of the state.

16 (c) *Following construction.* The owner or operator shall submit a post-
17 construction report to the department that includes construction documentation.
18 Construction documentation shall include verification that the specific criteria for
19 confined impoundments found in NRCS Standard 313, September 1998, Table 1, 2, 3, 4
20 or 5, and the additional requirements specified under par. (d), have been met.

21 (d) *Additional requirements.* As part of its written approval of plans and
22 specifications, the department may require additional design and operation requirements
23 for water quality protection, beyond those contained in NRCS Standard 313, September
24 1998, based on the following conditions:

25 1. Physical location of the storage facility, including depth to groundwater and
26 bedrock and proximity to surface waters and wetlands.

27 2. Soil limitations such as permeability, infiltration rate, drainage class and
28 flooding hazard.

29 3. Volume and water content of the waste material.

30 4. Available storage capacity and method of application.

1 (e) *Earthen lined storage facilities.* 1. Prior to construction of earthen lined
2 storage facilities, a soil testing laboratory, engineering firm or other qualified individual
3 shall take representative samples from the soil to be used to line the bottom and sidewalls
4 of the facility and analyze them for the following parameters: dry density, water content,
5 compaction curves, particle size distribution, plastic index, permeability at design
6 compaction and soil classification. Sample analysis results shall meet or exceed the
7 design specifications contained in NRCS Standard 313, September 1998, or the
8 department's additional conditions for the liner design established pursuant to par. (d).

9 2. Following construction of an earthen lined storage facility, the department may
10 require the owner or operator to extract random core samples from the constructed liner
11 based on critical groundwater, geologic or construction conditions. Sampling and analysis
12 shall be conducted by a soil testing laboratory, engineering firm or qualified individual.
13 When testing is required, the core samples shall be extracted at a rate of 4 per acre of
14 wetted area; except that a minimum of 3 core samples shall be extracted if the wetted area
15 is less than one acre. The samples shall be split proportionally between the wetted areas
16 of the bottom liner and sidewall liner relative to the total area of each. All test holes shall
17 be recompacted to a density equal to or greater than the surrounding liner material. All of
18 the core samples shall be analyzed by a soils testing laboratory or engineering firm for the
19 following parameters: dry density, water content, degree of compaction, thickness of seal
20 and particle size distribution. A permeability test shall also be performed on at least 25%
21 of the total number of samples. Liner thickness design specifications are met if the
22 thickness of each of the liner samples is equal to or greater than the specified design
23 thickness in NRCS Standard 313, September 1998 or the department's additional
24 conditions for the liner design established pursuant to par. (d).

25 3. The testing required in subds. 1. and 2. shall be conducted in accordance with
26 the methods specified in table 3, except that the permeability of constructed earthen liners
27 shall be determined using a laboratory permeability test on hydrated and saturated
28 specimens of the liner material, compacted at the same approximate density as exists in
29 the infield condition. Tests may be performed on remolded or core samples. The
30 permeability shall be based on stabilized inflow and outflow rates during the test.

1 Methods other than those listed in table 3 may be approved by the department on a case-
2 by-case basis. The methods in table 3 are incorporated by reference.

3

| TABLE 3 Soil Testing Methods | |
|---------------------------------|---|
| Test | Method |
| Core Sample Extraction | ASTM D1587 (1994) |
| Particle Size Analysis | ASTM D422 (1998) |
| Plastic Index | ASTM D4318 (2000) |
| Standard Proctor Density | ASTM D698 (1991) |
| In Place Density | ASTM D2922 (1991) or ASTM D2937 (1994) |

4

5 Note: Copies of ASTM standards referenced in this chapter are available for
6 inspection at the offices of the department of natural resources, the secretary of state and
7 the revisor of statutes. ASTM standards may be obtained from the American society for
8 testing and materials, 1916 Race Street, Philadelphia, PA 19103.

9 (f) *Evaluations of manure storage facilities.* 1. All operations applying for a
10 WPDES permit shall submit an evaluation of constructed manure storage facilities not
11 previously approved by the department as part of their application for a WPDES permit.
12 At a minimum, evaluations shall:

13 a. Include available post-construction documentation including the date and
14 materials of construction.

15 b. Address the ability of the systems to meet the requirements of s. NR 243.13(1)
16 and design criteria in NRCS Standard 313, September 1998.

17 2. The department may require an evaluation of a constructed manure storage
18 facility previously reviewed and approved by the department based on factors including
19 the age of the facility, the facility's current ability to meet the design specifications in
20 NRCS Standard 313, September 1998, identified environmental impacts and physical
21 location of the storage facility to waters of the state.

