

1 **2018 OA-028 – SUB 2**

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:
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9 ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter
10 numbers are to those of the Dane County Code of Ordinances.
11

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13 - 14.27 is rescinded in its entirety.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

- 24 49.01 Authority.
25 49.02 Jurisdiction.
26 49.03 Purpose, findings and declaration of policy.
27 49.04 Severability.
28

29 **SUBCHAPTER II**
30 **DEFINITIONS**

- 31 49.05 Purpose.
32 49.06 Word usage.
33 49.07 Definitions.
34

35 **SUBCHAPTER III**
36 **AGRICULTURAL PERFORMANCE STANDARDS AND PROHIBITIONS**

- 37 49.08 Performance standards and prohibitions.
38 49.09 Standards.
39 49.10 Cost share required.
40

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

- 43 49.11 Application for issuance of permits.
44 49.12 Manure storage facility plan requirements.
45 49.13 Review of application.
46 49.14 Permit conditions.
47 49.15 Permit revocation.
48 49.16 Certificate of use.
49

50 **SUBCHAPTER V**
51 **WINTER SPREADING PERMIT**

- 52 49.17 Permit requirement.
- 53 49.18 Winter spreading plan components.
- 54 49.19 Limitations to application of manure to frozen, snow-covered, or ice-covered
- 55 ground.
- 56 49.20 Permit conditions.

57
58 **SUBCHAPTER VI**
59 **PROCEDURES AND ADMINISTRATION**

- 60 49.21 Administration.
- 61 49.22 Variances.
- 62 49.23 Enforcement.
- 63 49.24 Appeals.
- 64 49.25 Fees.

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66
67 **SUBCHAPTER I**
68 **GENERAL PROVISIONS**

69
70 **49.01 AUTHORITY.** This ordinance is adopted under authority granted by ss. 33.455 and
71 92.16, Wis. Stats., and s. ATCP 50.56, Wis. Adm. Code.

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

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

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

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

102 **(2) JUDGEMENT OF ORDINANCE APPLICATION.** If a court of competent jurisdiction
103 adjudges invalid the application of any portion of this chapter to a particular property,
104 building, use, or structure, the judgement shall not affect the application of the provision to
105 any other property, building, use, or structure not specifically included in the judgement.

106 **(3) JUDGEMENT OF PERMIT.** If a court of competent jurisdiction adjudges as invalid any
107 requirement or limitation contained in a permit given under this chapter, it shall be
108 presumed that the permit would not have been granted without the requirement or
109 limitation, and therefore, the permit shall also be invalid.

111 SUBCHAPTER II 112 DEFINITIONS 113

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

116
117 **49.06 WORD USAGE.** For the purposes of this chapter, certain words and terms are
118 used as follows:

119 **(1)** Words used in the present tense include the future.

120 **(2)** Words in the singular include the plural.

121 **(3)** Words in the plural include the singular.

122 **(4)** The word “shall” is mandatory and not permissive.

123
124 **49.07 DEFINITIONS.** For the purposes of this chapter, certain words and terms are
125 defined as follows:

126 **(1)** “*Adequate sod or self-sustaining vegetative cover*” means maintenance of sufficient
127 vegetation types and densities that provide 70% coverage such that the physical integrity of
128 the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes
129 grasses, forbs, sedges and duff layers of fallen leaves, and woody debris.

130 **(2)** “*Agricultural lands*” means lands in agricultural use as provided under s. 91.01(2), Wis.
131 Stats.

132 **(3)** “*Applicant*” means any person who applies for a permit under this ordinance.

133 **(4)** “*Best management practices (BMPs)*” mean structural or nonstructural measures,
134 practices, techniques, or devices employed to avoid or minimize soil, sediment, or other
135 pollutants from being carried in runoff to waters of the state.

