

CR 85-186

STATE OF WISCONSIN)
)
DEPARTMENT OF AGRICULTURE,) SS.
TRADE & CONSUMER PROTECTION)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Kenneth P. Robert, Administrator, Agricultural Resource Management Division, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order amending rules relating to the animal waste grant program, Chapter Ag 165, Wis. Adm. Code, was duly approved and adopted by the Department on May 5, 1986.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 5th day of May, 1986.

Kenneth P. Robert
Kenneth P. Robert, Administrator
Agricultural Resource Management
Division

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ORDER OF THE
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES

1 To repeal Ag 165.06(3)(a)4; to repeal and recreate
2 Ag 165.02(2)(b) and Ag 165.06(3)(b); to renumber Ag 165.01(3) and
3 (4) and Ag 165.11; to renumber and amend Ag 165.01(5) through (8),
4 Ag 165.04(2)(intro.), Ag 165.09 and Ag 165.10; to amend
5 Ag 165.02(1), (2)(a)(intro.), (a)5, (c), (d)(intro.), (d)2, (d)6,
6 (e)(intro.), (e)2(intro.), (e)3 and (f), (3) and (4),
7 Ag 165.04(1), (2)(b)1 through 4, (3)(intro.) and (a), (4)(intro.),
8 (b), (c) and (e), Ag 165.05(1), (2)(intro.) and (b), Ag 165.06(1),
9 (2), (3)(a)(intro.) and 3, (4)(a)(intro.) and 1, and (4)(b),
10 Ag 165.07(intro.), (2), and (9) through (11), Ag 165.08(1)(intro.)
11 and (a), (2), (3)(intro.), (a) and (c)5, (4) and (5); and to
12 create Ag 165.01(3), Ag 165.02(2)(a)6 and (d)7, Ag 165.05(3),
13 Ag 165.06(2)(d) and (e), and (4)(a)4, and Ag 165.09; relating to
14 the animal waste grant program.

Analysis Prepared by the Department of Agriculture
Trade and Consumer Protection

This rule amends ch. Ag 165, Wis. Adm. Code (Animal Waste Grant Program), relating to the administration of the Wisconsin Farmers Fund Program created under s. 92.15, Stats. This program provides cost-sharing grants to farmers for the design and installation of manure storage and treatment facilities, or facilities to control manure runoff, for the purpose of preventing water pollution problems related to animal waste. The program is administered by the Department of Agriculture, Trade and Consumer Protection (DATCP) and by the counties. Funds are distributed by the department to participating counties, which in turn provide individual cost-share grants to farmers within the participating counties.

Under prior rules, if a farmer received a notice of pollution discharge from the Department of Natural Resources (DNR), or was required by DNR to obtain a pollutant discharge elimination system permit under ch. 147, Stats., DATCP could make a direct cost-share grant to the farmer, whether or not the animal feeding operation was located within a participating county. Under the rule amendments, a farmer can be declared ineligible for a direct grant from DATCP if DATCP finds that: (a) the farmer initiated a discharge of pollutants for the purpose of obtaining a cost-share grant; (b) the farmer could eliminate the pollution discharge through improved management practices, at nominal cost to the farmer; (c) the farmer could have prevented the problem by following a previously agreed plan for operations and maintenance; or (d) no predictable water quality benefits will be achieved by the cost-share grant.

Under prior statutes, cost-share grants could only be made to finance the design or construction of animal waste treatment or storage facilities or permanent runoff control structures. This was changed by 1985 Wisconsin Act 8, which authorized cost-share payments for runoff control systems, as well as permanent runoff control structures. The rule amendments bring prior rules into conformity with the amended statutes. Runoff control systems are defined as structures, facilities or practices used to control, divert or retard surface runoff water, and include diversions, dams, dikes, settling basins, terraces, filter walls, picket dams, gutters, downspouts, underground outlets, filter strips, and other similar practices and devices.

Under prior rules, a cost-share grant could not be made to finance animal waste treatment or storage facilities if, in the absence of the facilities, the waste from the animal feeding operation can feasibly be applied to land without causing or aggravating a water quality problem. Under the amendments, even if animal waste can feasibly be applied to land, a farmer may qualify for a cost-share grant to repair or modify existing storage or treatment facilities if all of the following conditions are met: (1) the repair or modification is needed to meet water quality objectives; (2) the facilities are operational except for the components which are in need of repair or modification; and (3) the owner or operator has made a substantial investment in the facility which will be effectively lost if the facility is not repaired or modified.