1 (4) PERMANENT SPRAY IRRIGATION SYSTEMS. (a) *General*. Proposed
2 permanent spray irrigation and other treatment systems shall at a minimum meet the
3 requirements of s. NR 214.14, soil investigation and groundwater monitoring criteria in
4 ss. NR 214.20 and 214.21, and requirements specified in ss. NR 243.13(1) and NR
5 243.14.

6 (b) *Evaluations of spray irrigation systems*. 1. All operations applying for a
7 WPDES permit shall submit an evaluation of constructed permanent spray irrigation
8 systems not previously approved by the department as part of their application for a
9 WPDES permit. At a minimum, evaluations shall:

10 a. Include available post-construction documentation including the date and
11 materials of construction.

12 b. Address the ability of the systems to meet the requirements of s. NR 243.13(1),
13 s. NR 214.14, and soil investigation and groundwater monitoring criteria in ss. NR
14 214.20 and 214.21.

15 2. The department may require an evaluation of a constructed spray irrigation
16 system previously reviewed and approved by the department based on factors including
17 the age of the system, identified environmental impacts and physical location of the
18 system to waters of the state.

19 (5) GROUNDWATER MONITORING. The department may require the
20 installation of groundwater monitoring wells in the vicinity of manure storage facilities,
21 runoff control systems, permanent spray irrigation systems and other treatment systems in
22 those situations where critical groundwater, geologic or construction conditions warrant
23 monitoring. If a groundwater monitoring system is required, it shall, at a minimum, be
24 designed, constructed and monitored in accordance with chs. NR 140 and 141 and s. NR
25 214.21.

26 (6) COMPOSTING FACILITIES. The department shall determine if the design
27 and operation of a manure composting facility is more appropriately approved under this
28 section or ch. NR 502. This determination shall be based on factors such as the type of
29 materials mixed with the manure and the amount and source of the materials, the method
30 of composting and the characteristics of the final composted material. If the department

1 determines that design and operation requirements for a composting facility are
2 appropriately reviewed and approved under this section, the department may still apply
3 additional design and operation requirements contained in ch. NR 502 as needed to
4 protect water quality.

5 (7) CLOSURE. (a) *General*. If the permittee wishes to abandon structures or
6 systems covered under this subchapter, a closure plan shall be submitted to the
7 department for prior approval.

8 (b) *Manure storage facilities*. Closure of manure storage facilities shall be
9 completed, at a minimum, according to NRCS Standard 360, June 2001. Closure of a
10 manure storage facility shall occur when manure has not been added or removed for a
11 period of 24 months, unless the owner or operator can provide information to the
12 department that the structure is designed to store manure for a longer period of time or
13 information that the storage structure will be utilized within a specific period of time.
14 NRCS Standard 360, dated June 2001, is incorporated by reference for this chapter.

15 Note: Copies of this document may be inspected at the offices of the department,
16 DATCP, NRCS, county land conservation departments, the secretary of state and the
17 revisor of statutes, Madison, WI.

18 (c) *Monitoring wells*. Groundwater monitoring wells shall be abandoned in
19 accordance with ch. NR 141.

20 **NR 243.16 Industrial, combined and other process wastes.** (1) INDUSTRIAL
21 WASTES. If industrial wastes, including milking center waste, are separated and stored
22 separately from manure, the storage and land application of the industrial wastes are
23 subject to the requirements of chs. NR 213 and 214 and s. NR 243.13(1). The department
24 may require that an operation's manure management plan address land application of
25 these wastes.

26 (2) COMBINED WASTES. If an operation combines manure with other types of
27 waste, the department shall apply the requirements in ss. NR 243.13(1), 243.14 and
28 243.15. The department may apply other requirements such as the requirements in ch. NR
29 113, 213 or 214 to the land application of the combined wastes and to the design of
30 structures or systems associated with the combined wastes. Factors that the department

1 shall consider in determining other applicable requirements include the volume and
2 characteristics of the wastes combined with the manure and any treatment of the
3 combined wastes. The department may require that an operation's manure management
4 plan address land application of these wastes.

5 **Subchapter III – Other Animal Feeding Operations**

6 **NR 243.21 Purpose.** The purpose of this subchapter is to establish procedures, in
7 cooperation with other federal and state agencies and governmental units, for addressing
8 unacceptable practices through the issuance of a notice of discharge under s. 281.16,
9 Stats., and ch. 283, Stats. Animal feeding operations with less than 1000 animal units that
10 have unacceptable practices are subject to this subchapter.