136 **(5)** “*Concentrated flow channel*” means a natural channel or constructed channel that has
137 been shaped or graded to required dimensions and established in perennial vegetation for
138 the stable conveyance of runoff. This definition may include but is not limited to non-
139 vegetated channels caused by ephemeral erosion including intermittent streams, drainage
140 ditches, and drainage ends identified on the NRCS soil survey. Some drainage ditches are
141 identified on the Dane County Web page at: <https://dcimapapps.countyofdane.com/lwrviewer/>

142 **(6)** “*Department*” means the Dane County Land & Water Resources Department.

143 **(7)** “*Certificate of use*” means an authorization provided by the Department to an
144 agricultural producer allowing them to continue to utilize an unpermitted waste storage
145 facility or permitted facilities that have exceeded the 20 year lifespan.

146 **(8)** “*Committee*” means the Land Conservation Committee as designated by the county
147 board pursuant to s. 7.20(2), Dane County Ordinance, and s. 92.06, Wis. Stats.

148 **(9)** “*Crop producer*” means an owner or operator of an operation engaged in crop
149 related agricultural practices specified in Wis. Stat. s. 281.16(1)(b).

150 **(9)** “*Direct conduit to groundwater*” means wells, sinkholes, swallets, fractured bedrock at
151 the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries,

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

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

154 **(a)** Runoff of stored manure, including manure leachate, that discharges a significant amount

155 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 of

159 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 of

163 nutrients by such means as injection, disc, sweep, plow or other tillage/infiltration method

164 such that manure will not run off the field or drain to subsurface tiles during application.

165 **(12)** “Feedlot” means a barnyard, exercise area, or other outdoor area where livestock are

166 concentrated for feeding or other purposes and self-sustaining vegetative cover is not

167 maintained. “Feedlot” does not include a winter grazing area or a bare soil area such as a

168 cattle lane or a supplemental feeding area located within a pasture, provided that the bare soil

169 area is not a significant source of pollution to waters of the state as determined by predictive

170 models for manure runoff utilized by the department.

171 **(13)** “Idle storage facility” means a facility where manure has not been added or

172 removed for a period of 24 months.

173 **(14)** “Land application” means the physical transfer of manure from any animal

174 confinement area or manure storage facility to fields for purposes of fertilization or

175 disposal.

176 ~~**(15)** “Landowner” means a person who owns a parcel of land.any of the following:~~

177 ~~**(16)** A person who owns a parcel of land.~~

178 ~~**(17)**(15) A person who rents, controls, or uses a parcel of land for agricultural purposes.~~

179 ~~**(18)**(16) “Livestock” means all domestic animals, including deer, elk, or any~~

180 ~~fenced-in animals.~~

181 ~~**(19)**(17) “Livestock operation” means a feedlot or other facility or a pasture where~~

182 ~~animals are fed, confined, maintained, or stabled.~~

183 ~~**(20)**(18) “Manure” means livestock excreta and includes the following when intermingled~~

184 ~~with excreta in normal farming operations: debris including bedding, water, soil, hair, and~~

185 ~~feathers; processing derivatives including separated sand, separated manure solids,~~

186 ~~precipitated manure sludges, supernatants, digested liquids, composted biosolids, and~~

187 ~~process wastewater; and runoff collected from barnyards, animal lots, and feed storage~~

188 ~~areas.~~

189 ~~**(21)**(19) “Manure storage facility” means an impoundment made by constructing~~

190 ~~an embankment or excavating a pit or dugout or by fabricating a structure to contain~~

191 ~~manure, process wastewater, or other animal or agricultural waste.~~

192 ~~**(22)**(20) “Manure storage facility, existing” means a facility that was constructed~~

193 ~~prior to October 1, 2002.~~

194 ~~**(23)**(21) “Manure storage facility, substantially altered” means a change initiated by~~

195 ~~an landowner and operator that results in a relocation of a manure structure or facility or~~

196 ~~significant changes to the size, depth or configuration of a manure structure or facility~~

197 ~~including:~~

198 **(a)** Replacement of a liner, or any interception of the liner as a result of changes in the

199 management system of the manure storage structure.

200 **(b)** An increase in the volumetric capacity or area of a structure or facility by greater than 20%.