Under s. 92.15(2)(c)6, Stats., and prior rules, if a cost-share grant was made for a project from the Wisconsin Farmers Fund, other cost-share grants from the county could not exceed 10 percent of the total cost incurred for the design and construction of the project. Under the rule amendments, this 10 percent limitation would not apply to federal cost-share funds distributed through the county.

Under prior statutes, the maximum combined grant from all governmental sources for animal waste treatment or permanent runoff control structures or storage facilities was limited to \$10,000. Under 1985 Wisconsin Act 8, this limitation no longer applies to facilities or systems whose principal purpose is to

control or prevent barnyard runoff. The rule amendments bring prior rules into conformity with the amended statutes.

Under prior rules, a portion of a cost-share grant could be used to finance engineering design services needed for the construction or repair of animal waste storage or treatment facilities, provided that the design services are provided by a qualified consulting engineer. Under the rule amendments, engineering design services can be financed out of a cost-share grant only if the services are provided by a registered professional engineer hired independently by the farmer.

Under 1985 Wisconsin Act 8, a county may now use up to 10 percent of the total funds paid under the Farmers Fund Program to pay for technical assistance and administrative services rendered by the county. Pursuant to 1985 Wisconsin Act 8, the proposed rule amendments would authorize DATCP to reimburse counties for technical assistance and administrative services up to the 10 percent amount. Prior rules prohibiting reimbursement for engineering design services provided by the county are repealed; however, counties are reimbursed directly by DATCP, rather than out of individual project grants.

Under prior rules, cost-share grants could not be used to pay for any portion of an animal waste storage or treatment facility which is installed under a building, and which forms part of a building or its foundation. This restriction is eliminated under the rule amendments, so that payments can be made for reception pits, hoppers or underground tanks when such structures or facilities appear to be cost-effective.

Under prior rules, counties were required to submit an annual accounting of program expenditures to the department by July 31 of each year. Under the rule amendments, counties are required to submit an annual accounting by June 30 of each year, and a final accounting of individual project expenditures within 60 days after the project completion date.

The rule amendments also make certain technical and editorial drafting changes to the current rule.

1 Pursuant to the authority vested in the state of Wisconsin
2 department of agriculture, trade and consumer protection by
3 s. 92.15, Stats., the department hereby repeals, amends and
4 creates rules interpreting s. 92.15, Stats., as follows:

5 SECTION 1. Ag 165.01(3) is created to read:

6 Ag 165.01(3) "County agency" means a land conservation com-
7 mittee, county department or other agency of the county designated

1 by the county board to assist the department with administration
2 of the animal waste grant program under this chapter.

3 SECTION 2. Ag 165.01(3) through Ag 165.01(8) are renumbered
4 Ag 165.01(4) through Ag 165.01(9), and Ag 165.01(6) through (9) as
5 renumbered are amended to read:

6 Ag 165.01(6) "~~Permanent-runoff~~ Runoff control structures
7 systems" means ~~constructions and devices~~ structures, facilities or
8 practices used to control, divert or retard surface runoff water,
9 and includes diversions, dams, dikes, settling basins, filter
10 walls, picket dams, gutters, downspouts, underground outlets,
11 filter strips, and other similar practices and devices.

12 (7) "Technical guide" means the technical guide which is
13 published by the soil conservation service of the United States
14 department of agriculture and which is in effect on March 1, ~~1984~~
15 1986.

16 (8) "Waste storage facility" means a concrete, steel or
17 otherwise fabricated structure, or an excavated or earthen
18 impoundment used for ~~temporary~~ storage of animal waste ~~or other~~
19 ~~organic agricultural wastes~~.

20 (9) "Waste treatment facility" means ~~a~~ an earthen lagoon, or
21 ~~an excavated or earthen impoundment~~ a concrete, steel or other
22 fabricated structure, used for biological treatment of animal
23 waste.

24 SECTION 3. Ag 165.02(1) and (2)(a)(intro.) are amended to
25 read:

26 Ag 165.02(1) GENERAL REQUIREMENT. To be eligible for the
27 receipt of animal waste grant funds under s. Ag 165.04, a county

1 agency shall prepare an animal waste ~~water-pollution-control~~ man-
2 agement plan as provided in this section. Plans shall be submit-
3 ted to the department for approval under sub. (3). No funds may
4 be granted to a county agency under s. Ag 165.04 until the county
5 board has adopted an approved plan.

