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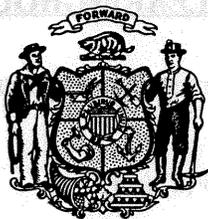
LCRC
FORM 2

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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-034

AN ORDER to repeal and recreate chapter NR 243, relating to animal feeding operations.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-09-00 REPORT SENT TO AGENCY.

RNS:RJC:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

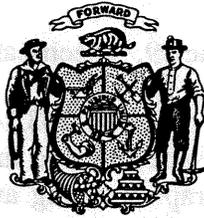
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-034

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section NR 243.23 (2) (a) indicates that corrective action needs to be taken if cost-sharing is available. However, it also provides that if cost-sharing was available previously, corrective actions must still be taken regardless of the current availability of cost-sharing. Section 281.16 (4), Stats., seems to indicate that cost-sharing being available is a necessary precondition for existing operations to have to come into compliance without regard to whether it was formerly available. Does s. 281.16 (4) authorize the department to consider previously available cost-sharing? Also, although the title to s. 243.23 (2) (a) indicates it applies to "existing operations," nothing in the substantive text limits it to those operations. It appears that it should.

2. Form, Style and Placement in Administrative Code

a. The rule incorporates a number of standards by reference. The analysis of the rule should indicate that consent to incorporation has been given by the Attorney General and the Revisor of Statutes. [s. 2.08 (1), Manual.]

b. In s. NR 243.04 (1), line 24, "to" should replace the hyphen.

c. Some of the definitions in s. NR 243.04 are out of alphabetical order. For example, the term defined in sub. (7) should follow sub. (9). Subsections (34) and (35) should be reversed.

d. In s. NR 243.12 (2) (d), on line 19, "specifications" should replace "specification."

e. The introductory paragraphs of s. NR 243.14 (2) and (3) are not truly introductory material; that is, they do not really introduce and lead into the material that follows. Therefore, they should be given appropriate paragraph lettering and the remaining paragraphs should be re-lettered. Also, see s. NR 243.23 (2) (intro.).

f. Section NR 243.21 contains only one provision. Therefore, the provision should not be numbered sub. (1).

g. In s. NR 243.23 (2) (c) (intro.), the phrase "any of the following occur" should be inserted before the colon. Also, subd. 1. should end in a period and the "or" should be deleted.

h. In s. NR 243.23 (2) (d), the second note appears to contain substantive material that should be placed in a substantive provision of the rule.

i. Because all of the other subsections of s. NR 243.23 have titles, sub. (5) should have a title as well.

j. Section NR 243.27 (2) should be drafted as a definition of "runoff management grant agreement." Additionally, s. NR 243.27 (3) should be drafted as a definition of "cost-share agreement."

3. Conflict With or Duplication of Existing Rules

Section NR 243.16 provides that owners or operators of large animal feeding operations must comply with applicable standards and prohibitions in ch. NR 151, as provided in their permits. Section NR 243.11 (1) implies that not all owners or operators of large animal feeding operations may need a permit. Is s. NR 243.16 intended to apply to those who do not need a permit?

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. NR 243.04 (30), and other places in the rule, a federal enactment is referred to by its common name, e.g., "the safe drinking water act." If the federal act's common name is to be used, the term should be defined with a citation to the U.S. Code.

b. Section NR 243.13 (5) (a) appears to be the first of several provisions that relate to "conditions" contained in a permit. However, the rule does not appear to specifically discuss the department's ability or authority to impose conditions. Under what provisions are conditions imposed? It appears that if the rule were amended to include language relating to the department

actually granting permits pursuant to the comment under item 7., below, that would be an ideal location to discuss conditions on those permits.

c. Section NR 243.14 (2) (b) refers to the “provisions of sub. (2).” It appears that the reference should be to the provisions of “this subsection.” However, if a different sub. (2) was intended, a more complete cross-reference should be provided. Also, given the existence of par. (c), it appears that par. (a) should begin with the phrase “Except as provided in par. (c).”

d. The term “ch.” before “NR 214” in s. NR 243.15 (1) should be deleted.

e. Section NR 243.21 provides that certain animal feeding operations “may be subject” to the subchapter if certain conditions exist. A specific cross-reference to that portion of the rule which causes them to be subject to the subchapter should be provided.

f. Several places in s. NR 243.23 (2) (a) to (c) refer to “eligible costs.” It appears that this term is defined in par. (d). Either par. (d) should be made into a true definition applicable to the section, or each reference to “eligible costs” should contain a reference to par. (d). However, s. NR 243.27 (1) provides that “eligible costs” are defined in chs. NR 153 and 154. The relationship of these terms and their appropriate definitions should be reviewed.

g. The term “NR” should be inserted before the citation to 153.004 (1) (f) in s. NR 243.27 (2) (c).

h. It appears that in s. NR 243.27 (4), par. (e) should be par. (b).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 243.01 (2), does the phrase “its declared interest” relate to the interest of the state’s agricultural industry or the interest of the department? The rule should be clarified. Also, the phrase “our natural resources” should be changed to “the state’s natural resources.”

b. Section NR 243.02 indicates that the provisions of the rule apply to only certain large animal feeding operations. However, s. NR 243.11 seems to imply that owners or operators of all large animal feeding operations must file an application for a permit. Thus, it seems as though the applicability provision of the rule is too narrow.

c. In s. NR 243.04 (1), what is an “environmentally accepted manner” of handling, storing and using manure? Is the phrase necessary? Are the “practices, techniques and measures” in ch. NR 154, s. NR 243.26 and ss. ATCP 50.61 to 50.95 all environmentally accepted, or are just some of them? In other words, can the definition be shortened to get precisely at the core of the definition? Also, with respect to the other practices and procedures “as determined by the department,” will these be published somewhere or will they be determined on a case-by-case basis? The rule should be clarified.

d. In s. NR 243.04 (4), the phrase “for the purposes of this chapter” is not needed as the section only relates to definitions used in ch. NR 243.

e. In s. NR 243.04 (8) and (9), it is sufficient to either define a term or to define it with a cross-reference to another provision of the Wisconsin Administrative Code. A definition and a cross-reference are not necessary.

f. In s. NR 243.04 (20), the phrase "but not limited to" is implied in the term "including" and, therefore, is not necessary. This comment applies to other provisions of the rule, such as s. NR 243.12 (2) (b). The entire rule should be reviewed for the use of the phrase "but not limited to." Also, the term "Governmental unit" in the last sentence should be enclosed in quotation marks.

g. Does the first use of the term "effective" in s. NR 243.04 (32) refer to the technical guide that is in effect on the effective date of the rule, or the technical guide that goes into effect on the effective date of the rule? The rule should be clarified.

h. What is the triggering point for the phrase "within 12 months" in s. NR 243.11 (1)? Does it mean within 12 months of the effective date of the rule? Alternatively, is the phrase intended to convey an anticipated ownership any time within a 12-month period? The rule should be clarified.

i. Section NR 243.12 (1) provides that owners and operators of large animal feeding operations that are required to obtain a Wisconsin pollution discharge elimination system (WPDES) permit, must file an application. Section NR 243.11 (1) appears to require all owners or operators of large animal feeding operations to file an application for a WPDES permit. Are two separate applications envisioned under these two provisions, e.g., an initial application and then another when it is determined a permit is needed? The relationship of the application requirements in these two provisions should be clarified.

j. In s. NR 243.12 (2) (intro.), what is a "new applicant"? Is this term used to distinguish between persons who already hold a permit and an owner of a "new operation" who has not yet been issued a permit? The rule should be clarified by either defining the term "new applicant" or by clarifying in the text to whom it applies. This comment also applies to s. NR 243.14 (1). Also, the phrase "all of the following" should be inserted before the colon.

