

1 **SUB 1 TO 2018 OA-028**

2
3 **AMENDING CHAPTER 14 AND CREATING CHAPTER 49 OF THE**
4 **DANE COUNTY CODE OF ORDINANCES, AGRICULTURAL PERFORMANCE**
5 **STANDARDS AND MANURE MANAGEMENT**
6

7 The County Board of Supervisors of the County of Dane does ordain as follows:

8
9 ARTICLE 1. Unless otherwise expressly stated herein, all references to section and
10 chapter numbers are to those of the Dane County Code of Ordinances.

11
12 ARTICLE 2. Chapter 14, Subchapter I "MANURE STORAGE AND UTILIZATION", ss.
13 14.001 - 14.27 is rescinded in its entirety.

14
15 ARTICLE 3. Chapter 49 is created to read as follows:

16
17 **CHAPTER 49**
18 **AGRICULTURAL PERFORMANCE STANDARDS AND**
19 **MANURE MANAGEMENT**

20
21 **SUBCHAPTER I**
22 **GENERAL PROVISIONS**

- 23 49.01 Authority.
24 49.02 Jurisdiction.
25 49.03 Purpose, findings and declaration of policy.
26 49.04 Severability.

27
28 **SUBCHAPTER II**
29 **DEFINITIONS**

- 30 49.05 Purpose.
31 49.06 Word usage.
32 49.07 Definitions.

33
34 **SUBCHAPTER III**
35 **AGRICULTURAL PERFORMANCE STANDARDS AND PROHIBITIONS**

- 36 49.08 Performance standards and prohibitions.
37 49.09 Standards.
38 49.10 Cost share required.

39
40 **SUBCHAPTER IV**
41 **MANURE STORAGE FACILITY PERMIT, USE AND SPECIFICATIONS**

- 42 49.11 Application for issuance of permits.
43 49.12 Manure storage facility plan requirements.
44 49.13 Review of application.
45 49.14 Permit conditions.
46 49.15 Permit revocation.
47 49.16 Certificate of use.

48
49 **SUBCHAPTER V**
50 **WINTER SPREADING PERMIT**

- 51 49.17 Permit requirement.

- 52 49.18 Winter spreading plan components.
- 53 49.19 Limitations to application of manure to frozen, snow-covered, or ice-covered
- 54 ground.
- 55 49.20 Permit conditions.

**SUBCHAPTER VI
PROCEDURES AND ADMINISTRATION**

- 59 49.21 Administration.
- 60 49.22 Variances.
- 61 49.23 Enforcement.
- 62 49.24 Appeals.
- 63 49.25 Fees.

**SUBCHAPTER I
GENERAL PROVISIONS**

69 **49.01 AUTHORITY.** This ordinance is adopted under authority granted by ss. 33.455
70 and 92.16, Wis. Stats., and s. ATCP 50.56, Wis. Adm. Code.

72 **49.02 JURISDICTION.** This ordinance applies to the entire geographical area of Dane
73 County.

75 **49.03 PURPOSE, FINDINGS AND DECLARATION OF POLICY. (1)** The purpose of
76 this ordinance is to provide for proper and safe storage, handling, and land application of
77 manure and to reduce the delivery of manure, other waste materials, fertilizers, and
78 sediment to surface waters and groundwater through the use of conservation practices
79 and implementation of state performance standards and prohibitions for agriculture.
80 The Dane County Board of Supervisors finds that polluted surface runoff and leachate
81 from improperly designed or maintained manure storage facilities, feed storage facilities,
82 unconfined manure piles, animal lots, milking centers, and agricultural practices causing
83 excessive tillage and land applications of manure and fertilizers have resulted in the
84 delivery of sediment, manure, other waste materials, and nutrients to surface waters and
85 groundwater within Dane County. The board recognizes the importance of protecting our
86 ground and surface water resources and finds that proper management of agricultural
87 practices contributes to the protection of ground and surface waters; public health; plant,
88 animal, and aquatic life; and the property tax base of Dane County. The board finds that
89 adherence to agricultural performance standards in chs. NR 151 and ATCP 50, Wis.
90 Adm. Code, by the county landowners is necessary to protect these interests.

92 **(2)** Compliance with this ordinance requires that individuals follow the procedures
93 contained herein, receive a permit from the department before beginning **regulated**
94 activities **that require a permit**, and comply with the requirements of this ordinance
95 and the permit.

97 **49.04 SEVERABILITY. (1) JUDGEMENT OF ORDINANCE PROVISIONS.** If a court of
98 competent jurisdiction adjudges any section, provision or portion of this chapter to be
99 invalid, the judgement shall not affect any other provision of this chapter not specifically
100 included in the judgement.

101 **(2) JUDGEMENT OF ORDINANCE APPLICATION.** If a court of competent jurisdiction adjudges
invalid the application of any portion of this chapter to a particular property, building, use,

102 or structure, the judgement shall not affect the application of the provision to any other
103 property, building, use, or structure not specifically included in the judgement.
104 **(3) JUDGEMENT OF PERMIT.** If a court of competent jurisdiction adjudges as invalid any
105 requirement or limitation contained in a permit given under this chapter, it shall be
106 presumed that the permit would not have been granted without the requirement or
107 limitation, and therefore, the permit shall also be invalid.
108

109 **SUBCHAPTER II**
110 **DEFINITIONS**
111

112 **49.05 PURPOSE.** To define words, terms, and phrases contained in this chapter that
113 are essential to the understanding, administration, and enforcement of this chapter.
114

115 **49.06 WORD USAGE.** For the purposes of this chapter, certain words and terms
116 are used as follows:

- 117 **(1)** Words used in the present tense include the future.
- 118 **(2)** Words in the singular include the plural.
- 119 **(3)** Words in the plural include the singular.
- 120 **(4)** The word “shall” is mandatory and not permissive.

121
122 **49.07 DEFINITIONS.** For the purposes of this chapter, certain words and terms are
123 defined as follows:

- 124 **(1)** “*Adequate sod or self-sustaining vegetative cover*” means maintenance of sufficient
125 vegetation types and densities that provide 70% coverage such that the physical
126 integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover
127 includes grasses, forbs, sedges and duff layers of fallen leaves, and woody debris.
- 128 **(2)** “*Agricultural lands*” means lands in agricultural use as provided under s. 91.01(2),
129 Wis. Stats.
- 130 **(3)** “*Applicant*” means any person who applies for a permit under this ordinance.
- 131 **(4)** “*Best management practices (BMPs)*” mean structural or nonstructural measures,
132 practices, techniques, or devices employed to avoid or minimize soil, sediment, or other
133 pollutants from being carried in runoff to waters of the state.
- 134 **(5)** “*Concentrated flow channel*” means a natural channel or constructed channel that has
135 been shaped or graded to required dimensions and established in perennial
136 vegetation for the stable conveyance of runoff. This definition may include but is not
137 limited to non-vegetated channels caused by ephemeral erosion including intermittent
138 streams, drainage ditches, and drainage ends identified on the NRCS soil survey. Some
139 drainage ditches are identified on the Dane County Web page at:
140 <https://dcimapapps.countyofdane.com/lwrviewer/>
- 141 **(6)** “*Department*” means the Dane County Land & Water Resources Department.
- 142 **(7)** “*Certificate of use*” means an authorization provided by the Department to an
143 agricultural producer allowing them to continue to utilize an unpermitted waste storage
144 facility or permitted facilities that have exceeded the 20 year lifespan.
- 145 **(8)** “*Committee*” means the Land Conservation Committee as designated by the county
146 board pursuant to s. 7.20(2), Dane County Ordinance, and s. 92.06, Wis. Stats.
- 147 **(9)** “*Crop producer*” means an owner or operator of an operation engaged in crop
148 related agricultural practices specified in Wis. Stat. s. 281.16(1)(b).
- 149 **(9)** “*Direct conduit to groundwater*” means wells, sinkholes, swallets, fractured bedrock
150 at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater,

151 quarries, cenotes, or depressional groundwater recharge areas over shallow fractured
152 bedrock.