6 (2) PLAN CONTENTS; PREPARATION. (a) Water pollution
7 sources; priority areas. The county animal waste ~~water-pollution~~
8 ~~control~~ management plan shall delineate priority areas within the
9 county where ~~animal waste water-pollution-problems~~ pollution prob-
10 lems associated with animal waste are most likely to occur. In
11 order to identify priority areas, the county agency shall
12 systematically consider:

13 SECTION 4. Ag 165.02(2)(a)5 is amended to read:

14 Ag 165.02(2)(a)5. Other factors which are considered
15 relevant by the county agency, and set forth in the animal waste
16 ~~water-pollution-control~~ management plan.

17 SECTION 5. Ag 165.02(2)(a)6 is created to read:

18 Ag 165.02(2)(a)6. Other requirements adopted by the
19 department.

20 SECTION 6. Ag 165.02(2)(b) is repealed and recreated to
21 read:

22 Ag 165.02(2)(b) Water pollution sources; nonpriority areas.

23 Animal feeding operations located outside priority areas may be
24 included in an animal waste management plan if, based on the cri-
25 teria set forth in par. (a), the county agency concludes that the
26 animal feeding operations may potentially cause water pollution
27 problems.

1 SECTION 7. Ag 165.02(2)(c) and (d)(intro.) are amended to
2 read:

3 Ag 165.02(2)(c) Meetings. Before completing the county ani-
4 mal waste ~~water-pollution-control~~ management plan, and as part of
5 the plan preparation process, the county agency shall hold meet-
6 ings with the owners and operators of animal feeding operations in
7 the county. ~~Meetings shall be held to~~ At the meetings, the county
8 agency shall present and discuss information on the nature, extent
9 and location of existing or potential animal waste water-pollution
10 problems in the county; the measures which may be used to correct
11 ~~the~~ existing or potential problems; and the government programs
12 available to assist in correcting these problems. At least one
13 meeting shall be held for each priority area identified under
14 par. (a). Owners and operators of animal feeding operations in
15 priority areas, and those in nonpriority areas identified under
16 par. (b), shall be invited to attend, by means of individual
17 written invitations.

18 (d)(intro.) Priority rankings. If ~~the owner or operator of~~
19 an animal feeding operation ~~which~~ is located in a priority area
20 ~~identified~~ under par. (a) or ~~which~~ is identified under par. (b),
21 and if the owner or operator expresses a willingness to partici-
22 pate in the animal waste grant program, the county agency shall
23 rank the animal feeding operation, ~~along~~ with other ~~such~~ animal
24 feeding operations, in priority order on a countywide basis, for
25 receipt of cost-sharing grants under this chapter. Priority rank-
26 ings shall be set forth in the animal waste ~~water-pollution-con-~~
27 ~~trol~~ management plan, and shall be reviewed and updated annually.

1 Priority ranking shall be based on the severity of water pollution
2 associated with the animal feeding operation, and other factors
3 set forth in this paragraph. Highest priority shall be given to
4 animal feeding operations in the county which have been identified
5 by the department of natural resources under s. NR 243.21 as
6 having caused the discharge of a significant amount of pollutants
7 to waters of the state. In establishing other priorities, the
8 county agency shall consider:

9 SECTION 8. Ag 165.02(2)(d)2 is amended to read:

10 Ag 165.02(2)(d)2. The need for animal waste storage or
11 treatment facilities, ~~considering other factors such as~~ based upon
12 the availability of suitable land for the winter spreading of
13 animal waste.

14 SECTION 9. Ag 165.02(2)(d)6 is amended to read:

15 Ag 165.02(2)(d)6. Other information or criteria which may be
16 considered relevant by the county agency, if set forth in the
17 animal waste ~~water-pollution-control~~ management plan.

18 SECTION 10. Ag 165.02(2)(d)7 is created to read:

19 Ag 165.02(2)(d)7. Other information or criteria which are
20 considered relevant by the department.

21 SECTION 11. Ag 165.02(2)(e)(intro.) is amended to read:

22 Ag 165.02(2)(e)(intro.) Based on information developed under
23 pars. (a) through (d), the county animal waste
24 ~~water-pollution-control~~ management plan shall:

25 SECTION 12. Ag 165.02(2)(e)2(intro.) is amended to read:

26 Ag 165.02(2)(e)2(intro.) Identify and evaluate the measures
27 which may be available to the county agency to correct or prevent

1 water-pollution problems associated with animal feeding
2 operations. Measures may include:

3 SECTION 13. Ag 165.02(2)(e)3 is amended to read:

4 Ag 165.02(2)(e)3. Indicate which of the measures the county
5 agency intends to implement.

6 SECTION 14. Ag 165.02(2)(f) is amended to read:

7 Ag 165.02(2)(f) Description of plan preparation process.

8 The county animal waste ~~water-pollution-control~~ management plan
9 shall describe the specific process used by the county to comply
10 with the requirements of this section.