k. In several places in the rule, a report or other information is required to be submitted to the department. The rule provides that the report, or other information, must contain "at a minimum" certain specific information. For example, see s. NR 243.12 (2) (c) and (d). Is it necessary to use the phrase "at a minimum"? Does the department expect that additional information will or should be provided? If the department does expect other information to be provided, that information should be specified in the rule. If not, simply state the minimum requirement and eliminate the phrase "at a minimum."

l. In s. NR 243.13 (2), it appears that the term "providing" should be changed to "provided" or "if."

m. Section NR 243.13 (5) (b) refers to the impairment of a "303 (d) listed waterbody." The rule defines "303 (d) listed waters." Is there a difference? If so, the difference should be

clarified through a definition of a listed "waterbody." If there is no difference, the same terminology should be used throughout the rule.

n. In s. NR 243.13 (5) (d) 2., the condition applies if the "owner or operator" does not land-apply the manure. Which "owner or operator" is referred to, the one who sells the manure or the one whose operation purchases the manure? Also, who is required to report the amount "managed in such a manner" to the department? The rule should be clarified.

o. Section NR 243.13 (6) (a) appears to apply to an operation "composting manure under anaerobic conditions." However, the rule defines "composting" to be an aerobic process. Is sub. (6) designed to address aerobic composting that has somehow turned anaerobic? In any event, the apparent inconsistency between sub. (6) and the definition in s. NR 243.04 (9) should be resolved. Also, given the proffered definition of composting, are the phrases "composting manure under aerobic conditions" in sub. (6) (b) and (c) redundant and unnecessary.

p. In s. NR 243.13 (7), what qualifies as "short-term" stacking? Also, the last sentence refers just to "stacking." Should it apply to "short-term" stacking? The rule should be clarified.

q. In the third sentence of s. NR 243.14 (1), the material beginning with "including the requirement" is not necessary since, presumably all of the requirements are listed in s. NR 108.04. However, if it is important to emphasize the requirements of s. NR 108.04, they could be listed or summarized in a note to the rule.

r. Section NR 243.14 (3) (intro.) refers to "owners or operators" in the first sentence and "the permittee" in the second. Are these intended to refer to the same individual? If so, is there a reason different terms are used? If the terms refer to different persons, the rule should be clarified accordingly.

s. The second period at the end of the second sentence in s. NR 243.14 (3) (b) should be deleted.

t. In s. NR 243.14 (3) (c) (intro.), how will the department require additional design and operation requirements? Will this be done after construction is complete? The rule should be clarified.

u. With regard to s. NR 243.14 (3) (d) 1., "prior to construction" of what? Earthen-lined storage structures? The substantive text of the rule should be clarified. Also, who is to take the soil samples? The department? The owner or operator? The contractor? The rule should be clarified on this point as well.

v. In the first sentence of s. NR 243.14 (3) (d) 2., the term "also" is not needed. Also, when and why would the department require post-construction sampling to be done? Also, who does the sampling? The rule should be clarified. Also, the last sentence refers to "the performance standard for liner thickness." What is this? Is this a department standard? A condition of a permit? A provision in one of the national standards incorporated by reference? The rule should be clarified.

w. What is an "existing manure storage facility" referred to in s. NR 243.14 (3) (e) (intro.)? Although the rule defines "existing operation," it does not define an "existing manure storage facility." Are they the same? If so, why are two different terms used? If not, the meaning of the undefined term should be made clear. In other words, at what point is a manure storage facility existing? The day the rule is effective?

Also, par. (e) (intro.) refers to an owner or operator requesting an exemption from certain design standards, yet it does not specify that the department may grant the exemption or how and why an exemption may be granted. It seems that the rule should. Finally, par. (e) (intro.) should end with the phrase "with all of the following performance criteria:". Each subdivision should end with a period and the word "and" at the end of subd. 2. should be deleted.

x. How does one go about getting "approval" under s. NR 243.14 (4)?

y. Section NR 243.14 (6) refers to abandoning "other practices and structures." Is this referring just to practices or structures for which a permit or approval from the department under ch. NR 243 is required or to other practices and structures? The rule should be clarified.

z. Section NR 243.22 (2) provides that a certain contact be made "as early as possible." As early as possible in relation to what? The rule should be clarified. Also, the term "will" should be "shall."

aa. Section NR 243.23 (1) (intro.) begins using the term "NOD." This term is not defined in the rule. It should be defined either in the definition section for the chapter, or in a separate definition applicable to subch. III. In addition, the phrase "all of the following" should be inserted before the colon.

ab. In s. NR 243.23 (1) (a) (intro.), the phrase "all of the following" or "any of the following" should be inserted before the colon, depending on the department's intent. Also, the phrase "but not limited to" should be deleted.

ac. Paragraphs (b) to (d) of s. NR 243.23 (1) should end in periods and the word "and" in par. (d) should be deleted. In par. (f), should the term "of" after "60 days" be "after"?

ad. How does a county agency or the Department of Agriculture, Trade and Consumer Protection (DATCP) "express an interest" in reviewing proposed corrective measures in s. NR 243.23 (3)? Also, it seems upon close reading of sub. (3), that if the county agency or DATCP do not want to review the proposed corrective measures and if the department does not ask for them to be submitted, no agency has to review the corrective measures. Is this the intent?

ae. Who is supposed to submit the report to the department in s. NR 243.23 (4)?

af. Section NR 243.24 (1) is drafted rather awkwardly and, as a result, is less than clear in its meaning. It is suggested that the first sentence be rewritten substantially as follows: "If an owner or operator fails to implement the necessary corrective measures within the time period provided in the NOD under s. NR 243.23, the department shall either pursue enforcement under . . . or commence the process of issuing a WPDES permit." Also, what does it mean to

commence the process for issuing a WPDES permit? Does this mean that the department would require an owner or operator to apply for a permit? The rule should be clarified. Also, the last sentence should be rewritten as follows: "The owner or operator may request an administrative review of the department's decision . . . pursuant to ch. NR 203."

ag. What is the purpose of s. NR 243.24 (2)? Is it to delineate when the department may seek enforcement action as opposed to issuing a WPDES permit, as provided in sub. (1)? If so, sub. (1) should contain a reference to sub. (2). Also, is the department to choose between an enforcement action and issuing an NOD, as sub. (2) provides, or issuing a WPDES permit, as sub. (1) provides? The purpose of sub. (2) and its relationship with sub. (1) needs to be clarified.

ah. It does not appear that the term "also" in s. NR 243.26 (1) is necessary.

ai. In s. NR 243.26 (2), the phrase "approval will" should be changed to "approval shall." Also, where are the "standard engineering principles" located and who will decide if the design is according to them?

aj. The provisions of s. NR 243.27 (5) to (7) and (9) appear to apply to governmental units. Nothing in the applicability provisions of the rule appear to indicate that the provisions of the rule will apply to governmental units.

ak. Who may apply for a variance under s. NR 243.27 (9)?

7. Compliance With Permit Action Deadline Requirements

Section NR 243.11 (1) requires certain persons who own or operate large animal feeding operations to apply for a permit. Each rule which includes a requirement for a business to obtain a permit must include the number of business days, calculated beginning on the day a permit application is received, within which the agency will review and make a determination on the permit application. [s. 1.10, Manual.] It is not readily apparent that the rule addresses the issue of the time period in which permits will be issued. In fact, it does not appear that the rule specifically sets forth a procedure or requirements for the department to grant permits. That procedure seems to be presumed given the tenor of various provisions of the rule. Perhaps there should be a provision that says something to the effect of: "The department shall grant a permit if . . ." Also, how long do the permits last? Section NR 243.12 (1) requires an application 180 days prior to their expiration. The expiration information should be contained in the rule.