153 **(10) “Direct runoff”** means any of the following:

154 **(a)** Runoff of stored manure, including manure leachate, that discharges a significant
155 amount of pollutants to surface waters of the state or to a direct conduit to ground water.

156 **(b)** Runoff from a feedlot that can be predicted to discharge a significant amount of
157 pollutants to surface waters of the state or a direct conduit to groundwater.

158 **(c)** Discharge of a significant amount of leachate from stored manure or feed to waters
159 of the state.

160 **(d)** Construction of a manure storage facility in permeable soils or over fractured bedrock
161 without a liner designed in accordance with NRCS Standard 313.

162 **(11) “Effective incorporation”** means mixing manure with soil, or subsurface placement
163 of nutrients by such means as injection, disc, sweep, plow or other tillage/infiltration
164 method such that manure will not run off the field or drain to subsurface tiles during
165 application.

166 **(12) “Feedlot”** means a barnyard, exercise area, or other outdoor area where livestock
167 are concentrated for feeding or other purposes and self-sustaining vegetative cover is
168 not maintained. “Feedlot” does not include a winter grazing area or a bare soil area such
169 as a cattle lane or a supplemental feeding area located within a pasture, provided that
170 the bare soil area is not a significant source of pollution to waters of the state as
171 determined by predictive models for manure runoff utilized by the department.

172 **(13) “Idle storage facility”** means a facility where manure has not been added or
173 removed for a period of 24 months.

174 **(14) “Land application”** means the physical transfer of manure from any animal
175 confinement area or manure storage facility to fields for purposes of fertilization or
176 disposal.

177 **(15) “Landowner”** means any of the following:

178 **(a)** A person who owns a parcel of land.

179 **(b)** A person who rents, controls, or uses a parcel of land for agricultural purposes.

180 **(16) “Livestock”** means all domestic animals, including deer, elk, or any fenced-in
181 animals.

182 **(17) “Livestock operation”** means a feedlot or other facility or a pasture where animals
183 are fed, confined, maintained, or stabled.

184 **(18) “Manure”** means livestock excreta and includes the following when intermingled with
185 excreta in normal farming operations: debris including bedding, water, soil, hair, and
186 feathers; processing derivatives including separated sand, separated manure solids,
187 precipitated manure sludges, supernatants, digested liquids, composted biosolids, and
188 process wastewater; and runoff collected from barnyards, animal lots, and feed storage
189 areas.

190 **(19) “Manure storage facility”** means an impoundment made by constructing an
191 embankment or excavating a pit or dugout or by fabricating a structure to contain
192 manure, process wastewater, or other animal or agricultural waste.

193 **(20) “Manure storage facility, existing”** means a facility that was constructed prior to
194 October 1, 2002.

195 **(21) “Manure storage facility, substantially altered”** means a change initiated by an
196 landowner and operator that results in a relocation of a manure structure or facility or
197 significant changes to the size, depth or configuration of a manure structure or facility
198 including:

199 **(a)** Replacement of a liner, or any interception of the liner as a result of changes in the
200 management system of the manure storage structure.

201 (b) An increase in the volumetric capacity or area of a structure or facility by greater than
202 20%.
203 (c) A change in a structure or facility related to a change in livestock management from
204 one species of livestock to another, such as cattle to poultry.
205 (22) "Manure storage facility, unpermitted" means a facility that was constructed without
206 a permit issued by Dane County Land & Water Resources Department.
207 (23) "Margin of safety level" means the level in a liquid manure storage or containment
208 facility that is vertically one foot below the lowest point of the top of the manure storage
209 facility or structure.
210 (24) "Natural Resources Conservation Service (NRCS)" means an agency of the United
211 States Department of Agriculture (USDA) which, for purposes of this chapter, provides
212 the agency and the department with technical assistance and information on the design
213 criteria, size, shape, engineering strength, and other necessary technical data for the
214 proper and safe installation of a manure storage facility.
215 (25) "Navigable waters and navigable drainage ways" means any body of water that is
216 navigable under the laws of the state as defined s. 281.31(2)(d), Wis. Stats.
217 (26) "Nutrient management plan" means a plan that ~~balances the nutrient needs of a~~
218 ~~crop with the nutrients available from legume crops, manure, fertilizer, or other sources.~~
219 ~~The requirements for a nutrient management plan are as established~~ meets the
220 definition in s. ATCP 50.04(3), Wis. Adm. Code.
221 (27) "Nutrients" means plant nutrients derived from commercial fertilizers, manure,
222 organic wastes, soil reserves, legumes, or other sources.
223 (28) "Ordinary high water mark" means the point on the bank or shore up to which the
224 presence and action of surface water is so continuous as to leave a distinctive mark
225 such as by erosion, destruction or prevention of terrestrial vegetation, or other easily
226 recognized characteristic. Where the bank or shore at any particular place is of such
227 character that it is difficult or impossible to ascertain where the point of ordinary high-
228 water mark is, recourse may be had to the opposite bank of a stream or to other places
229 on the shore of a lake or flowage to determine whether a given stage of water is above
230 or below the ordinary high-water mark.
231 (29) "Pasture" means land on which livestock graze or otherwise seek feed in a manner
232 that maintains the vegetative cover over the grazing area. Pasture may include limited
233 areas of bare soil such as cattle lanes and supplemental feeding areas provided the
234 bare soil areas are not significant sources of pollution to waters of the state.
235 (30) "Permit" means the signed, written statement issued by the department under this
236 ordinance authorizing the applicant to construct, install, substantially alter, or close, a
237 manure storage facility, and/or the application of livestock waste on frozen or snow-
238 covered ground.
239 (31) "Permitted facility" means a facility that was permitted under this ordinance.
240 (32) "Permittee" means any person to whom a permit is issued under this ordinance.
241 (33) "Person" means any individual, owner, operator, corporation, limited liability
242 company, partnership, association, municipality, interstate agency, state agency, or
243 federal agency.
244 (34) "Phosphorus index" means the State's agricultural land management planning tool
245 for assessing the potential of a cropped or grazed field to contribute phosphorus to
246 surface waters.
247 (35) "Pollutant" means any dredged, spoil, solid waste, incinerator residue, sewage,
248 garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials,
249 radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and
250 industrial, municipal, and agricultural waste discharged into water.

251 **(36)** *“Pollution”* includes contaminating or rendering unclean or impure the waters of the
252 state, or making the same injurious to public health, harmful for commercial or
253 recreational use, or deleterious to fish, bird, animal or plant life.

254 **(37)** *“Process wastewater”* means wastewater from the production area directly or
255 indirectly used in the operation of animal feeding operation that results from any or all of
256 the following:

257 **(a)** Spillage or overflow from animal or poultry watering systems.
258 **(b)** Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding
259 operation facilities.
260 **(c)** Direct contact swimming, washing, or spray cooling of animals or dust control.
261 **(d)** Water that comes into contact with any raw materials or animal byproducts including
262 manure, feed, milk, eggs, or bedding.