11 SECTION 15. Ag 165.02(3) and (4) are amended to read:

12 Ag 165.02(3) DEPARTMENTAL APPROVAL OF COUNTY ANIMAL WASTE
13 MANAGEMENT PLANS. County animal waste ~~water-pollution-control~~
14 management plans shall be submitted by the county agency to the
15 department for review and approval for compliance with this sec-
16 tion. In its review of ~~these~~ county plans, the department shall
17 consider typical agricultural practices, and the costs, needs and
18 technologies of agricultural production. Prior to approving or
19 disapproving a county plan, the department shall refer the plan to
20 the land conservation board for its recommendations on approval or
21 disapproval. If the department disapproves a county plan, the
22 department shall provide the county agency a written explanation
23 of the reasons for disapproval. The county agency may revise a
24 disapproved plan and resubmit it to the department for review and
25 approval.

26 (4) PLAN REVISIONS. A county agency may revise its animal
27 waste ~~water-pollution-control~~ management plan. Plan revisions

1 shall comply with the requirements of this section.

2 SECTION 16. Ag 165.04(1) is amended to read:

3 Ag 165.04(1) GENERAL. The department may allocate animal
4 waste grant funds ~~appropriated under s. 10.866(2)(zp), Stats., to~~
5 ~~counties~~ county agencies, as provided in s. 92.15, Stats. Funds
6 allocated to the ~~counties~~ county agencies under this section shall
7 be used for the purposes provided under s. Ag 165.06. Funds may
8 be allocated only to those counties which have adopted an approved
9 animal waste ~~water-pollution-control~~ management plan under
10 s. Ag 165.02 and an approved ordinance under s. Ag 165.03. Fund
11 allocations shall be made in compliance with s. Ag 165.06 and this
12 section.

13 SECTION 17. Ag 165.04(2)(a)(intro.) is renumbered (2)(a),
14 and as renumbered is amended to read:

15 Ag 165.04(2)(a) Animal waste grant funds shall be allocated
16 to ~~counties~~ county agencies on an annual, or other periodic basis.
17 Before making a periodic allocation of funds, the department shall
18 solicit funding applications from all ~~counties~~ county agencies
19 qualified under sub. (1). Funding applications shall be submitted
20 on forms provided by the department, on or before the deadline
21 date established by the department. Each funding application
22 shall identify, by reference to the county animal waste
23 ~~water-pollution-control~~ management plan, the projects proposed for
24 funding within the county, and the relative priority of the
25 proposed projects.

26 SECTION 18. Ag 165.04(2)(b)1 through 4 are amended to read:

27 Ag 165.04(2)(b)1. The total amount of funds to be allocated

1 to ~~counties~~ county agencies under the plan.

2 2. Each county agency to which funds are to be allocated.

3 3. The amount to be allocated to each county agency. A copy
4 of the proposed funding contract with each county agency shall be
5 included with the allocation plan.

6 4. The basis for the proposed allocation of funds among
7 ~~counties~~ county agencies, based on the allocation criteria under
8 sub. (3).

9 SECTION 19. Ag 165.04(3)(intro.) and (a) are amended to
10 read:

11 Ag 165.04(3)(intro.) In its allocation of funds among
12 ~~counties~~ county agencies, the department shall consider:

13 (a) The number of animal feeding operations ~~within each~~
14 identified in the county plans which are in need of measures to
15 correct or prevent animal waste water-pollution problems.

16 SECTION 20. Ag 165.04(4)(intro.) is amended to read:

17 Ag 165.04(4)(intro.) No funds may be allocated or released
18 to a county agency under this section except under a written con-
19 tract between the department and the county agency. The contract
20 shall set forth:

21 SECTION 21. Ag 165.04(4)(b) and (c) are amended to read:

22 Ag 165.04(4)(b) The maximum amount ~~or cost share percentage~~
23 ~~to be paid~~ of funds which will be made available ~~to the owner or~~
24 ~~operator for each project, as~~ cost-shared projects within the
25 county, as determined by the county department under s. Ag 165.06
26 this section, and a schedule for the disbursement of funds by the
27 county agency. Moneys which are advanced to counties under these

1 funding contracts shall be deposited in interest bearing accounts.
2 All accrued interest shall be applied to projects which have been
3 identified as being eligible for animal waste management grants.