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 relating to
5 animal feeding operations

6
7 WT-13-00

8
9 Analysis Prepared by Department of Natural Resources

10
11 Statutory Authority: ss. 227.11(2), 281.16, 281.19, 281.41, 281.65, 283.001, 283.11, 283.13,
12 283.31, 283.37, Stats.

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

17
18 Chapter NR 243 is a repealed and recreated rule under which the department will administer the
19 regulatory program for animal feeding operations. Chapter NR 243 is being repealed and
20 recreated in response to 1997 Wisconsin Act 27, 1999 Wisconsin Act 9 and the need for
21 modification and clarification of current regulations for large-scale animal feeding operations.

22
23 Pursuant to 40 CFR part 122 and ch. 283, Stats., large animal feeding operations, animal feeding
24 operations with 1000 animal units or more, are point sources which are subject to the WPDES
25 permit program. The proposed changes to ch. NR 243 provide modification and clarification to
26 the application, manure management, plan and specification and other requirements pertaining to
27 large animal feeding operations. In addition, the proposed changes establish applicable
28 performance standards and prohibitions proposed in ch. NR 151 as standard WPDES permit
29 conditions and provide more detail regarding other permit conditions which may be included in
30 permits. More detail is also provided regarding permitting and plan and specification review
31 procedures.

32
33 Currently, the sections of ch. NR 243 which cover other animal feeding operations, those
34 operations with less than 1000 animal units, establish factors the department considers in issuing
35 a notice of discharge or a permit to animal feeding operations that discharge a significant amount
36 of pollutants to waters of the state. The proposed changes to ch. NR 243 include failure to
37 comply with applicable performance standards and prohibitions in ch. NR 151 as additional
38 criteria under which the department may issue a notice of discharge. In addition, the proposed
39 changes outline the process for issuing an notice of discharge and the process for installing
40 corrective measures as well as other implementation and permitting conditions.

41
42 Changes to chapter NR 243 are an integral part of promulgating a series of inter-related
43 administrative rules to implement a re-design of Wisconsin's nonpoint source programs as set
44 forth in these statutes as well as an opportunity to clarify regulations for large-scale animal
45 feeding operations. Other related components of this effort that are being conducted concurrently
46 include: repeal and recreation of chapter NR 120, Nonpoint Source Pollution Abatement
47 Program; creation of chapter NR 151, Runoff Management; creation of chapter NR 152, Model
48 Ordinances for Construction Site Erosion Control and Storm Water Management; Chapter NR

*Incorp by reference
can't show
2.08 Manure*

1 153 Runoff Management Grant Program; creation of chapter NR 154, Best Management
2 Practices and Technical Standards For Use With DNR Cost-Share Programs and Non-
3 Agricultural Performance Standards; revision of chapter NR 216, Storm Water Discharge
4 Permits. The department of agriculture, trade and consumer protection is concurrently revising
5 ATCP 50, Soil and Water Resource Management, to incorporate changes in its programs.
6

7
8 SECTION 1. Chapter NR 243 is repealed and recreated to read:

9 **Chapter NR 243**

10 **ANIMAL FEEDING OPERATIONS**

11 **Subchapter 1 – General**

- 12 NR 243.01 Purpose
13 NR 243.02 Applicability
14 NR 243.04 Definitions
15 NR 243.05 Modification procedures
16 NR 243.06 Rainfall Events

17
18
19 **Subchapter II – Requirements for Large Animal Feeding Operations**

- 20 NR 243.11 Applicability
21 NR 243.12 Application requirements
22 NR 243.13 Manure management
23 NR 243.14 Submittal and approval of plans and specifications for designed structures
24 NR 243.15 Industrial, mixed and other wastes
25 NR 243.16 Performance standards and prohibitions

26
27 **Subchapter III – Other Animal Feeding Operations**

- 28 NR 243.21 Applicability
29 NR 243.22 Department determination of unacceptable practices
30 NR 243.23 Notice of discharge
31 NR 243.24 Enforcement and permits
32 NR 243.25 Design standard
33 NR 243.26 Accepted manure management practices
34 NR 243.27 Funding conditions for NOD projects
-

35 **Subchapter I – General**

36 **NR 243.01 Purpose.** (1) The purpose of this chapter is to implement design standards
37 and accepted manure management practices for the large animal feeding operations category of
38 point sources. This chapter also establishes the criteria under which the department may issue a
39 notice of discharge or a permit to other animal feeding operations which discharge pollutants to
40 waters of the state or fail to comply with applicable performance standards and prohibitions in ch.
41 NR 151. For other animal feeding operations, it is the intent of the department that a permit

1 would be issued only when it can be demonstrated that an operation discharges a significant
2 amount of pollutants to waters of the state. The authority for promulgation of this chapter is in
3 chs. 281 and 283, Stats. *anywhere in particular?*

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

13 **NR 243.02 Applicability.** The provisions of this chapter are applicable to large animal
14 feeding operations within the subcategories specified in s. NR 243.11, table 2 and other animal
15 feeding operations which discharge significant amounts of pollutants to waters of the state as
16 determined under s. NR 243.21 or fail to meet applicable performance standards and prohibitions.

17 **NR 243.04 Definitions.** The following definitions are applicable to terms used in this
18 chapter. Definitions of other terms and meanings of abbreviations are in ch. NR 205.

19 (1) "Accepted manure management practices" means practices, techniques or measures
20 through which manure is handled, stored and utilized in an environmentally accepted manner
21 which are intended to achieve compliance with applicable performance standards and
22 prohibitions established in ch. NR 151 and water quality objectives established under chs. 281
23 and 283, Stats. These practices, techniques or measures are in ch. NR 154 and s. NR 243.26, ss.
24 ATCP 50.61-50.95, the technical guide and may also include additional practices and procedures
25 as determined by the department. *as determined by the department*

26 (2) "Animal feeding operation" means a feedlot or facility, other than a pasture, where
27 animals have been, are or will be fed, confined, maintained or stabled for a total of 45 days or
28 more in any 12-month period. Two or more animal feeding operations under common ownership
29 or common management are a single operation if at least one of the following is true:

30 (a) The operations are adjacent.

1 (b) The operations utilize common areas, systems or acreage for the landspreading of
2 manure.

3 (c) Waste, manure or barnyard runoff are commingled in a common storage facility prior
4 to landspreading.

5 (3) "Animal unit" means a unit of measure used to determine the total number of single
6 animal types or combination of animal types, as specified in s. NR 243.11, which are fed,
7 confined, maintained or stabled in an animal feeding operation. For the purposes of this chapter,
8 one animal unit is equivalent to one head of beef or slaughter cattle weighing more than 1000
9 pounds.

10 (4) "Applicable performance standards and prohibitions" means, *revised* for the purposes of this
11 chapter, performance standards and prohibitions contained in ss. NR 151.04, 151.05, 151.06,
12 151.07 and 151.08.

13 (5) "ASTM" means the American society for testing and materials.

14 (6) "Combined animal units" means any combination of animal types calculated by
15 adding the number of single animal types as multiplied by the equivalency factors as specified in
16 s. NR 243.11.

17 (7) "Contaminated runoff" means that portion of manure and precipitation which flows
18 from animal feeding operations and transports pollutants such as organic matter, suspended solids
19 or nutrients.