263 **(38)** *“Runoff”* means storm water or precipitation including rain, snow, ice melt or similar
264 water that flows across the land surface via sheet or channelized flow.

265 **(39)** *“Safety devices”* means constructed measures designed to protect humans and
266 livestock from hazards associated with a manure storage facility.

267 **(40)** *“Site that is susceptible to groundwater contamination”* means any one of the
268 following:

269 **(a)** An area within 250 feet of a private well.
270 **(b)** An area within 1000 feet of a municipal well.
271 **(c)** An area within 300 feet upslope or 100 feet downslope of a direct conduit to
272 groundwater.
273 **(d)** A channel that flows to a direct conduit to groundwater.
274 **(e)** An area where the soil depth to groundwater or bedrock is less than 2 feet.
275 **(f)** An area where the soil does not exhibit one of the following soil characteristics:
276 1. At least a 2-foot soil layer with 40% fines or greater above groundwater and bedrock.
277 2. At least a 3-foot soil layer with 20% fines or greater above groundwater and bedrock.
278 3. At least a 5-foot soil layer with 10% fines, or greater above groundwater and bedrock.

279 **(41)** *“Surface waters”* means all natural and artificial named and unnamed lakes and all
280 naturally flowing streams within the boundaries of the state, but not including cooling
281 lakes, farm ponds and facilities constructed for the treatment of wastewaters.

282 **(42)** *“Technical guide”* means the United States Department of Agriculture (USDA)
283 Natural Resources Conservation Service (NRCS) Technical Guide as adopted by the
284 agency, including subsequent amendments or additions.

285 **(43)** *“Tolerable soil loss”* or *“T”* means the maximum rate of erosion, in tons per acre per
286 year, allowable for particular soils and site conditions that will maintain soil productivity.

287 **(44)** *“Top of the channel”* means an edge, or point on the landscape landward from the
288 ordinary high water mark of a surface water of the state, where the slope of the land
289 begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12%
290 or less continually for the initial 50 feet landward from the ordinary high water mark, the
291 top of the channel is the ordinary high water mark.

292 **(45)** *“Unconfined manure pile”* means a quantity of manure that is at least 175 cubic
293 feet in volume and which covers the ground surface to a depth of at least 2 inches and is
294 not confined within a manure storage facility, livestock housing facility or barnyard runoff
295 control facility or covered or contained in a manner that prevents storm water access
296 and direct runoff to surface water or leaching of pollutants to groundwater.

297 **(46)** *“Waste transfer system”* means all components including tanks, pipes, pumps,
298 conduits, valves, gutters, flow channels, and any other component designed to convey
299 manure, contaminated runoff, and milking center wastes into or out of buildings,
300 retention basins, or storage facilities.

301 **(47)** “*Water Quality Management Area (WQMA)*” means land that includes any of the
302 following: an area within 1,000 feet up-gradient of the ordinary high water mark of a
303 navigable lake, pond, or flowage; an area within 300 feet up-gradient of the high water
304 mark of a navigable river or; an area that is susceptible to groundwater contamination, or
305 has the potential to be a direct conduit for pollutants to reach groundwater.
306 **(48)** “*Waters of the state*” mean those portions of Lake Michigan and Lake Superior
307 within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds,
308 wells, impounding reservoirs, marshes, water courses, drainage systems and other
309 surface water or groundwater, natural or artificial, public or private within the state or
310 under its jurisdiction, except those waters which are entirely confined and retained
311 completely upon the property of a person.
312 **(49)** “*Winter grazing area*” means a cropland or pasture where livestock feed on dormant
313 vegetation or crop residue, with or without supplementary feed, during the period of
314 October 1 to April 30.
315

316 **SUBCHAPTER III**
317 **AGRICULTURAL PERFORMANCE STANDARDS AND PROHIBITIONS**
318

319 **49.08 PERFORMANCE STANDARDS AND PROHIBITIONS.**

320 **(1) SHEET, RILL, AND WIND EROSION.** All pastures and land where crops or feed are grown
321 shall be managed to achieve a soil erosion rate equal to or less than the tolerable soil
322 loss (T) rate established for that soil.

323 **(2) TILLAGE SETBACK.** To prevent tillage operations from destroying stream banks and
324 depositing soil directly in surface waters, crop producers shall not conduct a tillage
325 operation that negatively impacts stream bank integrity or deposits soil directly in surface
326 waters.

327 **(a)** No tillage operations may be conducted within 5 feet of the top of the channel of
328 surface waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be
329 required to meet this standard. Determinations for tillage setbacks are established in s.
330 ATCP 50.04 (4)(b)2, Wis. Adm. Code.

331 **(b)** Crop producers shall maintain the area within the tillage setback required under sub.
332 (a) in adequate sod or self-sustaining vegetative cover that provides a minimum of 70%
333 coverage.

334 Note: Conservation practices such as but not limited to critical area stabilization, grade
335 stabilization, shoreland protection may be installed to stabilize the bank and protect its
336 integrity. Enrollment in federal set aside programs such as CREP can also be used to
337 achieve compliance.

338 **(c)** This standard does not apply to grassed waterways installed as conservation
339 practices.

340 **(3) PHOSPHORUS INDEX.** All cropland, pastures, and winter grazing areas shall meet the
341 Wisconsin Phosphorus Index (PI) established in s. NR 151.04, Wis. Admin. Code,
342 including where the PI applies, the methods for calculating the PI, and acceptable PI
343 runoff levels.

344 Note: A nutrient management plan meeting s. ATCP 50.04 (3), Wis. Admin. Code, may
345 be used to demonstrate compliance with this standard.

346 **(4) NUTRIENT MANAGEMENT.** All crop and livestock producers that apply manure or other
347 nutrients directly or through contract to agricultural fields shall comply with this section.

348 (a) This performance standard does not apply to industrial waste and byproducts
349 regulated under ch. NR 214, Wis. Adm. Code, municipal sludge regulated under ch. NR
350 204, Wis. Adm. Code, and septage regulated under ch. NR 113, Wis. Adm. Code.
351 (b) Nutrient management plans are required on pastures unless exempt as established
352 in s. ATCP 50.04(3)(b), Wis. Adm. Code.
353 (c) Manure, commercial fertilizer, and other nutrients shall be applied in conformance
354 with a nutrient management plan as established in s. ATCP 50.04(3), Wis. Adm. Code.
355 1. The plan shall be designed to limit or reduce the discharge of nutrients to waters of
356 the state for the purpose of complying with state water quality standards and
357 groundwater standards.
358 2. Plans for croplands in watersheds that contain impaired surface waters or in
359 watersheds that contain outstanding or exceptional resource waters shall meet the
360 following criteria: unless otherwise provided in this subsection, the plan shall be
361 designed to manage soil nutrient concentrations so as to maintain or reduce delivery of
362 nutrients contributing to the impairment of impaired surface waters and to outstanding or
363 exceptional resources waters.
364 3. An updated plan shall be submitted to the department annually by June 1 to ensure
365 the plan meets requirements of this section.
366 (d) The plan may allow for an increase in soil nutrient concentrations at a site,
367 consistent with s. ATCP 50.04(3)(f), Wis. Admin. Code, if necessary to meet
368 crop demands.
369 (5) CLEAN WATER DIVERSION. (a) All livestock producers within a water quality
370 management area shall comply with this section.
371 (b) Runoff shall be diverted away from feedlots, manure storage areas and barnyard
372 areas within water quality management areas except that a diversion to protect a private
373 well under s. NR 151.015 (18)(a), Wis. Adm. Code, is required only when the feedlot,
374 manure storage area, or barnyard area is located upslope from the private well.
375 (6) MANURE MANAGEMENT PROHIBITIONS. All livestock operations shall comply with this
376 section as follows:
377 (a) No overflow of manure storage structures.
378 (b) No unconfined manure piles within a water quality management area.
379 (c) No direct runoff from a feedlot or stored manure to waters of the state.
380 (d) No unlimited access by livestock to waters of the state in a location where high
381 concentrations of animals prevent the maintenance of adequate sod or self-sustaining
382 vegetative cover. This prohibition does not apply to properly designed, installed and
383 maintained livestock or farm equipment crossings.
384 (7) PROCESS WASTEWATER HANDLING. All livestock producers shall comply with this
385 section.
386 (a) No significant discharge of process wastewater to waters of the state.
387 (b) The following factors will be considered when determining whether a discharge of
388 process wastewater is a significant discharge to waters of the state:
389 1. Volume and frequency of the discharge.
390 2. Location of the source relative to receiving waters.
391 3. Means of process wastewater conveyance to waters of the state.
392 4. Slope, vegetation, rainfall, and other factors affecting the likelihood of process
393 wastewater discharge to waters of the state.
394 5. Available evidence of discharge to a surface water of the state or to a direct conduit to
395 groundwater.
396 6. Whether the process wastewater is discharged to a site that is defined as a site that is
397 susceptible to groundwater contamination.
398 7. Other factors relevant to the impact of the discharge on water quality standards of the
receiving water or to groundwater standards.