11 **NR 243.22 Definitions.** In this subchapter:

12 (1) "Governmental unit" means a municipality as defined in s. 281.01(6), Stats.

13 (2) "Livestock facility" means a structure or system constructed or established on
14 a livestock operation or animal feeding operation, including a runoff control system
15 associated with an outside feedlot, manure storage facility or feed bunker.

16 (3) "Waters of the state" has the meaning specified under s. 281.01(18), Stats.

17 **NR 243.23 General requirements for animal feeding operations. (1)**

18 **LIVESTOCK PERFORMANCE STANDARDS AND PROHIBITIONS.** (a) Animal
19 feeding operations shall comply with the livestock performance standards and
20 prohibitions in accordance with the requirements s. NR 151.095.

21 (b) The department may grant a variance to livestock performance standards or
22 accepted management practices consistent with s. NR 151.097. A variance may not be
23 granted to a livestock prohibition or other statutory requirements.

24 Note: Additional procedures for implementing cropland performance standards
25 are included in ch. NR 151.

26 Note: Under s. 281.16(3)(e), Stats., an owner or operator may not be required by
27 the state, or a governmental unit through an ordinance or regulation, to bring existing
28 livestock facilities into compliance with the livestock performance standards or
29 prohibitions, technical standards or conservation practices unless cost sharing is available.

1 (2) WPDES PERMITS. In accordance with the requirements of s. NR 243.26, an
2 owner or operator of an animal feeding operation may be required to apply for a WPDES
3 permit as a result of certain unacceptable practices.

4 **NR 243.24 Department determination of unacceptable practices.** Unless based
5 on information provided as part of a WPDES permit application submitted pursuant to s.
6 NR 243.26(1), no determination may be made by the department that an unacceptable
7 practice exists at an operation until there has been an onsite investigation by the
8 department or a federal or state agency or governmental unit.

9 (1) CATEGORIES OF UNACCEPTABLE PRACTICES. The categories of
10 unacceptable practices include:

11 (a) *Category I.* A category I unacceptable practice is a discharge to waters of the
12 state resulting in the animal feeding operation meeting the federal definition of a point
13 source established in 40 CFR part 122.23 and Appendix B to 40 CFR part 122.

14 1. An animal feeding operation meets the definition of a point source if:

15 a. Pollutants are discharged into navigable waters through a manmade ditch,
16 flushing system or other similar man-made device, or

17 b. Pollutants are discharged into navigable waters that originate outside of and
18 pass over, across or through the operation or otherwise come into direct contact with the
19 animals confined at the operation.

20 2. An animal feeding operation does not meet the federal point source definition if
21 the discharges by the animal feeding operation occur only as a result of a chronic rainfall
22 event or a 25-year, 24-hour rain event or greater and the discharges are from a facility,
23 structure or area which is properly designed and maintained to contain manure and other
24 wastes from the operation and the rain from a 25-year, 24-hour rainfall event.

25 (b) *Category II.* A category II unacceptable practice is a discharge of pollutants to
26 waters of the state that does not meet the federal criteria of a point source discharge
27 delineated in par. (a) and that is the result of a failure to comply with a livestock
28 performance standard or prohibition.

29 (c) *Category III.* A category III unacceptable practice is a discharge of pollutants
30 to waters of the state that does not meet the federal criteria of a point source discharge

1 delineated in par. (a) and does not result from a failure to comply with a livestock
2 performance standard or prohibition.

3 (2) COORDINATION WITH GOVERNMENTAL UNITS. The department shall
4 notify the appropriate governmental unit prior to taking any of the following actions:

5 (a) Contacting an owner or operator of an animal feeding operation under the
6 procedures in this subchapter to investigate an unacceptable practice.

7 (b) Issuing an NOD for a category II unacceptable practice.

8 (c) Taking enforcement action under s. 281.98, Stats., against a owner or operator
9 of an animal feeding operation for failing to comply with a livestock performance
10 standard or prohibition.

11 (d) Notification is not required if the unacceptable practice is an imminent threat
12 to public health or fish and aquatic life.

13 (3) DEPARTMENT ACTION. If the department determines that an unacceptable
14 practice exists at an operation based on its own onsite investigation, an investigation
15 conducted by a federal or state agency or governmental unit, or information provided as
16 part of WPDES permit application, the department may take any of the following actions:

17 (a) *For all unacceptable practices.* 1. The department may coordinate with a
18 designated governmental unit to address the unacceptable practice and provide assistance
19 to the owner or operator. This contact shall be made as soon as possible after the
20 determination that an unacceptable practice exists at an operation to maximize
21 opportunities for the governmental unit to provide assistance to the owner or operator.