201 **(c)** A change in a structure or facility related to a change in livestock management from one

202 species of livestock to another, such as cattle to poultry.
203 ~~(24)~~(22) “Manure storage facility, unpermitted” means a facility that was constructed
204 without a permit issued by Dane County Land & Water Resources Department under this
205 ordinance.
206 ~~(25)~~(23) “Margin of safety level” means the level in a liquid manure storage or
207 containment facility that is vertically one foot below the lowest point of the top of the manure
208 storage facility or structure.
209 ~~(26)~~(24) “Natural Resources Conservation Service (NRCS)” means an agency of the
210 United States Department of Agriculture (USDA) which, for purposes of this chapter, provides
211 the agency and the department with technical assistance and information on the design
212 criteria, size, shape, engineering strength, and other necessary technical data for the proper
213 and safe installation of a manure storage facility.
214 ~~(27)~~(25) “Navigable waters and navigable drainage ways” means any body of water
215 that is navigable under the laws of the state as defined s. 281.31(2)(d), Wis. Stats.
216 ~~(28)~~(26) “Nutrient management plan” means a plan that ~~balances the nutrient needs of~~
217 ~~a crop with the nutrients available from legume crops, manure, fertilizer, or other sources.~~
218 ~~The requirements for a nutrient management plan are as established~~ meets the definition in
219 s. ATCP 50.04(3), Wis. Adm. Code.
220 ~~(27)~~ “Nutrients” means plant nutrients derived from commercial fertilizers, manure,
221 organic wastes, soil reserves, legumes, or other sources.
222 ~~(29)~~(28) “Operator” means a person who rents, controls or uses a parcel of land for
223 agricultural purposes.
224 ~~(30)~~(29) “Ordinary high water mark” means the point on the bank or shore up to which
225 the presence and action of surface water is so continuous as to leave a distinctive mark
226 such as by erosion, destruction or prevention of terrestrial vegetation, or other easily
227 recognized characteristic. Where the bank or shore at any particular place is of such
228 character that it is difficult or impossible to ascertain where the point of ordinary high- water
229 mark is, recourse may be had to the opposite bank of a stream or to other places on the
230 shore of a lake or flowage to determine whether a given stage of water is above or below the
231 ordinary high-water mark.
232 ~~(31)~~(30) “Pasture” means land on which livestock graze or otherwise seek feed in a
233 manner that maintains the vegetative cover over the grazing area. Pasture may include
234 limited areas of bare soil such as cattle lanes and supplemental feeding areas provided the
235 bare soil areas are not significant sources of pollution to waters of the state.
236 ~~(32)~~(31) “Permit” means the signed, written statement issued by the department under
237 this ordinance authorizing the applicant to construct, install, substantially alter, or close, a
238 manure storage facility, and/or the application of livestock waste on frozen or snow-
239 covered ground.
240 ~~(33)~~(32) “Permitted facility” means a facility that was permitted under this ordinance.
241 ~~(34)~~(33) “Permittee” means any person to whom a permit is issued under this ordinance.
242 ~~(35)~~(34) “Person” means any individual, owner, operator, corporation, limited liability
243 company, partnership, association, municipality, interstate agency, state agency, or
244 federal agency.
245 ~~(36)~~(35) “Phosphorus index” means the State’s agricultural land management planning
246 tool for assessing the potential of a cropped or grazed field to contribute phosphorus to
247 surface waters.
248 ~~(37)~~(36) “Pollutant” means any dredged, spoil, solid waste, incinerator residue, sewage,
249 garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials,
250 radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and
251 industrial, municipal, and agricultural waste discharged into water.