399 **(8) MANURE STORAGE FACILITIES.** All livestock producers building new manure storage
400 facilities, substantially altering manure storage facilities, or choosing to close their
401 manure storage facilities shall comply with this section.
402 **(a) New construction and substantial alterations.**
403 1. New or substantially altered manure storage facilities shall be designed, constructed,
404 and maintained to minimize the risk of structural failure of the facility and to minimize
405 leakage of the facility in order to comply with groundwater standards and NRCS
406 technical standard 313.
407 2. The levels of materials in the storage facility may not exceed the margin of safety
408 level.
409 3. Storage facilities that are constructed or significantly altered on or after January 1,
410 2011, shall be designed and operated to contain the additional volume of runoff and
411 direct precipitation entering the facility as a result of a 25-year, 24-hour storm.
412 4. A new manure storage facility means a facility constructed after October 1, 2002.
413 5. A substantially altered manure storage facility is a manure storage facility that is
414 substantially altered after October 1, 2002.
415 **(b) Closure.** 1. "Conditions for closure." Idle storage facilities shall be closed in a manner
416 that will prevent future contamination of groundwater and surface waters in accordance
417 with NRCS technical standard 360.
418 2. "Conditions for retention." The owner or operator may retain the facility for a longer
419 period of time by making a written request to the department to retain the facility once
420 every two years until the facility is brought into use and by demonstrating to the county
421 the following conditions are met:
422 a. The facility is designed, constructed and maintained in accordance with this chapter.
423 b. The facility is designed to store manure for a period of time longer than 24 months.
424 c. Retention of the facility is warranted based on anticipated future use.
425 **(c) Existing facilities.** 1. Manure storage facilities in existence as of October 1, 2002, that
426 pose an imminent threat to public health, fish and aquatic life, or groundwater, shall be
427 upgraded, replaced, or closed in accordance with this section.
428 2. Levels of materials in storage facilities may not exceed the margin of safety level.
429 **(9) SAFETY DEVICES.** The following safety devices are required on all manure storage
430 facilities in Dane County whether or not a permit has been issued under this ordinance:
431 **(a)** A fence around the manure storage facility is required unless the manure storage
432 facility has vertical walls 5 feet above the ground surface or the manure storage facility
433 has a cover that will support foot traffic. Fences shall be a minimum of 48 inches above
434 grade and shall not allow the passage of a larger than 6-inch sphere between any fence
435 or gate member. All fence openings shall have gates that can be shut and securely
436 fastened.
437 **(b)** A grate or cover for any opening in the waste transfer system that is larger than 6
438 inches in diameter. Grates and covers must be designed to withstand all load
439 requirements. A fence around a waste transfer system may be used in lieu of a grate or
440 cover if the fence meets the criteria contained in sub (a).
441 **(c)** Safety stops, gates, or both shall be installed at push-off ramps and load out areas of
442 impoundments and structures to prevent accidental entry of tractors and other
443 equipment.
444 **(d)** Manure storage facilities and their components shall have signs at all access points
445 to warn of the danger of entry.
446
447 **49.09 STANDARDS. (1) STANDARDS FOR EVALUATING SHEET, RILL, AND WIND**
448 **EROSION.** The standards for evaluating sheet, rill, and wind erosion shall be Revised
449 Universal Soil Loss Equation 2 (RUSLE2).

450 Note: RUSLE2 is available at
451 https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/cp/?cid=nrcs142p2_02080
452 1. Equivalent methodology may be used as approved by the department.
453 (2) STANDARDS FOR DESIGN AND CONSTRUCTION OF MANURE STORAGE FACILITIES. The
454 standards for design and construction of manure storage facilities shall be the current
455 standards in the NRCS Technical Guide, including 313 Waste Storage Facility, 634
456 Manure Transfer, 635 Vegetated Treatment Area, 632 Waste Separation Facility, and
457 629 Waste Treatment and any amendments to these standards.
458 (3) STANDARDS FOR NUTRIENT MANAGEMENT. The standards for management of manure
459 and nutrients applied to cropland and pastures shall be the current standards in the
460 NRCS Technical Guide, including 590 Nutrient Management and any amendments.
461 (4) STANDARDS FOR PHOSPHORUS INDEX (PI). The standard for meeting the PI on
462 croplands, pastures, or winter grazing areas shall be based on the calculation utilized by
463 the current SNAP Plus nutrient management planning model.
464 Note: SNAP Plus is available at <https://snapplus.wisc.edu/>.
465 (5) STANDARDS FOR CLOSURE OF MANURE STORAGE FACILITY. The standards for closure of
466 an unused manure storage facility shall be the current standards in the NRCS Technical
467 Guide, including 360 Waste Facility Closure and any amendments.
468 (6) STANDARDS FOR DETERMINATION OF SIGNIFICANT DISCHARGE AND DIRECT RUNOFF. The
469 standards for determination of direct runoff shall be the Barnyard Runoff Evaluation Tool
470 (BERT), BARNY, VTA spreadsheet or an equivalent predictive model for manure, feed
471 leachate, milkhouse waste or other process wastewater runoff.
472 Note: Available models can be found at
473 https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/engineering/?cid=nrcs142p2_025422.
474 Equivalent methodology may be used as approved by the department.
475 (7) STANDARDS FOR THE DETERMINATION OF ADEQUATE SOD OR SELF-SUSTAINING
476 VEGETATIVE COVER. Standards for determination of adequate sod or self-sustaining
477 vegetative cover shall be the standards outlined in the NRCS Technical Guide 528
478 Prescribed Grazing or vegetative measurement by grid sample shall show at least 70
479 percent living plant material cover.
480 (8) SUBSEQUENT MODIFICATION OF STANDARDS. The standards of the NRCS Technical
481 Guide are adopted and by reference made a part of this section as if fully set forth
482 herein. Any future amendment, revision or modification of the standards incorporated
483 herein are made a part of this section, unless otherwise acted upon by the agency.
484 Copies of the current standards are available at the department.
485 (9) ADDITIONAL STANDARDS. Standards not identified in this section may be utilized to
486 meet the requirements of this ordinance with prior approval from the department.
487 Variances may be requested in accordance with s.49.25.
488
489 **49.10 COST SHARE REQUIRED.** An owner or operator of an agricultural facility or
490 practice that is in existence before October 1, 2002, may not be required to comply with
491 the performance standards, prohibitions, conservation practices or technical standards
492 under this subchapter unless cost-sharing is made available to the owner or operator
493 to the extent that cost-sharing is required by state law and is made available to the
494 owner or operator. A determination that cost-sharing is available to meet the
495 performance standards, prohibitions, conservation practices or technical standards
496 under this subsection will be determined in accordance with s. NR 151.09 or NR
497 151.095, Wis. Adm. Code, when funding is provided under ch. 281.65, Wis. Stats.,
498 and will be determined in accordance with ch. ATCP 50, Wis. Adm. Code, when funds
499 are from any other source.
500