20 (8) "Compost" means a material, as defined in s. NR 500.03(44), which has been
21 decomposed by composting to the extent that the material will not significantly reheat due to
22 action of microorganisms when subjected to optimum oxygen, moisture, nutrients, and thermal
23 conditions.

24 (9) "Composting" means, as defined in s. NR 500.03(45), an aerobic-decomposition
25 process by which mircoorganisms or soil invertebrates reduce materials into component
26 compounds, producing carbon dioxide and water as primary by-products.

1 (10) "County agency" means a land conservation committee, department or other agency
2 of the county designated by the county board to provide assistance to the owner or operator of an
3 animal feeding operation, as specified in ss. NR 243.22 and 243.23.

4 (11) "DATCP" means department of agriculture, trade and consumer protection.

5 (12) "Department" means the Wisconsin department of natural resources.

6 (13) "Designed structures" means groundwater monitoring systems, runoff control
7 structures, permanent spray irrigation or other land application systems, manure storage facilities
8 or other manure treatment systems.

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

11 (15) "Dry lot" means a facility for growing ducks in confinement with no access to
12 external swimming areas.

13 (16) "Exceptional resource water" means any surface water, or portion thereof, in s. NR
14 102.11.

15 (17) "Existing operation" means any livestock facility, operation or practice in existence
16 prior to October 14, 1997 and any expansion or modification to a facility, operation or practice
17 which occurred prior to the effective date of this rule...[revisor insert date]

18 (18) "Expansion or modification" means adding a significant amount of land, capital or
19 animals after the effective date of this rule...[revisor insert date]

20 Note: If an operation in existence prior to October 14, 1997 initiates an expansion after
21 October 14, 1997, but before the effective date of this rule...[revisor insert date], the entire
22 operation is considered an existing operation. If an operation in existence prior to October 14,
23 1997 initiates an expansion after the effective date of this rule...[revisor insert date], the
24 expanded or modified portion is considered a "new operation" and an owner or operator must
25 comply with the performance standards or prohibitions for that expanded or modified portion
26 regardless of whether cost-sharing is made available. Cost-sharing dollars, however, will still be
27 available for the portion of the operation in existence prior to the effective date of this
28 rule...[revisor insert date].

1 (19) "Filter strip" means a designed and constructed strip or area of vegetation for
2 reducing sediment, organic matter and other pollutants contained in runoff.

3 (20) "Governmental unit" means any unit of government including, but not limited to, a ^{not necessary}
4 county, city, village, town, metropolitan sewerage district created under ss. 66.20 to 66.26 or
5 66.88 to 66.918, Stats., town sanitary district, public inland lake protection and rehabilitation
6 district, regional planning commission or drainage district operating under ch. 88, Stats.
7 Governmental unit does not include the state or any state agency.

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

11 (22) "Large animal feeding operation" means an animal feeding operation which feeds,
12 confines, maintains or stables 1,000 animal units or more.

13 (23) "Manure" means excreta from livestock, poultry or other animals.

14 (24) "New operation" means any livestock facility, operation or practice that did not
15 exist before October 14, 1997 and any expansion or modification to an operation which was
16 initiated on or after the effective date of this rule...[revisor insert date] and any transfer of
17 ownership of an existing operation to a non-family member which occurred on or after October
18 14, 1997.

19 (25) "NRCS" means natural resources conservation service.

20 (26) "Outstanding resource water" means any surface water, or portion thereof, in s. NR
21 102.10.

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

24 (28) "Permanent runoff control structures" means constructions and devices installed to
25 control, divert or retard surface runoff water.

26 (29) "Schedule of compliance" means a schedule of corrective measures including an
27 enforceable sequence of actions or operations leading to compliance with an effluent limitation or
28 other limitation, prohibition or standard.

1 (30) "Source water protection area" means an area delineated by the department for a
2 public water system or including numerous public water systems, whether the source is ground
3 water or surface water or both, as part of the state source water assessment program approved by
4 the U.S. environmental protection agency under section 1453 of the safe drinking water act.

5 (31) "Storage facility" means an excavated or diked pond, walled structure or platform
6 designed for containment of manure.

7 (32) "Technical guide" means Section IV of the Wisconsin natural resources
8 conservation service field office technical guide effective on the effective date of this
9 rule...[revisor insert date].

10 Note: Copies of the technical guide may be inspected at the offices of the
11 department, DATCP, NRCS, county land conservation departments, the secretary of state
12 and the revisor of statutes.

13 (33) "303(d) listed waters" means the list of impaired waters in the state
14 developed by the department pursuant to 33 USC 1313 and 40 CFR s. 130.7.

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

19 (35) "25-year, 24-hour rainfall event" means a rainfall event measured in terms
20 of the depth of rainfall occurring within a 24-hour period and having an expected
21 recurrence interval of once in 25 years.

22 (36) "Waters of the state" has the meaning specified under s. 283.01(13), Stats.

23 Note: This definition includes both ground and surface water.

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

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

1 **NR 243.05 Modification procedures.** The design standards and accepted manure
 2 management practices specified in this chapter may be modified by the department for an animal
 3 feeding operation subject to this chapter when the owner or operator responsible for the animal
 4 feeding operation demonstrates that the standards and practices are more stringent than necessary
 5 to avoid a detrimental effect on water quality. This demonstration may be made during the permit
 6 issuance process under ch. 283, Stats., and ch. NR 203, or during the plan review process under s.
 7 281.41, Stats.

8 **NR 243.06 Rainfall events.** The design rainfall amount and probable intensity of 25-
 9 year, 24-hour rainfall events for locations in Wisconsin shall be determined from the data in table
 10 1, or for a particular location, the determination may be made on the basis of more recent rainfall
 11 probability data verified by a government agency and approved by the department for this
 12 purpose.

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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

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Subchapter II – Requirements for Large Animal Feeding Operations

NR 243.11 Applicability. (1) Any person who owns or operates a large animal feeding operation or will own or operate a large animal feeding operation within 12 months, is required to file an application for a permit with the department. The total number of animal units for a subcategory shall be calculated by multiplying the number of animals for each animal type by the appropriate equivalency factor from table 2, and summing the products. The number of combined animal units shall be the sum of the number of animal units for each subcategory. For animal types not listed in table 2, the equivalency to animal units shall be based on live animal weights. In these cases, 1,000 pounds is equivalent to one animal unit. Based on the application and the provisions of this subchapter, the department shall determine whether a permit needs to be issued.

Note: Stormwater construction site requirements outlined in ch. NR 216 may apply to construction activities.

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

of what?

Permitting requirement 5.1.10, manual

Rule doesn't seem to deal w/ issuance of permits

Number Equivalent To 1,000 Animal Units	Subcategory of Animal Types	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 (1000 lbs to Mkt)	1.0
1250	Steers or Cows (600 to 1000 lbs)	0.8

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
	TURKEYS:	
55000	Per Bird	0.018
	COMBINED ANIMAL UNITS:	
1000	Calculated Total	

1 **NR 243.12 Application requirements.** (1) Owners or operators of large animal feeding
2 operations which are required to obtain a WPDES permit shall, in accordance with s. 283.37(2),
3 Stats., submit a complete application to the department at least 12 months prior to the intended
4 date on which animals would be confined at the operation. Operations that hold a WPDES
5 permit shall reapply at least 180 days prior to the expiration date of their WPDES permit.

6 (2) As part of the application, a new applicant for a WPDES permit shall submit:

7 (a) The location of the existing or proposed site on plat maps, aerial photographs, soil
8 survey maps and on a scaled drawing, the location of animal housing, manure storage and runoff
9 control structures, groundwater monitoring wells, loafing and outside lot areas and feed storage
10 structures.