4 (c) The respective responsibilities of the department and
5 the county agency for implementing the contract. The county
6 agency which is responsible for implementing the project on behalf
7 of the county shall be identified.

8 SECTION 22. Ag 165.04(4)(e) is amended to read:

9 Ag 165.04(4)(e) Other terms and conditions under which the
10 funds are allocated to the county agency.

11 SECTION 23. Ag 165.05(1) is amended to read:

12 Ag 165.05(1) Pursuant to s. 92.15(3m), Stats., the depart-
13 ment may make cost-share grants directly to owners or operators of
14 animal feeding operations who have received a notice of discharge
15 or who are required to apply for a Wisconsin pollutant discharge
16 elimination system permit under ch. 147, Stats. The department
17 may make direct cost-share grants under this section whether or
18 not the county in which the animal feeding operation is located
19 has an approved animal waste ~~water-pollution-control~~ management
20 plan under s. Ag 165.02 or an approved ordinance under
21 s. Ag 165.03. Direct grants under this section are subject to the
22 provisions of ss. Ag 165.06, Ag 165.07, Ag 165.08(3)(c) and
23 ~~Ag 165.09~~ Ag 165.10. For purposes of a direct grant under this
24 section, the department shall assume the responsibilities of a
25 county agency under ss. Ag 165.06, Ag 165.07, Ag 165.08(1)(d) and
26 (f), Ag 165.08(3)(c), and ~~Ag 165.09~~ Ag 165.10.

27 SECTION 24. Ag 165.05(2)(intro.) is amended to read:

1 Ag 165.05(2)(intro.) The department may enter into an agree-
2 ment with a county under which the county agency assumes certain
3 responsibilities of the department under this section. Responsi-
4 bilities assumed by a county on behalf of the department may
5 include:

6 SECTION 25. Ag 165.05(2)(b) is amended to read:

7 Ag 165.05(2)(b) Certification, under s. Ag 165.08(1)(f) and
8 (3)(c)4, that waste storage and treatment facilities and runoff
9 control ~~structures~~ systems meet the requirements of this chapter.

10 SECTION 26. Ag 165.05(3) is created to read:

11 Ag 165.05(3) The department may determine that the owner or
12 operator of an animal feeding operation identified under sub. (1)
13 is not eligible for a cost-share grant if the department finds
14 that:

15 (a) The owner or operator initiated a discharge of
16 pollutants for the purpose of obtaining a cost-share grant;

17 (b) The owner or operator could prevent the discharge of
18 pollutants through improved management practices, at nominal cost
19 to the owner or operator;

20 (c) The owner or operator could have prevented the discharge
21 of pollutants by complying with an operations and maintenance
22 plan to which the owner or operator has previously agreed; or

23 (d) No predictable water quality benefits will be achieved
24 by the cost-share grant.

25 SECTION 27. Ag 165.06(1) and (2) are amended to read:

26 Ag 165.06(1) GENERAL. Funds allocated ~~by the department to~~
27 ~~counties~~ county agencies under s. Ag 165.04 shall be used by the

1 ~~counties~~ county agencies to finance cost-share grants to individ-
2 ual owners and operators of animal feeding operations. Individual
3 cost-share grants shall be used ~~for the construction~~ to construct
4 or repair ~~of~~ animal waste treatment or storage facilities, or
5 ~~permanent~~ runoff control ~~structures~~ systems, needed to meet water
6 quality objectives. Cost-share grants may be applied to engineer-
7 ing design costs or construction costs, or both, to the extent
8 permitted under this section. Individual cost-share grants shall
9 be made under an agreement with the owner or operator, as provided
10 in s. Ag 165.07. Payments may be made only upon certification, by
11 a qualified technician, that the facility or structure has been
12 completed in compliance with the agreement and this chapter.

13 (2) COST-SHARE GRANTS; GENERAL REQUIREMENTS AND LIMITATIONS.

14 (a) Cost-effectiveness. ~~Cost-share grant amounts~~ The size of
15 cost-share grants to individual owners and operators of animal
16 feeding operations shall be based on the cost of projects which
17 will have predictable water quality benefits, and which are
18 cost-effective for that purpose in comparison to other measures
19 available to the owner or operator. A determination as to the
20 cost-effectiveness of a proposed project shall be made by the
21 county. In determining the cost-effectiveness of a proposed proj-
22 ect, the county agency shall consider the predicted water quality
23 benefits of the project, the cost of the project amortized over
24 its expected useful life, and the practical effects of the project
25 on the animal feeding operation. ~~Cost-share grants may not be~~
26 ~~used to finance the design or construction of animal waste treat-~~
27 ~~ment or storage facilities if, in the absence of the facilities,~~