22 2. The department may issue a notice of intent to issue an NOD.

23 (b) *Category I unacceptable practices.* For category I unacceptable practices, the
24 department may take any of the following actions:

25 1. Issue an NOD to the owner or operator of the animal feeding operation to
26 address the unacceptable practices.

27 2. Send the owner or operator a permit application if the owner or operator has not
28 filed a WPDES permit application pursuant to s. NR 243.26.

29 3. Take direct enforcement action.

1 Note: The department may take direct enforcement action for discharges due to
2 intentional acts or gross mismanagement by an owner or operator.

3 (c) *Category II unacceptable practices.* For category II unacceptable practices, the
4 department may take any of the following actions:

5 1. Issue an NOD if requested by a governmental unit or if a governmental unit is
6 not addressing a facility's noncompliance with livestock performance standards or
7 prohibitions in a manner consistent with the procedures established in ch. NR 151.

8 2. Follow the procedures outlined in s. NR 151.095.

9 (d) *Category III unacceptable practices.* For category III unacceptable practices,
10 the department may issue an NOD to the owner or operator.

11 Note: In most cases, the department will rely on governmental units to fully
12 implement the livestock performance standards and prohibitions and address impacts to
13 water quality from category II unacceptable practices. The department intends to issue
14 NODs in accordance with this section in cases where a governmental unit has requested
15 assistance in implementing and enforcing the performance standards or prohibitions or in
16 cases where a governmental unit has failed to appropriately address unacceptable
17 practices at animal feeding operations in a timely manner. The department recognizes that
18 coordination between governmental units, the department of agriculture, trade and
19 consumer protection and other state agencies is needed to achieve statewide compliance
20 with the performance standards and prohibitions. Accordingly, the department plans on
21 working with counties, the department of agriculture, trade and consumer protection and
22 other interested partners to develop a detailed intergovernmental strategy for achieving
23 compliance with the performance standards and prohibitions that recognizes the
24 procedures in these rules, state basin plans and the priorities established in land and water
25 conservation plans.

26 (4) NOTICE OF DISCHARGE. If the department issues an NOD to an animal
27 feeding operation, it shall be sent certified mail, return receipt requested or personal
28 delivery.

29 (a) The following information shall be included in the NOD:

1 1. Investigation summary. The department shall include a summary which
2 describes the results of the onsite investigation used to determine that unacceptable
3 practices exist at an operation. The summary shall include a determination of the category
4 of the unacceptable practice that exists at the operation. The department shall provide a
5 copy of the summary to the animal feeding operation and appropriate governmental unit.

6 2. Corrective measures. The NOD shall specify one or more suggested corrective
7 measures for the unacceptable practice identified in the summary report. The NOD may
8 be amended at any time to reflect changes to suggested corrective measures based on
9 further evaluation and planning associated with addressing the unacceptable practice.

10 3. Technical and financial assistance. A list of known governmental or private
11 services which may be available to provide technical or financial assistance shall be
12 included in the NOD.

13 4. Category II determinations. For category II unacceptable practices, the NOD
14 shall contain determinations consistent with s. NR 151.095, except for the compliance
15 period determination. Determinations required under s. NR 151.095 may be included as
16 part of the NOD or as amendments to the NOD. Compliance period requirements are
17 contained in subd. 5.

18 Note: Section NR 151.095 contains the criteria and establishes the procedures for
19 determining when cost sharing is required for eligible costs associated with corrective
20 measures and when cost sharing is considered to have been made available. Cost sharing
21 is not required for new facilities and for practices that do not involve eligible costs, such
22 as moving a manure pile. Cost sharing for eligible costs may be available under chs. NR
23 120 or NR 153.

24 5. Compliance period. A reasonable compliance period for implementing
25 necessary corrective measures shall be specified in the NOD. The compliance period
26 identified in the NOD shall be determined by the department in accordance with the
27 following:

28 a. The length of the compliance period shall be from 60 days to 2 years unless
29 otherwise provided for in this paragraph.

1 b. The length of the compliance period may be less than 60 days if the site is an
2 imminent threat to public health or fish and aquatic life.

3 c. The compliance period may not be more than 2 years unless an alternative
4 compliance period has been mutually agreed upon by the department and the owner or
5 operator of the animal feeding operation.

6 d. For existing facilities where corrective measures require cost sharing in
7 accordance with s. NR 151.095 and where cost sharing has not previously been made
8 available, the compliance period specified in an NOD shall begin on the date that cost
9 share dollars are available pursuant to s. NR 151.095(5)(d).