11 (b) A draft manure management plan prepared in accordance with NRCS Standard 590,
12 dated February 1999, which includes, but is not limited to, a calculation of total manure produced
13 on an annual basis, description of the normal method of manure application or incorporation, a
14 calculation of needed landspreading acreage based on nitrogen or phosphorus content of the
15 manure, a list of adequate fields for landspreading manure, available aerial photographs and soil
16 tests for fields to be used for landspreading, and an evaluation of nonspreadable areas within
17 fields. NRCS Standard 590, dated February 1999, is incorporated by reference for this chapter.

1 Note: Copies of this standard may be inspected at the offices of the department, DATCP,
2 NRCS, county land conservation departments, the secretary of state and the revisor of statutes,
3 Madison, WI.

4 (c) A description of proposed and existing manure storage facilities. Plans and
5 specifications for new manure storage facilities or proposed modifications to existing manure
6 storage facilities shall also be submitted. Upon approval by the department, plans and
7 specifications for proposed storage facilities may be submitted during the term of the permit. For
8 existing manure storage facilities, available post-construction documentation shall be submitted.
9 At a minimum, this documentation shall contain the date and materials of construction and an
10 evaluation of the structure's ability to meet the intent of the performance criteria and
11 specifications found in NRCS Standard 313, dated September 1998. NRCS Standard 313, dated
12 September 1998, is incorporated by reference for this chapter.

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

16 (d) A description of proposed and existing runoff control systems, groundwater
17 monitoring systems and permanent spray irrigation or other landspreading systems. Plans and
18 specifications for new systems or proposed modifications to existing systems shall be submitted.
19 Upon approval by the department, plans and specification for proposed systems may be
20 submitted during the term of the permit. For existing systems, available post construction
21 documentation shall be submitted. For an existing runoff control system, this documentation shall
22 contain, at a minimum, an evaluation of the system's ability to control runoff from a 25-year, 24-
23 hour rainfall event.

24 (e) Any other information necessary to comply with the requirements of ch. NR 150.

25 (3) Applications shall be submitted on form 3400-25, including a completed animal unit
26 calculation worksheet.

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

1 **NR 243.13 Manure management.** (1) **MANURE MANAGEMENT PLANS.** Owners
2 or operators of large animal feeding operations which are required to obtain a WPDES permit
3 shall, prior to issuance of the permit, develop and submit a final manure management plan to the
4 department for approval. Owners or operators of animal feeding operations holding a WPDES
5 permit shall retain an up-to-date management plan.

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

11 (3) **TECHNICAL STANDARDS.** Submitted final manure management plans shall at a
12 minimum meet specifications for nutrient management contained in NRCS Standard 590,
13 February 1999.

14 (4) **OTHER NUTRIENTS.** Nutrient levels from commercial fertilizers and sludge
15 applied on fields where manure will be landspread shall be accounted for as part of the manure
16 management plan.

17 (5) **PERMIT CONDITIONS.** (a) Conditions contained in the WPDES permit for
18 manure management plans may include additional restrictions or management practices beyond
19 those found in NRCS Standard 590, February 1999. These may include additional restrictions on
20 nitrogen and phosphorus loadings, incorporation requirements, restrictions on winter
21 landspreading and distribution schedules when necessary to protect water quality. The
22 department shall consider nutrient management conditions contained in ch. ACTP 50 as well as
23 the following factors when developing permit conditions or reviewing and approving the
24 management plan, or any proposed amendments to an approved management plan:

25 1. Potential impacts on and impairments to waters of the state due to overapplication or
26 runoff of the manure.

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

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

- 1 4. Available storage capacity and method of application.
- 2 5. Nutrient requirements of the crop or crops to be grown on the fields utilizing the
- 3 manure.
- 4 6. The presence of subsurface drainage tile systems.
- 5 7. Potential impacts to waters identified as part of the state source water assessment
- 6 program approved by EPA under section 132 of the safe drinking water act, 1996 amendments. *cite*

7 (b) Conditions contained in the WPDES permit for manure management plans shall
8 include additional restrictions or management practices beyond those found in NRCS Standard
9 590, February 1999, when necessary to control phosphorus loadings in a manner that will not
10 contribute to the impairment of a 303(d) listed waterbody. *water body*

11 (c) Conditions contained in the WPDES permit for manure management plans shall
12 include additional restrictions or management practices beyond those found in NRCS Standard
13 590, February 1999, when necessary to control phosphorus loadings in a manner that will not
14 alter the background quality of outstanding or exceptional resource waters identified in ch. NR
15 102.

16 (d) The owner or operator shall be responsible for all manure from the operation and
17 associated implementation of the approved management plan, in accordance with conditions
18 contained in the WPDES permit, except under the following conditions:

19 1. The manure is processed, distributed and sold as a commercial product pursuant to a
20 Wisconsin commercial fertilizer license issued by DATCP and the owner or operator does not
21 land apply the manure. The amount of manure managed in such a manner shall be reported to the
22 department on an annual basis.

23 2. The manure is sold to another operation permitted under a WPDES permit with an
24 approved manure management plan and the owner or operator does not land apply the manure.
25 The amount of manure managed in such a manner shall be reported to the department on an
26 annual basis. *which owner or operator*
by whom

don't rule out this to be an aerobic process (243.04(9))

1 (6) COMPOSTING. (a) If the operation is composting manure under anaerobic
2 conditions, the material being processed, stored or landsread shall be considered manure and
3 shall meet all storage and landspreading provisions of subch. II.

4 (b) If the operation is composting manure under aerobic conditions and the owner or
5 operator obtains a written exemption for composted material under ch. NR 502 from the solid
6 waste management program siting and landspreading requirements, the material being processed,
7 stored or landsread shall be considered manure and shall meet all storage and landspreading
8 provisions of subch. II.

9 (c) If the operation is composting manure under aerobic conditions and the operator can
10 not obtain an exemption for composted material under ch. NR 502, a solid waste license shall be
11 obtained and conditions of ch. NR 502 are applicable. The owner or operator shall maintain
12 written documentation of conformance with ch. NR 502 requirements on site for department
13 review.

14 (7) SHORT-TERM MANURE STACKING. Short-term stacking of manure is not
15 allowed, except if approved by the department. Short-term stacking requests will be reviewed on
16 a case-by-case basis. All approved short-term stacks, at a minimum, shall meet the specifications
17 in NRCS Standard 313, September 1998. The department may require additional restrictions
18 which include, but are not limited to, acceptable time periods for stacking, how long the manure
19 stacks may remain in place, size of manure stacks, loading and resting requirements of stacking
20 sites and slope restrictions. Stacking will not be allowed in water quality management areas.

what quality is this?

21 **NR 243.14 Submittal and approval of plans and specifications for designed**

22 **structures.** (1) GENERAL. For new applicants, in accordance with s. NR 243.12, plans and
23 specifications for designed structures shall be submitted as part of the permit application unless
24 department approval is received for a later submittal. Plans and specifications shall also be
25 submitted during the term of the permit, if construction of a new designed structure or a
26 modification to an existing designed structure is proposed during the term of the permit.

27 Submittal of plans and specifications shall meet the requirements in s. NR 108.04, including the
28 requirement that submittals occur at least 90 days prior to the anticipated date upon which the
29 owner or operator plans to commence construction. An owner or operator may not commence
30 construction of runoff control structures, permanent spray irrigation or other land application

why is this necessary? put in note.

7

1 systems, groundwater monitoring systems, manure storage facilities, or other manure treatment
2 systems until plans and specifications have been approved by the department in writing.