SUBCHAPTER IV

501 **MANURE STORAGE FACILITY PERMIT, USE, AND SPECIFICATIONS**

502
503 **49.11 APPLICATION FOR ISSUANCE OF PERMITS. (1) PERMIT REQUIRED. (a)** No
504 person may do any of the following without obtaining a permit in accordance with this
505 section:

- 506 1. Construct a new manure storage facility or substantially alter an existing manure
507 storage facility, including the construction or substantial alteration of waste transfer
508 systems connected to a manure storage facility.
509 2. Upgrade, repair or replace a manure storage facility that has been identified as posing
510 an imminent threat to public health, fish and aquatic life, or groundwater.
511 3. Close an existing manure storage facility, including conversion of its use, regardless
512 of whether the facility must be closed in accordance with s. 49.08(8)(c).

513 **(2) EXCEPTION TO PERMIT REQUIREMENT. (a)** Emergency repairs such as repairing a
514 broken pipe or equipment, leaking dikes, or the removal of stoppages may be performed
515 without a permit. Any repairs performed as a result of the facility failing, overtopping or
516 repairs intercepting the liner or substantially altering the original design or construction of
517 a facility shall be reported, in writing, within one day of the emergency to the department.

518 1. The department will make a determination whether the repairs made were reasonably
519 necessary to respond to the existing emergency. The department is authorized to enter
520 upon lands where a repair has been made to a facility to make this determination.

521 2. A permit shall be required for any work deemed to constitute additional alteration or
522 repair to the facility in excess of that reasonably necessary to respond to the emergency.

523 The department's determination shall be rendered within 5 business days of the
524 reporting. Work done without a proper permit shall constitute noncompliance with the
525 ordinance. The passage of this ordinance is not to be construed as a requirement that
526 livestock operations construct manure storage facilities but rather that facilities that are
527 constructed be required to obtain the appropriate permits and approvals.

528 **(b)** Manure storage facilities that are 1,000 gallons or less in total volume may be
529 constructed without a permit. These facilities are required to meet the NRCS Standard
530 313-Waste Storage Facility, and 634-Manure Transfer. This exemption applies only if
531 the manure storage facility is not connected to another manure storage facility or
532 facilities with a cumulative volume of more than 1,000 gallons.

533 **(3) PERMIT DURATION.** Permits for manure storage facilities shall be valid for 20 years.
534 Prior to the expiration date, the manure storage facility may be evaluated by a
535 professional engineer to assess the facility's structural condition and compliance with the
536 standards listed in this ordinance. The evaluation shall be used by the department to
537 determine if repairs are required prior to issuance of certificate of use. If no evaluation is
538 performed or if the landowner does not want to implement the repairs to bring the facility
539 into compliance with this chapter, the facility shall be closed in compliance with s.
540 49.12(3) prior to the expiration date of the permit.

541
542 **49.12 MANURE STORAGE FACILITY PLAN REQUIREMENTS.** Each application for a
543 manure storage permit under this section shall include the completion of the county
544 permit application and a detailed manure storage facility construction plan.

545 **(1) MANURE STORAGE FACILITY PLAN REQUIREMENTS.** Manure storage structures, and any
546 additions to such structures, shall maintain the following setbacks pursuant to s. ATCP
547 51.12, Wis. Adm. Code, and additional setbacks set forth herein.

548 **(a) SETBACKS FROM PROPERTY LINES AND ROAD RIGHTS-OF-WAY.** Manure
549 storage structures shall be setback 350 feet from any property line or road right-of-way,
550 however, the setback from the property line or road right-of-way may be reduced if the
551 new facility is located no closer than an existing manure storage facility. For purposes of

552 measuring this setback, property line is defined as the outermost boundary of a property
553 under common ownership as described on a deed recorded with the Dane County
554 Register of Deeds and the manure storage facility measurement will be from the inside
555 top of the liner of the structure. Setbacks do not apply to manure transfer facilities.
556 **(b) EXPANSION.** Manure storage structures located within a setback area may be
557 expanded provided the area to be expanded meets required setbacks.
558 **(2) MANURE STORAGE CONSTRUCTION PLAN REQUIREMENTS.** A complete permit application
559 for a new or modified storage facility shall meet or exceed the minimum established
560 limits and specific criteria within NRCS Technical Standard 313 for Waste Storage, and
561 additional Technical Standards, including, but not limited to, 342 Critical Area Planting,
562 382 Fence, 558 Roof Runoff Structure, 590 Nutrient Management, and 634 Manure
563 transfer as applicable. The plan shall include all of the following:
564 **(a)** Number, type, and size of animals for which storage is provided and the duration for
565 which storage is to be provided.
566 **(b)** Type of bedding to be used in the operation and all aspects of handling and recovery
567 of this bedding material.
568 **(c)** Site plan of the facility and its location in relation to the following:
569 1. "Residences." The location of any residential buildings other than that of the owner of
570 the premises, or owned by the owner of the premises but occupied by his/her family,
571 agent or employee within 500 feet of the facility shall be identified.
572 2. "Property Lines." The location of any property lines within 500 feet of the facility shall
573 be identified.
574 3. "Wells." The location of any wells within 500 feet of the facility shall be identified.
575 4. "Utilities." The location of all utilities within 500 feet of the facility shall be identified.
576 5. "State and federal highways, county and town roads, and public streets designated as
577 roadways." The location of any roadway within 500 feet of the facility shall be identified.
578 6. "Navigable waters and navigable drainage ways." The location of any navigable water
579 and drainage ways within 500 feet of the facility shall be identified.
580 7. "Floodplains and other water bodies." The location of floodplains and other
581 waterways within 500 feet of the facility shall be identified.
582 **(d)** North arrow, scale of the drawing, legal description of the proposed facility, and
583 location, description and elevation of a temporary benchmark.
584 **(e)** Structural details including, but not limited to, dimensions, cross-sections, concrete
585 thickness, reinforcing steel location and design loading details when other than NRCS
586 pre-qualified designs and drawings are used.
587 **(f)** Construction and material specifications including, but not limited to, applicable
588 specifications for earth fill, excavation, concrete, reinforcing steel, timber and pipes.
589 **(g)** Soil test pit locations, elevations, and soil descriptions to a depth as required for the
590 planned structure according to the NRCS Technical Standard 313.
591 **(h)** Elevation of groundwater, bedrock or seasonally saturated conditions if encountered
592 in the soil profile and the date of any such determinations.
593 **(i)** Provisions for adequate drainage and control of runoff to prevent pollution of surface
594 water and groundwater.
595 **(j)** Time schedule for construction of the facility.
596 **(k)** Details and plans for the method and structures used in transferring manure into and
597 from the facility.
598 **(l)** Plan to control erosion during the construction or modification of the facility.
599 **(m)** Plans that address the safety requirements of the facility as needed.
600 **(n)** Emergency response plan identifying the names and phone numbers of individuals
601 or others to be notified in the event of any leaks, spills or other system failures that could
602 discharge manure.