252 ~~(38)~~(37) *“Pollution”* includes contaminating or rendering unclean or impure the waters of
253 the state, or making the same injurious to public health, harmful for commercial or
254 recreational use, or deleterious to fish, bird, animal or plant life.
255 ~~(39)~~(38) *“Process wastewater”* means wastewater from the production area directly or
256 indirectly used in the operation of animal feeding operation that results from any or all of the
257 following:
258 (a) Spillage or overflow from animal or poultry watering systems.
259 (b) Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding
260 operation facilities.
261 (c) Direct contact swimming, washing, or spray cooling of animals or dust control.
262 (d) Water that comes into contact with any raw materials or animal byproducts including
263 manure, feed, milk, eggs, or bedding.
264 ~~(40)~~(39) *“Runoff”* means storm water or precipitation including rain, snow, ice melt or
265 similar water that flows across the land surface via sheet or channelized flow.
266 ~~(41)~~(40) *“Safety devices”* means constructed measures designed to protect humans
267 and livestock from hazards associated with a manure storage facility.
268 ~~(42)~~(41) *“Site that is susceptible to groundwater contamination”* means any one of
269 the following:
270 (a) An area within 250 feet of a private well.
271 (b) An area within 1000 feet of a municipal well.
272 (c) An area within 300 feet upslope or 100 feet downslope of a direct conduit to
273 groundwater.
274 (d) A channel that flows to a direct conduit to groundwater.
275 (e) An area where the soil depth to groundwater or bedrock is less than 2 feet.
276 (f) An area where the soil does not exhibit one of the following soil characteristics:
277 1. At least a 2-foot soil layer with 40% fines or greater above groundwater and bedrock.
278 2. At least a 3-foot soil layer with 20% fines or greater above groundwater and bedrock.
279 3. At least a 5-foot soil layer with 10% fines, or greater above groundwater and bedrock.
280 ~~(43)~~(42) *“Surface waters”* means all natural and artificial named and unnamed lakes and
281 all naturally flowing streams within the boundaries of the state, but not including cooling
282 lakes, farm ponds and facilities constructed for the treatment of wastewaters.
283 ~~(44)~~(43) *“Technical guide”* means the United States Department of Agriculture (USDA)
284 Natural Resources Conservation Service (NRCS) Technical Guide as adopted by the
285 agency, including subsequent amendments or additions.
286 ~~(45)~~(44) *“Tolerable soil loss”* or *“T”* means the maximum rate of erosion, in tons per acre
287 per year, allowable for particular soils and site conditions that will maintain soil productivity.
288 ~~(46)~~(45) *“Top of the channel”* means an edge, or point on the landscape landward from
289 the ordinary high water mark of a surface water of the state, where the slope of the land
290 begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or
291 less continually for the initial 50 feet landward from the ordinary high water mark, the top of
292 the channel is the ordinary high water mark.
293 ~~(47)~~(46) *“Unconfined manure pile”* means a quantity of manure that is at least 175 cubic
294 feet in volume and which covers the ground surface to a depth of at least 2 inches and is not
295 confined within a manure storage facility, livestock housing facility or barnyard runoff control
296 facility or covered or contained in a manner that prevents storm water access and direct
297 runoff to surface water or leaching of pollutants to groundwater.
298 ~~(48)~~(47) *“Waste transfer system”* means all components including tanks, pipes, pumps,
299 conduits, valves, gutters, flow channels, and any other component designed to convey
300 manure, contaminated runoff, and milking center wastes into or out of buildings, retention
301 basins, or storage facilities.

302 ~~(49)~~(48) “Water Quality Management Area (WQMA)” means land that includes any of the
303 following: an area within 1,000 feet up-gradient of the ordinary high water mark of a navigable
304 lake, pond, or flowage; an area within 300 feet up-gradient of the high water mark of a
305 navigable river or; an area that is susceptible to groundwater contamination, or has the
306 potential to be a direct conduit for pollutants to reach groundwater.

307 ~~(50)~~(49) “Waters of the state” mean those portions of Lake Michigan and Lake
308 Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs,
309 ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and
310 other surface water or groundwater, natural or artificial, public or private within the state
311 or under its jurisdiction, except those waters which are entirely confined and retained
312 completely upon the property of a person.