10 Note: Cost-share dollars may be offered as part of an NOD or may be included in
11 an amendment to an NOD.

12 e. For all other facilities, the compliance period specified in the NOD shall begin
13 on the date of the NOD, regardless of the availability of cost sharing.

14 6. Failure to comply. An explanation of the possible consequences if the owner or
15 operator fails to comply with the provisions of the notice, including enforcement or loss
16 of cost-sharing, or both.

17 (b) The department may request that proposed corrective measures be submitted
18 to the department for review prior to implementing the corrective measures.

19 (c) The department may require that accepted management practices be
20 superseded by additional design requirements or practices if they are necessary for water
21 quality protection.

22 (d) The department may require that the operation, or designee, notify the
23 department as to the status of implementing the corrective measures prior to the end of
24 the compliance period.

25 **NR 243.25 Enforcement.** (1) CATEGORIES I AND III. (a) Operations issued an
26 NOD for a category I or III unacceptable practice shall implement corrective measures
27 within the compliance period specified, regardless of the availability of cost-sharing. The
28 owner or operator may seek cost sharing to implement corrective measures within the
29 specified compliance period, but if cost sharing is not available, the owner or operator

1 shall install corrective measures to abate the discharge without cost sharing or otherwise
2 apply for a WPDES permit.

3 (b) If the owner or operator does not implement the corrective measures within
4 the specified time frame to address category I or III unacceptable practices, the
5 department may issue a WPDES permit even if the owner or operator refuses to submit
6 an application or the department may pursue enforcement action under ch. 283, Stats.

7 (2) CATEGORY II. For operations issued an NOD for a category II unacceptable
8 practice, if the owner or operator of an animal feeding operation does not implement
9 corrective measures within the compliance period specified in the NOD, and cost sharing
10 has been made available for existing facilities or cost sharing is not required under s. NR
11 151.095, the department may take enforcement action pursuant to s. 281.98, Stats.,
12 require the submittal of a WPDES permit application or take other appropriate actions
13 against the owner or operator.

14 Note: The procedures specified in this subchapter for category II unacceptable
15 practices are limited to actions taken by the department under s. 281.98, Stats., for
16 noncompliance with a livestock performance standard or prohibition. Pursuant to other
17 statutory authority, the department may take direct enforcement action without cost
18 sharing against a livestock producer for willful or intentional acts or other actions by a
19 producer that pose an imminent or immediate threat to human health or the environment.

20 **NR 243.26 WPDES permit applications.** (1) Any owner or operator of an
21 animal feeding operation with more than 300 animal units that has or is proposing a
22 category I discharge under s. NR 243.24, shall submit a complete application for a
23 WPDES permit to the department.

24 (2) Any owner or operator of an animal feeding operation with 300 animal units
25 or less shall submit a complete application for a WPDES permit if:

26 (a) The department conducts an onsite investigation pursuant to s. NR 243.24 and
27 issues an NOD to the animal feeding operation for a category I discharge, and

28 (b) The operation fails to abate the category I discharge within the time period
29 specified in the NOD.

1 (3) APPLICATION FORMS. Applications shall, at a minimum, be submitted on
2 form 3400-25, including a completed animal unit calculation worksheet. The department
3 may require additional information as part of the permit application consistent with the
4 requirements of subch. II.

5 Note: Applications can be obtained at regional offices of the department or the
6 department's bureau of watershed management, 101 S. Webster St., P.O. Box 7921,
7 Madison, WI 53707.

8 (4) WPDES PERMIT REQUIREMENTS. WPDES permits issued under this
9 subchapter shall contain requirements designed to implement corrective measures to
10 address unacceptable practices. Permits may also contain requirements from subch. II,
11 including the requirement to develop a manure management plan and address milking
12 center waste, when necessary to protect water quality.

13 Note: Pursuant to s. 283.31, Stats., and federal regulations, a point source
14 discharge by an animal feeding operation is prohibited unless the discharge is covered by,
15 and in compliance with, a WPDES permit.

16 Note: Pursuant to ch. NR 153, operations covered by a WPDES permit are no
17 longer eligible for cost sharing under s. 281.65, Stats.

18
19 The foregoing rules were approved and adopted by the State of Wisconsin Natural
20 Resources Board on January 22, 2002.

21
22 The rules shall take effect on the first day of the month following publication in
23 the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

24
25
26 Dated at Madison, Wisconsin _____

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29 STATE OF WISCONSIN
30 DEPARTMENT OF NATURAL RESOURCES

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34 By _____
35 Darrell Bazzell, Secretary

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