- 603 (o) Certification by a professional engineer registered in the State of Wisconsin, or an
604 engineering practitioner certified by the Wisconsin Department of Agriculture, Trade and
605 Consumer Protection (DATCP) or the NRCS that the plans meet technical and
606 ordinance standards.
- 607 (p) Operation and maintenance plan for the facility signed by the owner that identifies
608 the basics of operation, the manure removal interval, the use of agitation pads, and
609 required repairs to berms and roads that are a necessary part of the facility function and
610 meets all other requirements of NRCS Technical Standards 313 and 634.
- 611 (q) Nutrient management plan that complies with s. ATCP 50.04, Wis. Adm. Code. The
612 nutrient management plan must be prepared by a nutrient management planner qualified
613 under s. ATCP 50.04 (3), Wis. Adm. Code, submitted and approved prior to issuance of
614 the permit.
- 615 (r) Any other additional information required by the department to protect water quality
616 and determine compliance with this section.
- 617 (3) MANURE STORAGE FACILITY CLOSURE APPLICATION REQUIREMENTS. A complete permit
618 application for waste storage facility closure shall meet all standards as outlined in
619 NRCS Technical Standard 360 and shall specify:
- 620 (a) Provisions to remove and properly dispose of all accumulated wastes in the manure
621 facility.
- 622 (b) Provisions to remove any concrete or synthetic liner, or properly use pieces of the
623 concrete or synthetic liner as clean fill at the site.
- 624 (c) Provisions to remove and properly dispose of any soil contaminated with waste from
625 the manure storage facility.
- 626 (d) Provisions to remove any soils, to the depth of significant manure contamination or 2
627 feet, whichever is less, from the bottom and sides of a facility without a constructed liner.
- 628 (e) Provision to remove or permanently plug the waste transfer system serving the
629 manure storage facility.
- 630 (f) Provisions to cover all disturbed area with topsoil, seeding the areas with a grass
631 mixture, and mulching the seeded area. This section does not apply if an alternative use
632 of the site is authorized under a waste facility closure plan approved by the county as
633 part of the permit.
- 634 (g) Any other additional information required by the department to protect water quality
635 and determine compliance with this section.

636

637 **49.13 REVIEW OF APPLICATION.** The department shall receive and review all permit
638 applications. The department shall determine if the proposed facility and Nutrient
639 Management Plan, if applicable, meets required standards set forth in s. 49.12. Within
640 30 calendar days after receiving the completed application and fee, the department shall
641 inform the applicant, in writing, whether the permit application is approved and issue the
642 permit or shall inform the applicant, in writing, of the reasons for disapproval. If additional
643 information is required, the department shall notify the permit applicant. The department
644 has 30 calendar days to approve or deny the permit application, in writing, from receipt
645 of the requested additional information. If the department fails to approve or deny the
646 permit application in writing within 30 days of the receipt of the permit application or
647 additional information, as appropriate, the application shall be deemed approved and the
648 applicant may proceed as if a permit had been issued.

649

650 **49.14 PERMIT CONDITIONS.** All permits issued under this subchapter shall be issued
651 subject to the following conditions and requirements:

- 652 (1) Manure storage facility design, construction, operations, management, utilization, and
653 closure activities shall be carried out in accordance with the manure facility plan and
654 applicable standards specified in s.49.12.
- 655 (2) The permittee shall give 5 working days' notice to the department before starting any
656 construction or closure activity authorized by the permit.
- 657 (3) The permittee, engineer and contractor shall participate in a pre-construction
658 conference with county staff before initiating construction of a new facility to outline the
659 requirements and responsibilities of all of the involved parties.
- 660 (4) Written approval from the department must be obtained prior to any modifications to
661 the permitted plans.
- 662 (5) The permittee, design engineer or consultant, and the contractor shall certify, in
663 writing, that a new facility was installed as planned. This certification shall include an as-
664 built survey and as-built drawings signed and stamped by the engineer depicting the as-
665 built survey and any changes to the construction plan in red.
- 666 (6) The department shall provide onsite inspection and verification for all construction
667 projects conducted under a permit issued under this chapter. To receive final verification,
668 a manure storage facility must be fully constructed as designed including the marking of
669 the maximum operating level and implementation of all safety devices.
- 670 (7) No permitted manure storage facilities may receive manure until the county provides
671 final verification.
- 672 (8) Construction activities authorized by permit must be completed and certified within 2
673 years from the date of issuance, after which any additional construction activities will
674 require a new manure storage permit application to be submitted and approved.
- 675
- 676 **49.15 PERMIT REVOCATION.** The department may revoke the permit issued under
677 this subchapter if the holder of the permit has misrepresented any material fact in the
678 permit application or manure facility plan, or if the holder of the permit violates any of the
679 conditions of the permit.
- 680
- 681 **49.16 CERTIFICATE OF USE. (1) CERTIFICATE REQUIREMENT.** No person may
682 operate or use a manure storage facility, or any portion of a manure storage facility, that
683 was constructed without a permit issued by the Department or has an expired permit
684 unless the person has a valid certificate of use for the storage facility or that portion of
685 the manure storage facility that is being operated or used.
- 686 (2) OPERATING REQUIREMENTS. The operator of a manure storage facility is in
687 compliance with the certificate of use if the person does all of the following:
- 688 (a) Updates and follows an annual nutrient management plan that complies with
689 requirements in this ordinance, and covers all manure land applied from the manure
690 storage facility covered by the certificate of use.
- 691 (b) Provides a nutrient management plan annually to the department by June 1 to
692 document compliance with ordinance requirements.
- 693 (c) Properly operates the storage facility in accordance with performance standards in s.
694 49.08(8) and consistent with the recommended operating methods as defined by the
695 NRCS Technical Guide, Agricultural Waste Management Field Handbook, and
696 Engineering Field Handbook.
- 697 (d) Properly maintains the storage facility free from visible and serious damage, erosion,
698 or deformities that would impair the facility's safety or function as determined by the
699 NRCS Technical Guide, Agricultural Waste Management Field Handbook, and
700 Engineering Field Handbook.
- 701 (e) Properly maintains the safety devices for a manure storage facility.

702 (f) Provides the department proof of compliance with the requirements in subs (c) and
703 (d) upon request and submits to periodic inspections of the storage facility with advance
704 notice from the department.

705 (g) Develops and implements a plan for closure of the manure storage facility within 2
706 years of when the operator ceases use of the facility or when closure is required based
707 on conditions specified in this ordinance.

708 (3) CERTIFICATE REVOCATION. The department may revoke a certificate of use if there is a
709 misrepresentation of any material fact in the permit application, a misrepresentation of
710 any material fact in the storage facility plan, a misrepresentation of any material fact in
711 the animal waste management plan, a failure to comply with the nutrient management
712 plan requirement, a failure to provide the department with a copy of the nutrient
713 management plan upon request, or for multiple or repeat violations of this ordinance.
714 The department will immediately provide written notice of the revocation and the reason
715 for the revocation.

716

717 SUBCHAPTER V

718 WINTER SPREADING PERMIT

719

720 **49.17 PERMIT REQUIREMENT. (1)** No person may apply manure on frozen, snow-
721 covered, or ice-covered ground without first obtaining a winter spreading permit issued
722 under this subchapter. Said permit shall be issued after review and approval of a winter
723 spreading plan meeting the requirements of this Subchapter. The permit shall remain in
724 effect for a period of 4 years unless revoked by the department pursuant to s. 49.23(4).