313 ~~(51)~~(50) “Winter grazing area” means a cropland or pasture where livestock feed
314 on dormant vegetation or crop residue, with or without supplementary feed, during the
315 period of October 1 to April 30.

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
321 grown 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 operation
325 that negatively impacts stream bank integrity or deposits soil directly in surface waters.

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

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

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

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

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

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

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

346 (a) This performance standard does not apply to industrial waste and byproducts regulated
347 under ch. NR 214, Wis. Adm. Code, municipal sludge regulated under ch. NR 204, Wis.
348 Adm. Code, and septage regulated under ch. NR 113, Wis. Adm. Code.

349 (b) Nutrient management plans are required on pastures unless exempt as established in s.
350 ATCP 50.04(3)(b), Wis. Adm. Code.

351 (c) Manure, commercial fertilizer, and other nutrients shall be applied in conformance with a

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

402 maintained to minimize the risk of structural failure of the facility and to minimize leakage of
403 the facility in order to comply with groundwater standards and NRCS technical standard 313.

404 2. The levels of materials in the storage facility may not exceed the margin of safety
405 level.

406 3. Storage facilities that are constructed or significantly altered on or after January 1,
407 2011, shall be designed and operated to contain the additional volume of runoff and direct
408 precipitation entering the facility as a result of a 25-year, 24-hour storm.

409 4. A new manure storage facility means a facility constructed after October 1, 2002.

410 5. A substantially altered manure storage facility is a manure storage facility that is
411 substantially altered after October 1, 2002.

412 **(b) Closure.** 1. "Conditions for closure." Idle storage facilities shall be closed in a manner that
413 will prevent future contamination of groundwater and surface waters in accordance with
414 NRCS technical standard 360.

415 2. "Conditions for retention." The landowner or operator may retain the facility for a longer
416 period of time by making a written request to the department to retain the facility once every
417 two years until the facility is brought into use and by demonstrating to the county the
418 following conditions are met:

419 a. The facility is designed, constructed and maintained in accordance with this chapter.

420 b. The facility is designed to store manure for a period of time longer than 24 months.

421 c. Retention of the facility is warranted based on anticipated future use.

422 **(c) Existing facilities.** 1. Manure storage facilities in existence as of October 1, 2002, that
423 pose an imminent threat to public health, fish and aquatic life, or groundwater, shall be
424 upgraded, replaced, or closed in accordance with this section.

425 2. Levels of materials in storage facilities may not exceed the margin of safety level.

426 **(9) SAFETY DEVICES.** The following safety devices are required on all manure storage
427 facilities in Dane County whether or not a permit has been issued under this ordinance:

428 **(a)** A fence around the manure storage facility is required unless the manure storage facility
429 has vertical walls 5 feet above the ground surface or the manure storage facility has a cover
430 that will support foot traffic. Fences shall be a minimum of 48 inches above grade and shall
431 not allow the passage of a larger than 6-inch sphere between any fence or gate member or

432 meets s.49.09(2).- All fence openings shall have gates that can be shut and securely
433 fastened.

434 **(b)** A grate or cover for any opening in the waste transfer system that is larger than 6 inches
435 in diameter. Grates and covers must be designed to withstand all load requirements. A
436 fence around a waste transfer system may be used in lieu of a grate or cover if the fence
437 meets the criteria contained in sub (a).

438 **(c)** Safety stops, gates, or both shall be installed at push-off ramps and load out areas of
439 impoundments and structures to prevent accidental entry of tractors and other equipment.

440 **(d)** Manure storage facilities and their components shall have signs at all access points to
441 warn of the danger of entry.

442

443 **49.09 STANDARDS. (1) STANDARDS FOR EVALUATING SHEET, RILL, AND WIND**
444 **EROSION.** The standards for evaluating sheet, rill, and wind erosion shall be Revised
445 Universal Soil Loss Equation 2 (RUSLE2). Note: RUSLE2 is available at
446 https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/cp/?cid=nrcs142p2_02080

447 1. Equivalent methodology may be used as approved by the department.