3 Note: This approval may be in addition to any local or county approvals needed. Also, a
4 storm water construction WPDES permit may be required prior to construction pursuant to ch.
5 NR 216.

6 (2) RUNOFF CONTROL. Owners or operators of large animal feeding operations shall
7 control point sources of contaminated runoff in accordance with the design standard specified in
8 par. (a). This design standard shall be achieved by installing, operating and maintaining
9 permanent runoff control structures which include, but are not limited to, established practices
10 specified in the technical guide, such as filter strips, sediment basins, waste storage facilities, roof
11 runoff management and grassed waterways or diversions.

(a) should be level - not an intro

had intro

12 (a) Owners or operators of large animal feeding operations shall design permanent
13 runoff control structures according to the maximum amount of rainfall generated by a 25-year,
14 24-hour rainfall event for the location of the point source. This standard may be modified in
15 accordance with s. NR 243.05.

16 (b) Practices other than those contained in the technical guide or ch. ATCP 50 may be
17 substituted to satisfy the provisions of sub. (2) provided that the substitutions are approved as
18 alternative practices by the department. Approval will be granted if the alternative practice was
19 designed according to standard engineering principles and the design and operation achieves the
20 level of runoff control specified in par. (a)

21 (c) The department may require that the level of runoff control specified in par. (a) be
22 superseded by additional discharge limitations, if the limitations are necessary for water quality
23 protection.

How does work

24 (3) MANURE STORAGE. Owners or operators of large animal feeding operations
25 which have selected temporary storage as part of a manure management system shall design
26 storage facilities that at a minimum meet the design specifications contained in NRCS Standard
27 313, September 1998. Plans and specifications submitted by the permittee for department
28 approval shall include a written management and site assessment, operation and maintenance
29 plan and relevant calculations for any proposed manure storage facility.

1 (a) *General.* Storage structures shall be designed to provide storage capacity that is
2 consistent with the operation's department approved manure management plan. Permittees shall
3 operate and maintain manure storage facilities to prevent overtopping and discharges to waters of
4 the state.

5 (b) *Following construction.* The owner or operator shall submit a post-construction
6 report to the department that includes construction documentation. At a minimum, construction
7 documentation shall verify that the specific criteria for confined impoundments found in NRCS
8 Standard 313, September 1998, Table 1, 2, 3, 4 or 5 have been met.

9 (c) *Additional requirements.* The department may require additional design and
10 operation requirements for water quality protection, beyond those contained in NRCS Standard
11 313, September 1998, based on the following conditions:

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

14 2. Soil limitations such as permeability, infiltration rate, drainage class and flooding
15 hazard.

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

17 4. Available storage capacity and method of application.

18 (d) *Earthen lined storage structures.* 1. Prior to construction, representative samples
19 shall be taken from the soil used to line the bottom and sidewalls of the facility and analyzed by a
20 soils testing laboratory or engineering firm for the following parameters: dry density, water
21 content, compaction curves, particle size distribution, plastic index, permeability at design
22 compaction and soil classification. Sample analysis results shall meet or exceed the design
23 specifications contained in NRCS Standard 313, September 1998.

24 2. Following construction of an earthen lined storage facility, the department may also
25 require that random core samples be extracted from the constructed liner, in the event that critical
26 groundwater, geologic or construction conditions warrant. When testing is required, the core
27 samples shall be extracted at a rate of 4 per acre of wetted area; except that a minimum of 3 core
28 samples shall be extracted if the wetted area is less than one acre. The samples shall be split
29 proportionally between the wetted areas of the bottom liner and sidewall liner relative to the total

1 area of each. All test holes shall be recompacted to a density equal to or greater than the
 2 surrounding liner material. All of the core samples shall be analyzed by a soils testing laboratory
 3 or engineering firm for the following parameters: dry density, water content, degree of
 4 compaction, thickness of seal and particle size distribution. A permeability test shall also be
 5 performed on at least 25% of the total number of samples. The performance standard for liner
 6 thickness is met if the thickness of each of the liner samples is equal to or greater than the
 7 specified design thickness. *what is this*

8 3. The testing required in subs. 1. and 2. shall be conducted in accordance with the
 9 methods specified in table 3; except that the permeability of constructed earthen liners shall be
 10 determined using a laboratory permeability test on hydrated and saturated specimens of the liner
 11 material, compacted at the same approximate density as exists in the infield condition. Tests may
 12 be performed on remolded or core samples. The permeability shall be based on stabilized inflow
 13 and outflow rates during the test. Methods other than those listed in table 3 may be approved by
 14 the department on a case-by-case basis. The methods in table 3 are incorporated by reference.

TABLE 3 Soil Testing Methods	
Test	Method
Core Sample Extraction	ASTM D1587 (1994)
Particle Size Analysis	ASTM D422 (1998)
Plastic Index	ASTM D424 (1971)
Standard Proctor Density	ASTM D698 (1991)
In Place Density	ASTM D2922 (1991) or ASTM D2937 (1994)

15 Note: Copies of ASTM standards referenced in this chapter are available for inspection
 16 at the offices of the department of natural resources, the secretary of state and the revisor of
 17 statutes. ASTM standards may be obtained from the American society for testing and materials,
 18 1916 Race Street, Philadelphia, PA 19103. *as of when*

19 (e) *Evaluation and exemption process for existing manure storage facilities.* The
 20 department may require an evaluation of an existing manure storage facility based on factors such
 21 as, but not limited to, age of the facility, the facility's inability to meet design specifications of
 22 the current NRCS Standard 313, September 1998, and physical location of the storage facility to
 23 waters of the state. If the existing manure storage facility does not meet the design standards in
 24 NRCS Standard 313, September 1998, the owner or operator may request an exemption from
 25 NRCS Standard 313, September 1998. In the exemption request, the owner or operator shall
 26 demonstrate that the facility complies with the following performance criteria: *How? what?*

1 1. Any pollutant dilution, dispersion or degradation that may occur will occur within the
2 design management zone as defined in ch. NR 140.

3 2. Any increases of substances in the groundwater from the storage structure will be
4 minimized to the extent technically and economically feasible, and

5 3. Any applicable groundwater and surface water standards will not be exceeded if the
6 facility is not upgraded.

7 (4) PERMANENT SPRAY IRRIGATION SYSTEMS. Department approval is required
8 prior to the construction and operation of a permanent spray irrigation system or other permanent
9 land treatment system. Proposed permanent spray irrigation and other treatment systems shall
10 meet the site location criteria in s. NR 214.14(1), operating requirements in s. NR 214.14(5), and
11 soil investigation and groundwater monitoring criteria in ss. NR 214.20 and 214.21.

*How do you
get approval?*

12 (5) GROUNDWATER MONITORING. The department may require the installation of
13 groundwater monitoring wells in the vicinity of manure storage facilities, runoff control systems,
14 permanent spray irrigation systems and other treatment systems in those situations where critical
15 groundwater, geologic or construction conditions warrant. If a groundwater monitoring system is
16 required, it shall be designed, constructed and monitored in accordance with chs. NR 140 and 141
17 and s. NR 214.21(2).

18 (6) ABANDONMENT. Abandonment of manure storage facilities shall be completed, at
19 a minimum, according to the NRCS Standard 313, September 1998, requirements. Abandonment
20 of a manure storage facility occurs when manure has not been added or removed for a period of
21 24 months, unless the owner or operator can provide information to the department that the
22 structure is designed to store manure for a longer period of time or information that the storage
23 structure will be utilized within a specific period of time. Groundwater monitoring wells shall be
24 abandoned in accordance with ch. NR 141. If the permittee wishes to abandon other practices or
25 structures, an abandonment plan shall be submitted to the department for prior approval.