725

726 **49.18 WINTER SPREADING PLAN COMPONENTS. (1)** WINTER MANURE SPREADING
727 PLAN. The winter manure ~~spreading application~~ plan must be updated and submitted
728 to the department annually no later than October 15 prior to the winter during which
729 the permittee intends to apply manure in order to validate the permit for that year.
730 These requirements do not apply to manure deposited through winter gleaning or
731 pasturing of plant residue. At a minimum, a winter manure application plan must
732 include the following components:

733 (a) Capacity of storage for each manure type generated on the farm.

734 (b) Quantity of manure anticipated to be spread during periods of frozen or snow-
735 covered soil, or the amount generated in 14 days, whichever is greater.

736 (c) Capacity for stacking manure that is \geq 16% solids without permanent storage, Refer
737 to NRCS Technical Guide 313 or 318 to locate potential stacking sites.

738 (d) Aerial maps showing township, range, section and landowner, field boundaries,
739 identification numbers, acreage, soil types, and areas not spreadable because of
740 prohibitions.

741 (e) Fields/location of planned manure applications as well as previous year's crop and
742 planned crop.

743 (f) An identified method for tracking applications that includes dates, field/locations, and
744 the rates of manure application.

745 (g) An emergency response procedure that identifies contacts, steps to be taken to
746 contain and clean up the manure, and the documentation to be recorded in the event of
747 a discharge event.

748

749 **49.19 LIMITATIONS TO APPLICATION OF MANURE TO FROZEN, SNOW-**
750 **COVERED, OR ICE-COVERED GROUND. (1)** Manure shall not be applied in the
751 following areas:

- 752 (a) Within a water quality management area (WQMA),
- 753 (b) In waterways or other areas of concentrated flow,
- 754 (c) During active snow-melt where water is flowing.
- 755 (2) Do not exceed the phosphorus removal of the following growing seasons' crop.
- 756 Liquid manure applications shall not exceed 7,000 gallons per acre. All winter manure
- 757 applications shall not exceed 60 lbs. P2O5 per acre in a winter season.
- 758 (3) Do not apply to fields with a slope >6% unless the plan documents there are no
- 759 other fields available and, at least two of the following practices are implemented:
- 760 (a) Field has contour buffer strips or is contour strip cropped,
- 761 (b) All crop residue is left on the field and no fall tillage is conducted. This practice is not
- 762 an option where residue is removed as silage or for bedding,
- 763 (c) Apply manure in intermittent strips on no more than 50% of the field,
- 764 (d) Apply manure to no more than 25% of the field during each application, waiting a
- 765 minimum of 14 days between applications,
- 766 (e) Reduce manure application rates not to exceed 3,500 gallons/acre, or 30 pounds of
- 767 P2O5, whichever is less,
- 768 (4) Do not apply nutrients to fields where concentrated flow channels are present unless
- 769 at least two of the following practices are implemented:
- 770 (a) Practices available under s. 49.19(3)(a) through (e),
- 771 (b) No manure application within 200 feet of all concentrated flow channels,
- 772 (c) Fall tillage is on the contour and slopes are lower than 6%.

773
 774 **49.20 PERMIT CONDITIONS. (1) Record Keeping Requirements.** The permittee shall
 775 maintain an accurate record of the date, location and rate of application for every
 776 application of manure on land subject to the winter spreading permit. This record will be
 777 retained for a period of one year following the date of application. All manure application
 778 records shall be made available to the department immediately upon request.

779
 780 **SUBCHAPTER VI**
 781 **PROCEDURES AND ADMINISTRATION**

- 782
 783 **49.21 ADMINISTRATION. (1) DELEGATION OF AUTHORITY.** The County of Dane
 784 hereby designates its Land and Water Resources Department to administer and enforce
 785 this chapter.
- 786 **(2) ADMINISTRATIVE DUTIES.** In the administration and enforcement of this ordinance, the
 787 department shall:
- 788 (a) Inventory and ensure landowner compliance with agricultural performance standards
 - 789 and prohibitions in s. 49.08.
 - 790 (b) Review manure storage facility and winter spreading permit applications, and issue
 - 791 permits and certificates of use, in accordance with this chapter.
 - 792 (c) Keep an accurate record of all permit applications, manure storage facility plans,
 - 793 permits issued, certificates of use issued, inspections made and other official actions.
 - 794 (d) Review the nutrient management plan prepared for the manure storage facility.
 - 795 (e) Review designs of best management practices and conduct inspections during
 - 796 construction and implementation to ensure that they are constructed and maintained
 - 797 according to technical standards, design specifications, and the operation and
 - 798 maintenance plan.
 - 799 (f) Investigate complaints relating to compliance with the ordinance.
 - 800 (g) Perform other duties as specified in this ordinance.
- 801 **(3) INSPECTION AUTHORITY.** The department is authorized to enter upon any lands
 802 affected by this chapter to inspect the land, and request records to determine

803 compliance with this chapter including inspection of sites prior to or after the issuance of
804 a permit or certificate, and sites with unpermitted storage facilities. If permission cannot
805 be received from the applicant or permittee, entry by the department shall request a
806 special inspection warrant pursuant to s. 66.0119 Wis. Stats. Refusal to grant permission
807 to enter lands subject to a permit under this ordinance shall be grounds for denial of or
808 revocation of the permit.

809 **(4) ENFORCEMENT.** The department shall enforce this chapter as set forth in s. 49.23.
810

811 **49.22 VARIANCES. (1)** A permit applicant may request a variance from the
812 requirements under ss. 49.12 or 49.18 if the applicant demonstrates and county
813 conservationist agrees that all of the following conditions are present:

814 **(a)** Enforcement of the standards set forth in this ordinance will result in unnecessary
815 hardship to the landowner.

816 **(b)** The hardship is due to exceptional physical conditions unique to the property.

817 **(c)** Granting the variance will not adversely affect the public health, safety or welfare, nor
818 be contrary to the spirit, purpose and intent of this ordinance.

819 **(2)** If all of the conditions set forth in sub. (1) are met, a variance may only be granted to
820 the minimum extent necessary to afford relief from unnecessary hardship, with primary
821 consideration to water quality and impact to downstream conditions.

822 **(3)** A person aggrieved by a variance determination may appeal that decision to the
823 committee pursuant to s. 49.24.

824 **(4)** No variance from the standards in s. 49.09 may be granted by the department unless
825 the applicant or department receives a written justification from the NRCS or other
826 qualified engineering authority.

827 **(5)** No variance from the performance standards in s. 49.08 may be granted unless the
828 landowner or operator complies with the requirements for variances specified in s. NR
829 151.097, Wis. Adm. Code, and receives approval from the Wisconsin Department of
830 Natural Resources and the department.

831 **(a)** Requests for such a variance shall be made in writing to the department.

832 **(b)** The department shall forward the variance request to the Wisconsin Department of
833 Natural Resources within 10 days of receiving the request.

834 **(c)** The request for variance from the standards in 49.08 shall include documentation of
835 the following:

836 **(a)** Compliance with the performance standard or technical standard is not feasible due
837 to site conditions.

838 **(b)** The landowner or operator will implement best management practices or other
839 corrective measures that ensure a level of pollution control that will achieve a level of
840 water quality protection comparable to that afforded by the performance standards in ch.
841 NR 151, Wis. Adm. Code,

842 **(c)** The landowner or operator or their agents or assigns did not create the conditions for
843 which the variance is requested.