1 ~~the waste from the animal feeding operation can feasibly be~~
2 ~~applied to land, in compliance with standards and specifications~~
3 ~~number 633 of the technical guide, without causing or aggravating~~
4 ~~a water quality problem.~~

5 (b) Grant amounts; cost-sharing rates. The amount paid to
6 an owner or operator of an animal feeding operation under a
7 cost-share grant shall be based on the cost of the proposed proj-
8 ect, as determined by the county agency. The county agency shall
9 establish standard cost-sharing rates applicable to animal waste
10 storage facilities, animal waste treatment facilities, and ~~perma-~~
11 ~~nent~~ runoff control ~~structures~~ systems. The rate for cost-share
12 grants provided under this chapter may not exceed 70 percent of
13 the total cost for the design and construction of a project. If a
14 cost-share grant is made for a project under this chapter, addi-
15 tional cost-share grants from the county agency may not exceed
16 10 percent of the total cost incurred for the design and construc-
17 tion of the project. This 10 percent limitation does not apply to
18 federal cost-share funds distributed through the county. The max-
19 imum combined grant from all governmental sources may not exceed
20 \$10,000. This \$10,000 limitation does not apply to any structure,
21 facility or practice, the principal purpose of which is to control
22 or prevent barnyard runoff.

23 (c) Engineering design costs; grant limitations. A
24 portion of a cost-share grant may be used to finance engineering
25 design services needed for the construction or repair of animal
26 waste storage or treatment facilities, or ~~permanent~~ runoff control
27 ~~structures~~ systems, if these provided that the engineering design

1 services are provided by a ~~qualified consulting~~ registered profes-
2 sional engineer hired independently by the owner or operator.
3 Cost-share grants may not be used to finance engineering design
4 services provided by the county agency, the United States soil
5 conservation service or other governmental agencies except as pro-
6 vided in s. Ag 165.09. Payments for engineering design services
7 shall be determined by the county agency, based on the reasonable
8 cost of the services, but may not exceed 20 percent of the total
9 cost-share grant. ~~The county shall inform the owner or operator~~
10 ~~of the animal feeding operation that, if~~ If a private consulting
11 engineer is used to provide engineering design services, ~~the farm-~~
12 ~~er shall be informed~~ the county agency shall inform the owner or
13 operator of the animal feeding operation that he or she the owner
14 or operator is responsible for ~~the~~ that portion of the design cost
15 which is not funded by the cost-share grant. No payment for engi-
16 neering design services may be made by a county until the county
17 agency has determined that the structure or facility has been
18 ~~completed~~ installed in compliance with applicable standards and
19 specifications set forth in the technical guide.

20 SECTION 28. Ag 165.06(2)(d) and (e) are created to read:

21 Ag 165.06(2)(d) Availability of alternatives; grant denial.
22 Except as provided in par. (e), cost-share grants may not be used
23 to finance the design or construction of animal waste treatment or
24 storage facilities if, in the absence of the facilities, the waste
25 from the animal feeding operation can feasibly be applied to land,
26 in compliance with standards and specifications number 633 of the
27 technical guide, without causing or aggravating a water quality

1 problem. The feasibility of a land application under this
2 paragraph shall be determined in light of existing topographic,
3 climatological and management factors.

4 (e) Cost-share grants for prior existing facilities. If the
5 waste from an animal feeding operation can feasibly be applied to
6 land as provided in par. (d), the owner or operator may neverthe-
7 less receive a cost-share grant to repair or modify existing stor-
8 age or treatment facilities if all of the following conditions are
9 met:

10 1. The repair or modification is needed to meet water
11 quality objectives.

12 2. The facilities are operational except for the components
13 which are in need of repair or modification.

14 3. The owner or operator has made a substantial investment
15 in the facility which will be effectively lost if the facility is
16 not repaired or modified.

17 SECTION 29. Ag 165.06(3)(a)(intro.) is amended to read:

18 Ag 165.06(3)(a)(intro.) Cost-share grants for animal waste
19 storage or treatment facilities may include payments for design or
20 construction of the facility, including repair or reconstruction
21 of existing facilities; for permanent fencing needed to protect
22 the facility; and for ~~materials and~~ permanently installed equip-
23 ment needed to transport animal waste to the facility as part of
24 an animal waste management plan. Payments may not be made for:

25 SECTION 30. Ag 165.06(3)(a)3 is amended to read:

26 Ag 165.06(3)(a)3. Equipment for spreading ~~or incorporating~~
27 animal waste onto land, or incorporating animal waste into land.