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26 **NR 243.15 Industrial, mixed and other wastes.** (1) INDUSTRIAL WASTES. If
27 industrial wastewater, including milkhouse wastewater, is separated and stored separately from
28 manure, the storage and land application of the industrial wastewater is subject to the
29 requirements of chs. NR 213 and ch. NR 214.

X

1 (2) MIXED WASTES. If manure is mixed with industrial wastewater and 10 percent or
2 more of the volume of the mixture consists of industrial wastewater, then the storage of the
3 mixed wastewater is subject to the requirements of ch. NR 213 and the land application of the
4 mixed wastewater is subject to the requirements of ch. NR 214. If manure is mixed with
5 industrial wastewater and less than 10 percent of the volume of the mixture consists of industrial
6 wastewater, then the storage and land application of the mixture is subject to the requirements of
7 this chapter.

8 (3) SEPTAGE. If septage is mixed with manure in a manure storage facility, the mixed
9 wastes are subject to the requirements of s. NR 113.12(4).

10 **NR 243.16 Performance standards and prohibitions.** Owners or operators of large
11 animal feeding operations shall comply with applicable performance standards and prohibitions
12 prescribed in ch. NR 151, in accordance with the terms of their WPDES permit.

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

14 **NR 243.21 Applicability.** (1) The purpose of this subchapter is to address, in
15 cooperation with other federal, state and county agencies, unacceptable practices at animal
16 feeding operations with fewer than 1000 animal units. Animal feeding operations not classified as
17 a large animal feeding operation pursuant to s. NR 243.11, may be subject to this subchapter, if
18 the department or other federal, state, or county agency determines through an onsite
19 investigation that unacceptable practices exist at an operation.

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20 **NR 243.22 Department determination of unacceptable practices.** (1) No
21 determination may be made by the department that an unacceptable practice exists at an operation
22 until there has been an onsite investigation by the department or a federal, state or county agency.
23 In making the determination under this section, the department shall consider the following
24 information obtained during the onsite investigation:

- 25 (a) Compliance with performance standards and prohibitions outlined in ch. NR 151.
- 26 (b) The impact on the waters of the state receiving a discharge.
- 27 (c) The size of the animal feeding operation and the amount of wastes reaching waters of
28 the state.
- 29 (d) The location of the animal feeding operation relative to waters of the state.

1 (e) The means by which the manure is conveyed into waters of the state.

2 (f) The slope, vegetation, rainfall, tributary drainage area and other factors contributing
3 to the amount and frequency of discharge of manure into waters of the state.

4 (2) If a determination is made that unacceptable practices exist, the department shall
5 contact the designated county agency or DATCP and request that assistance be provided to the
6 owner or operator. This contact will be made as early as possible to maximize opportunities for
7 the designated county agency or DATCP to provide assistance to the owner or operator.

in relation to what?

8 (3) The department shall prepare a report which describes the results of the onsite
9 investigation. A copy of the report of the onsite investigation shall be provided to the owner or
10 operator. If requested, a copy of the report shall also be provided to the designated county agency
11 or DATCP.

by whom?

12 **NR 243.23 Notice of discharge. (1) IDENTIFICATION OF UNACCEPTABLE**
13 **PRACTICES.** Upon identification of unacceptable practices at a given operation, either based on
14 a department onsite investigation or based on investigative efforts conducted by a federal, state or
15 county agency, the department shall determine if additional action is required to address the
16 unacceptable practice. If the department determines that additional action is required, the
17 department may provide the owner or operator of the animal feeding operation with a notice of
18 discharge, or NOD, setting forth:

signature date

call of the bill

19 (a) The nature of the unacceptable practice. The department shall state if the
20 unacceptable practice is identified as a failure to comply with applicable performance standards
21 and prohibitions or a discharge of a significant amount of pollutants to waters of the state, or
22 both. A discharge of a significant amount of pollutants to waters of the state includes, ~~but is not~~
23 ~~limited to:~~

added to bill

- 24 1. Overflow from a manure storage facility.
- 25 2. Overapplication of manure.
- 26 3. Direct runoff of manure from the operation.
- 27 4. Discharge of leachate from a manure stack.
- 28 5. Seepage from a manure storage facility.

1 6. Construction of a manure storage facility in permeable soils or over fractured bedrock
2 without a liner designed to meet the specifications for waste storage facilities contained in NRCS
3 Standard 313, September 1998.

4 (b) One or more suggested corrective measures for the unacceptable practice;

5 (c) For existing operations, a determination stating whether the corrective measures are
6 eligible for cost-sharing and whether cost-sharing has previously been made available by a
7 federal, state or local government cost-share program to correct the unacceptable practice;

8 (d) A list of known governmental or private services which may be available to provide
9 technical or financial assistance; and,

10 (e) A reasonable time period for implementing necessary corrective measures. The time
11 period may not be less than 60 days nor more than 2 years from the date of the notice, unless an
12 alternative time period has been mutually agreed upon by the department and the owner or
13 operator of the operation or as provided in par. (f) or sub. (2)(a) or (b).

14 (f) In situations where the unacceptable practice represents an imminent threat to public
15 health or fish and aquatic life and the corrective measures do not require cost-sharing, a
16 determination stating that corrective measures require implementation in less than 60 days of the
17 notice.

18 (2) CORRECTIVE MEASURES. The owner or operator of the animal feeding operation
19 shall address the unacceptable practice identified in an NOD by implementing necessary
20 corrective measures identified in ss. NR 243.25 and 243.26.

21 ? (a) Existing operations. 1. If the corrective measures to address unacceptable practices
22 involve eligible costs, the owner or operator shall implement corrective measures when cost-
23 sharing has been made available to the owner or operator from any funding sources for eligible
24 costs. The time period specified in the NOD for implementation of corrective measures begins
25 on the date cost-share dollars are first made available to the owner or operator by the department.
26 If the department determines that cost-sharing has previously been made available to the owner
27 or operator for eligible costs by any funding source, the owner or operator shall implement
28 corrective measures within the time period specified in the NOD, regardless of the availability of
29 cost-sharing.

Not an intro.
+ Stat Ask
281.16(4)
only applicable
if available
not "was a"

1 2. If the corrective measures to address unacceptable practices do not involve eligible
2 costs, the owner or operator shall implement the corrective measures within the time period
3 specified in the NOD, regardless of the availability of cost-sharing.

4 (b) *New operations.* Owners or operators of new operations shall implement corrective
5 measures, regardless of the availability of cost-sharing. In the event an NOD is issued to a new
6 operation, the owner or operator shall correct unacceptable practices within the time period
7 specified in the NOD, regardless of the availability of cost-sharing.

8 (c) *Cost-sharing availability.* Cost-sharing is considered to be made available for eligible
9 costs to the owner or operator when: *either of the following occur*

10 1. Cost-sharing has been offered to the owner or operator from any funding sources for
11 at least 70% of the eligible costs needed to implement corrective measures; or

12 2. The federal or state government has offered a grant to a local governmental unit
13 covering at least 70% of eligible costs of the owner or operator needed to implement corrective
14 measures.

15 (d) *Eligible costs.* Eligible costs are those costs associated with a corrective measure
16 which a federal, state or local government cost-share program has determined to be eligible for
17 cost-sharing. The department shall use the respective program's determination of eligible costs to
18 determine if cost-sharing has been made available to an operation to implement a corrective
19 measure. For department related cost-share programs, eligible costs do not include the value or
20 amount of time spent by an owner or operator in making management changes.