844

845 **49.23 ENFORCEMENT. (1) PROCEDURES.** The department may do the following:

846 **(a)** Provide voluntary cost sharing to secure compliance.

847 **(b)** Follow the procedures in s. NR 151.09, Wis. Adm. Code, to implement and enforce
848 the cropland performance standards and the procedures in s. NR 151.095, Wis. Adm.
849 Code, to implement and enforce the livestock performance standards.

850 **(c)** Pursue any other action or remedy authorized under this ordinance.

851 **(2) INVESTIGATION AND NOTICE OF VIOLATION.** Department staff are responsible for
852 conducting the necessary inspection and investigation to ensure compliance with this

853 chapter and documenting the presence of violations by completing and sending a Notice
854 of Violation (NOV) to the landowner.

855 **(3) ENFORCEMENT OF VIOLATIONS. (a)** Violations of a permit, certificate, compliance
856 determination, or other approval issued under this chapter, or any condition or approved
857 plan associated with such permit or other approval, shall be deemed a violation of this
858 chapter and shall constitute grounds for revocation of the permit, certificate, compliance
859 determination, or other approval as well as fines, forfeitures, and any other available
860 remedies. A permit, certificate, compliance determination, or other approval may be
861 revoked only by action of the body that initially granted it following procedures required
862 for its initial issuance to the extent practical. The decision of the appropriate body shall
863 be furnished to the permit, certificate, or compliance determination holder in writing,
864 stating the reasons thereof.

865 **(b)** A permit, certificate, compliance determination, or other approval issued in violation
866 of this chapter, other ordinances of the Dane County Code of Ordinances, the Wisconsin
867 Administrative Code, or Wisconsin Statutes, gives the permit holder no vested right to
868 continue the activity authorized by the permit, certificate, compliance determination, or
869 other approval and is considered voidable.

870 **(4) STOP WORK ORDER. (a)** Whenever the department finds any noncompliance with the
871 provisions of this ordinance, the department shall attempt to communicate with the
872 landowner, operator or other person performing the work to obtain immediate and
873 voluntary compliance if such person is readily available. If the landowner, operator or
874 other person performing the work is not readily available, that person refuses to
875 voluntarily comply immediately or the noncompliance presents an immediate danger or
876 will cause or threatens to cause bodily injury or damage to off-site property including, but
877 not limited to, off-site runoff, the department shall post in a conspicuous place on the
878 premises, a stop work order which shall cause all activity not necessary to correct the
879 noncompliance to cease until noncompliance is corrected.

880 **(b)** The stop work order shall provide the following information:

- 881 1. date of issuance;
- 882 2. town and section number or equivalent information within a municipality;
- 883 3. reason for posting; and
- 884 4. signature of inspector posting the order.

885 **(c)** Unauthorized removal of a stop work order from the premises shall be a violation of
886 this ordinance.

887 **(5) NOTIFICATION.** In addition to posting a stop work order, the department shall provide
888 notification to the landowner, operator, contractor or other person by personal service,
889 written notice by certified mail, electronic mail, or facsimile transmission.

890 **(a)** The permittee, landowner, operator, contractor or other person shall have 24 hours
891 from time of notification by the department to correct any noncompliance with the plan
892 when notification is by either personal communication of noncompliance to the
893 landowner, operator, contractor, person or their respective agents, or written notice sent
894 by certified mail to the landowner or operator.

895 **(b)** If notice is not provided under sub (a), the permittee and landowner, operator or
896 other person shall have 72 hours to correct any noncompliance with the plan when
897 notification is by posting notice in a conspicuous place on the site or sending notice by
898 facsimile transmission to the landowner, operator, contractor or other person.

899 **(c)** If the noncompliance is not corrected within the time periods specified in subs. (a) or
900 (b), the permittee, landowner, operator or other person authorize the department to take
901 any action, to perform any work, or commence any operations necessary to correct
902 noncompliance on the subject property where notice of noncompliance has been issued
903 to bring the property into compliance with plan requirements. The permittee, landowner,

904 operator or other person further consent to reimburse the authority for the total costs and
905 expenses of the corrective actions. Reimbursement may be collected as a special
906 charge upon the property for current services rendered as provided by law.

907 **(d)** If the permittee has filed an appeal under s. 49.24 (2)(a) prior to the expiration of the
908 time for compliance under sub (a), the department may take action, perform work or
909 correct conditions only to the extent necessary to protect against an imminent hazard or
910 condition that will cause or threatens to cause personal injury or damage to off-site
911 property.

912 **(6) UNLAWFUL.** Any manure storage facility erected, moved or structurally altered or any
913 use established in violation of the provisions of this chapter by any person, firm,
914 association, corporation, including building contractors or their agents, shall be an
915 unlawful structure or use.

916 **(7) FORFEITURES.** Any person, firm, company, or corporation that violates, disobeys,
917 omits, neglects, or refuses to comply with; or who resists the enforcement of any of the
918 provisions of this chapter; shall be subject to a fine of not less than \$50 or more than
919 \$500 together with the costs of action. Any person found guilty of violating this chapter
920 who has previously been convicted of a violation of the same ordinance, shall be subject
921 to a fine of not less than twice the established forfeiture for each such offense, together
922 with the costs of action. Each day a violation exists or continues constitutes a separate
923 offense.

924 **(8) INJUNCTIVE RELIEF.** Compliance with this ordinance may be enforced by injunctive
925 order at suit of the county. The Dane County corporation counsel may bring an action to
926 enforce this chapter and seek any remedy, legal or equitable. It shall not be necessary to
927 prosecute for forfeiture before resorting to injunctive proceedings.

928
929 **49.24 APPEALS. (1) AUTHORITY.** The committee shall hear and decide appeals where
930 it is alleged that there is error in any order, requirement, decision or determination by
931 department staff in administering this ordinance.

932 **(2) PROCEDURE.** (a) Any person aggrieved by any decision of the department pursuant to
933 this ordinance may appeal to the committee. Such appeal shall be submitted to the
934 committee in writing within 60 days after receiving the written decision of the department.
935 Notice of Appeal setting forth the specific grounds for the appeal shall be filed with the
936 department. The department shall forthwith transmit to the committee the Notice of
937 Appeal.

938 (b) The committee shall fix a reasonable time for the hearing of the appeal and publish a
939 class 1 notice under ch. 985, Wis. Stats., as well as give due notice to the parties in
940 interest, and decide the same within a reasonable time. Upon the hearing any party may
941 appear in person or by agent or attorney.

942 (c) The committee may, in conformity with the provisions of this ordinance, reverse or
943 affirm, wholly or partly, or modify the order, requirement, decision or determination
944 appealed from and may make such order, requirement, decision or determination as
945 ought to be made, and shall have all the powers of the officer from whom the appeal is
946 taken.

947
948 **49.25 FEES.** All fees under this ordinance are established pursuant to a fee schedule
949 adopted by the Committee. Copies of the current fee schedule are kept on file at the
950 department. Any permit fee is payable upon submission of a permit application.

951
952 **ARTICLE 4. NON-CODE PROVISION.** The effective date of this ordinance shall be July
953 1, 2019.

954

955 *[EXPLANATION: The manure management portion of Chapter 14 is rescinded and a*
956 *new Chapter 49 is created entitled Agricultural Performance Standards and Manure*
957 *Management. The updated ordinance is consistent with current state administrative*
958 *codes and federal technical standards and incorporates recommendations from the*
959 *Healthy Farms Healthy Lakes Task Force.]*

960