1 SECTION 31. Ag 165.06(3)(a)4 is repealed.

2 SECTION 32. Ag 165.06(3)(b) is repealed and recreated to
3 read:

4 Ag 165.06(3)(b) Standards of design, construction and main-
5 tenance. Animal waste storage and treatment facilities shall be
6 of sufficient capacity to store the normal accumulation of animal
7 waste which may be produced by the animal feeding operation over a
8 period of at least 30 days. Facilities shall be designed and con-
9 structed in compliance with ch. NR 112, Wis. Adm. Code. Facili-
10 ties shall also be designed and constructed in compliance with
11 standards and specifications numbers 312, 313, 358, 359, 382 and
12 425 of the technical guide, or other standards and specifications
13 approved by the department. Facilities shall be maintained for at
14 least 10 years, or until the animal feeding operation is
15 discontinued.

16 SECTION 33. Ag 165.06(4)(a)(intro.) and 1 are amended to
17 read:

18 Ag 165.06(4)(a)(intro.) Cost-share grants for ~~permanent~~ run-
19 off control ~~structures~~ systems may include payments for
20 structures, facilities, or practices such as:

21 1. Diversions, gutters, downspouts, collection basins, fil-
22 ter strips, waterways, terraces, outlet structures, conduits, and
23 land shaping needed to manage runoff from the animal feeding
24 operation or runoff from the land application site.

25 SECTION 34. Ag 165.06(4)(a)4 is created to read:

26 Ag 165.06(4)(a)4. Runoff control practices which are
27 necessary to meet identified water quality objectives.

1 SECTION 35. Ag 165.06(4)(b) is amended to read:

2 Ag 165.06(4)(b) Standards of design, construction and main-
3 tenance. ~~Permanent~~ Runoff control ~~structures~~ systems shall be
4 designed and constructed in compliance with ~~applicable~~ standards
5 and specifications numbers 350 362, 382, 393, 412, 558 and 561 of
6 the technical guide or other standards and specifications approved
7 by the department. The structures shall be maintained for at
8 least 10 years, or until the animal feeding operation is
9 discontinued.

10 SECTION 36. Ag 165.07(intro.) is amended to read:

11 Ag 165.07(intro.) The county agency shall enter into an
12 agreement with every owner or operator of an animal feeding opera-
13 tion who receives cost-sharing funds under this chapter. The
14 agreement shall include:

15 SECTION 37. Ag 165.07(2) is amended to read:

16 Ag 165.07(2) The specific structures, ~~or~~ facilities or
17 practices to be constructed or repaired.

18 SECTION 38. Ag 165.07(9) through (11) are amended to read:

19 Ag 165.07(9) A provision by which the owner or operator of
20 the animal feeding operation agrees to comply with the require-
21 ments of this chapter, and operate the funded structures, facili-
22 ties and--structures or practices in such a manner as to avoid
23 water quality problems. Animal waste storage and treatment facil-
24 ities shall be operated so as to prevent spills or leakage from
25 the facility.

26 (10) A provision whereby the owner or operator agrees to
27 repay the cost-sharing funds if the structures, ~~or~~ facilities or

1 practices are not properly maintained or are not operated in a
 2 manner so as to avoid water quality problems. Repayment of grant
 3 funds shall not be required if a structure, ~~or facility or prac-~~
 4 tice is rendered ineffective during the required maintenance
 5 period under s. Ag 165.06 due to circumstances beyond the control
 6 of the ~~grant recipient~~ owner or operator of the structure, or
 7 facility or practice.

8 (11) A provision whereby the owner or operator agrees to
 9 repay the cost-sharing funds in the event of a change in ownership
 10 during the required maintenance period under s. Ag 165.06. ~~The~~
 11 ~~original recipient of cost-sharing funds shall not be~~ A person
 12 obligated under a cost-sharing agreement is not required to repay
 13 the cost-share funds under this subsection if the ~~new~~ succeeding
 14 owner or operator agrees in writing to ~~maintain and operate the~~
 15 ~~structures or facilities in substantial compliance with the~~
 16 ~~cost-sharing agreement and this chapter~~ assume all obligations
 17 under the agreement, including the obligations under this
 18 subsection and subs. (9) and (10).

19 SECTION 39. Ag 165.08(1)(intro.) and (a) are amended to
 20 read:

21 Ag 165.08(1)(intro.) The county agency is responsible for
 22 local administration of the animal waste grant program. County
 23 agency responsibilities include:

24 (a) Preparation of county animal waste ~~water-pollution~~
 25 ~~control~~ management plans under s. Ag 165.02.