21 Note: Examples of costs eligible for cost-sharing under department cost-share programs
22 are contained in chs. NR 120, NR 153 and NR 154. Under department programs, eligible costs
23 typically involve capital costs or significant out-of-pocket costs incurred by an owner or operator.

24 Note: The department's priorities for addressing unacceptable practices include those
25 operations located in high priority areas such as 303(d) listed watersheds and outstanding or
26 exceptional resource waters or those operations which are considered priority operations such as
27 those operations which fall under the purview of the USDA/EPA Unified National Strategy for
28 Animal Feeding Operations. In addition, the department intends to take action under ch. NR 243
29 in cases where the county or local unit of government has failed to appropriately address an
30 operation with unacceptable practices.

31 (3) COUNTY OR DATCP REVIEW. When the designated county agency or DATCP
32 has expressed an interest in reviewing the proposed corrective measures, the owner or operator
33 may submit the proposal to that agency for review. If the designated county agency or DATCP

1 does not wish to review the proposal, the department may request that the proposal be submitted
2 to the department for review prior to implementing the corrective measures.

3 (4) WRITTEN REPORTS. If the designated county agency or DATCP chooses to review
4 the proposal, a written report shall be submitted to the department which specifies the corrective
5 measures to be used in addressing the unacceptable practice. If a practice other than those
6 specified in ch. NR 154, ATCP 50 or the technical guide is proposed as a corrective measure, the
7 written report shall specify the manner in which the alternative practice satisfies the provisions of
8 s. NR 243.26 (2). A copy of the report shall also be sent to the owner or operator.

9 (5) ^{Works title} The owner or operator, designated county agency or DATCP shall notify the
10 department as to the status of implementing the corrective measures prior to the end of the time
11 period specified in sub. (1)(e) or (f) or (2).

12 **NR 243.24 Enforcement and permits.** (1) Failure to implement the necessary corrective
13 measures within the time period provided in the notice of discharge under s. NR 243.23, will
14 result in the department either pursuing enforcement action under s. 281.98, Stats., for failure to
15 comply with applicable performance standards and prohibitions or commencing the process of
16 issuing a WPDES permit. WPDES permits issued under this section may contain a schedule of
17 compliance designed to implement accepted manure management practices necessary to control
18 the discharge or comply with performance standards and prohibitions. Under the provisions of
19 ch. NR 203, the owner or operator may request an administrative review of the department's
20 decision to issue a WPDES permit and the terms and conditions of the permit.

21 (2) In situations where a significant discharge of manure to waters of the state occurs due
22 to intentional acts or mismanagement by an owner or operator, the department may seek direct
23 enforcement action rather than issue an NOD to the owner or operator.

24 **NR 243.25 Design standard.** Owners or operators of animal feeding operations subject
25 to the provisions of s. NR 243.23 or 243.24 shall design and install permanent runoff control
26 structures, according to the maximum amount of rainfall generated by a 25-year, 24-hour rainfall
27 event for the location of the operation. This standard may be modified in accordance with the
28 provisions of s. NR 243.05.

29 **NR 243.26 Accepted manure management practices.** (1) Accepted manure
30 management practices, including the development of a manure management plan, shall also be

1 used to satisfy the requirements of either s. NR 243.23 or 243.24 in implementing the necessary
2 corrective measures relative to runoff control, storage or disposal of manure or milkhouse wastes,
3 and compliance with performance standards and prohibitions.

4 (2) Practices other than those specified in ch. NR 154, ch. ATCP 50 or the technical
5 guide may be substituted to satisfy the provisions of sub. (1) provided that the substitutions are
6 reviewed and recommended by the designated county agency or DATCP and approved by the
7 department. Approval will be granted if the alternative practice is designed according to standard
8 engineering principles and the design achieves the level of runoff control specified in s. NR
9 243.25 or achieves compliance with performance standards and prohibitions.

10 (3) The department may require that accepted manure management practices or the level
11 of runoff control specified in s. NR 243.25 be superseded by additional requirements or discharge
12 limits, if the department can demonstrate that the requirements are necessary to protect water
13 quality.

14 **NR 243.27. Funding conditions for NOD projects.** (1) GENERAL. The department
15 may provide cost-sharing for eligible costs of corrective measures or practices installed to
16 remediate an NOD. Eligible costs are defined in chs. NR 153 and 154. *So the eligible costs are*

17 (2) RUNOFF MANAGEMENT GRANT AGREEMENTS. (a) A runoff management
18 grant agreement is an agreement entered into between the department and a governmental unit or
19 state agency to provide cost-sharing for practices to remediate an NOD. *grant as*

20 (b) For practices that are eligible for cost-sharing, the department may sign a runoff
21 management grant agreement making cost-share funds available to the governmental unit or state
22 agency for distribution to a cost-share recipient to remediate an NOD. The signing of the runoff
23 management grant agreement by department shall constitute cost-share availability for the
24 purposes of s. NR 243.23(2)(c)1. and 2.. *X*

25 (c) Except for s. 153.004(1)(f), the runoff management grant agreement requirements in
26 s. NR 153.004 apply to runoff management grant agreements entered into by the department to
27 fund practices to remediate an NOD. *NR ?*

28 (3) COST-SHARE AGREEMENTS. A cost-share agreement is an agreement established
29 between the governmental unit or state agency and the cost-share recipient which identifies the
30 practices to remediate an NOD and establishes conditions and considerations under which a cost-
31 share recipient agrees to install practices consistent with corrective measures identified in the
32 NOD or grant application.

1 (4) EASEMENTS AND PROPERTY ACQUISITIONS. (a) Easements may be utilized
2 as a corrective measure for an NOD. The requirements in s. NR 153.006 apply to easements
3 used as a corrective measure when funded by the department to remediate an NOD.

4 (e) Property acquisition is not eligible for cost-sharing funding from the department to
5 remediate an NOD.

6 (5) COST CONTAINMENT PROCEDURES. The cost containment requirements in s.
7 NR 153.008 apply to governmental units and practices which receive funding from the
8 department to remediate an NOD.

9 (6) REIMBURSEMENT AND PROCUREMENT. The reimbursement procedures and
10 procurement requirements in ss. NR 153.009 and 153.010 apply to governmental units and
11 practices which receive funding from the department to remediate an NOD.

12 (7) RECORDS AND REPORTING. The records, reporting and auditing requirements in
13 ss. NR 153.011 and NR 153.012 apply to governmental units which receive funds from the
14 department to remediate an NOD project.

15 (8) SUSPENSION, TERMINATION AND ENFORCEMENT OF GRANTS. The
16 provisions in ss. NR 153.013 and NR 153.014 apply to grants and projects funded by grants to
17 remediate an NOD.

18 (9) VARIANCES. The department may approve in writing a variance from a requirement
19 of this section upon written request when the department determines that a variance is essential to
20 effect necessary grant actions or water quality objectives and where special circumstances make a
21 variance in the best interest of the program. A governmental unit's written variance request shall
22 clearly explain the circumstances justifying the variance. Before approving a variance, the
23 department shall take into account factors such as good cause, circumstances beyond the control
24 of the governmental unit and financial hardship. The department may not grant variances from
25 statutory requirements.

26
27
28
29 The foregoing rule was approved and adopted by the State of Wisconsin Natural
30 Resources Board on _____.

1
2 The rule shall take effect on the first day of the month following publication in the
3 Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.
4

5
6 Dated at Madison, Wisconsin _____
7

8
9 STATE OF WISCONSIN
10 DEPARTMENT OF NATURAL RESOURCES
11

12
13
14 By _____
15 George E. Meyer, Secretary
16

17 (SEAL)