26 SECTION 40. Ag 165.08(2), (3)(intro.) and (3)(a) are amended
 27 to read:

1 Ag 165.08(2) In the exercise of its authority under this
2 chapter, the county agency shall consider ~~typical~~ accepted
3 agricultural practices, and the costs, needs and technologies of
4 agricultural production. The county agency designated under
5 par. (1)(c) shall refer, for review, all county animal waste
6 ~~water-pollution-control~~ management plans and ordinances prepared
7 under this chapter to the county committee on agriculture and
8 extension education created under s. 59.87(2), Stats.

9 (3) The county agency shall establish and maintain a
10 complete accounting and record keeping system which shall
11 include:

12 (a) Separate accounts of all funds allocated to the county
13 agency by the department under s. Ag 165.04, including a record of
14 all receipts and expenditures, and the current account balance.

15 SECTION 41. Ag 165.08(3)(c)5 is amended to read:

16 Ag 165.08(3)(c)5. Authorization by the county agency for the
17 release of cost-sharing payments. A record of the authorization
18 shall be filed prior to payment.

19 SECTION 42. Ag 165.08(4) and (5) are amended to read:

20 Ag 165.08(4) The county agency shall submit an annual
21 accounting of expenditures to the department by ~~July 31~~ June 30 of
22 each year, and shall submit a final accounting of individual
23 project expenditures to the department within 60 days after the
24 project completion date.

25 (5) The county agency may contract for the performance of
26 specified administrative and ~~accounting~~ technical tasks, subject
27 to ~~oversight~~ approval by the county board.

1 SECTION 43. Ag 165.09 is created to read:

2 Ag 165.09 TECHNICAL ASSISTANCE AND PROGRAM ADMINISTRATION;
3 REIMBURSEMENT TO COUNTIES. (1) The department may reimburse a
4 county agency for technical assistance and program administration
5 services provided by or for the county agency if the services are
6 necessary to implement cost-share projects approved by the depart-
7 ment. A county agency's total request for reimbursement on any
8 single project may not exceed 10% of the cost-share payment for
9 that project. Reimbursement requests shall be made on forms pro-
10 vided by the department. Counties may reimburse other governmen-
11 tal agencies for services provided to them for implementing
12 cost-share grants.

13 (2) A county agency may be reimbursed for the following
14 technical assistance services pursuant to sub. (1):

- 15 (a) Inventory and evaluation.
16 (b) Surveys and plottings.
17 (c) Predesign, design, layouts, and certification.
18 (d) Preconstruction or postconstruction design tests.
19 (e) Other services approved by the department.

20 (3) A county agency may be reimbursed for the following
21 program administration services pursuant to sub. (1):

- 22 (a) Maintaining project files.
23 (b) Analyzing alternative practices for cost-effectiveness.
24 (c) Preparing cost-sharing agreements.
25 (d) Processing requests for cost-share grant disbursement.
26 (e) Reviewing projects with landowners and contractors.
27 (f) Coordinating activities with other government agencies.

1 (g) Other services approved by the department.

2 SECTION 44. Ag 165.09 through Ag 165.11 are renumbered
3 Ag 165.10 through Ag 165.12, and Ag 165.10 and Ag 165.11 as
4 renumbered are amended to read:

5 Ag 165.10 RECORDS AND AUDITS. (1) The county agency shall
6 maintain records and documents for the duration of the maintenance
7 period required for the structure, ~~or~~ facility or practice under
8 s. Ag 165.06.

9 (2) The department may conduct such fiscal and program
10 audits as it deems necessary, including interim and final audits
11 on funded projects. Audits may include a physical inspection of
12 structures, ~~and~~ facilities or practices financed with state funds,
13 as necessary to determine consistency with program goals and
14 standards.

15 Ag 165.11 INTERDEPARTMENTAL COORDINATION. The department
16 shall ~~enter into an agreement with the Wisconsin department of~~
17 ~~natural resources to~~ coordinate the animal waste grant program
18 under this chapter with related programs and rules of the
19 Wisconsin department of natural resources.

20 SECTION 45. The rules contained in this order shall take
21 effect on the first day of the month following their publication,
22 as provided in s. 227.026(1)(intro.), Stats.

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Dated this 5th day of May, 1986.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By K. P. Robert
K. P. Robert, Administrator
Agricultural Resource Management
Division

JKM/T3/23/SP/D24
4/30/86-32

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