448 **(2) STANDARDS FOR DESIGN AND CONSTRUCTION OF MANURE STORAGE**
449 **FACILITIES.** The standards for design and construction of manure storage facilities shall
450 be the current standards in the NRCS Technical Guide, including 313 Waste Storage
451 Facility, 634 Manure Transfer, 635 Vegetated Treatment Area, 632 Waste Separation

452 Facility, and 629 Waste Treatment and any amendments to these standards.
453 **(3) STANDARDS FOR NUTRIENT MANAGEMENT.** The standards for management of
454 manure and nutrients applied to cropland and pastures shall be the current standards in the
455 NRCS Technical Guide, including 590 Nutrient Management and any amendments.
456 **(4) STANDARDS FOR PHOSPHORUS INDEX (PI).** The standard for meeting the PI on
457 croplands, pastures, or winter grazing areas shall be based on the calculation utilized by the
458 current SNAP Plus nutrient management planning model.
459 Note: SNAP Plus is available at <https://snapplus.wisc.edu/>.
460 **(5) STANDARDS FOR CLOSURE OF MANURE STORAGE FACILITY.** The standards for
461 closure of an unused manure storage facility shall be the current standards in the NRCS
462 Technical Guide, including 360 Waste Facility Closure and any amendments.
463 **(6) STANDARDS FOR DETERMINATION OF SIGNIFICANT DISCHARGE AND DIRECT**
464 **RUNOFF.** The standards for determination of direct runoff shall be the Barnyard Runoff
465 Evaluation Tool (BERT), BARNY, VTA spreadsheet or an equivalent predictive model for
466 manure, feed leachate, milkhouse waste or other process wastewater runoff.
467 Note: Available models can be found at
468 [https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/engineering/?cid=nrcs142p](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/engineering/?cid=nrcs142p2_025422)
469 [2_025422](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/engineering/?cid=nrcs142p2_025422). Equivalent methodology may be used as approved by the department.
470 **(7) STANDARDS FOR THE DETERMINATION OF ADEQUATE SOD OR SELF-**
471 **SUSTAINING VEGETATIVE COVER.** Standards for determination of adequate sod or
472 self-sustaining vegetative cover shall be the standards outlined in the NRCS Technical
473 Guide 528 Prescribed Grazing or vegetative measurement by grid sample shall show at
474 least 70 percent living plant material cover.
475 **(8) SUBSEQUENT MODIFICATION OF STANDARDS.** The standards of the NRCS
476 Technical Guide are adopted and by reference made a part of this section as if fully set
477 forth herein. Any future amendment, revision or modification of the standards incorporated
478 herein are made a part of this section, unless otherwise acted upon by the
479 [agencydepartment](#). Copies of the current standards are available at the department.
480 **(9) ADDITIONAL STANDARDS.** Standards not identified in this section may be utilized to
481 meet the requirements of this ordinance with prior approval from the department. Variances
482 may be requested in accordance with s.49.225.

483
484 **49.10 COST SHARE REQUIRED.** An [land](#)owner or operator of an agricultural facility or
485 practice that is in existence before October 1, 2002, may not be required to comply with the
486 performance standards, prohibitions, conservation practices or technical standards under this
487 subchapter unless cost-sharing is made available to the [land](#)owner or operator [to the extent](#)
488 [that cost-sharing is required by state law](#). A determination that cost-sharing is available to
489 meet the performance standards, prohibitions, conservation practices or technical standards
490 under this subsection will be determined in accordance with s. NR 151.09 or NR 151.095,
491 Wis. Adm. Code, when funding is provided under ch. 281.65, Wis. Stats., and will be
492 determined in accordance with ch. ATCP 50, Wis. Adm. Code, when funds are from any
493 other source.

494 495 496 **SUBCHAPTER IV**

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

498
499 **49.11 APPLICATION FOR ISSUANCE OF PERMITS. (1) PERMIT REQUIRED. (a)** No
500 person may do any of the following without obtaining a permit in accordance with this
501 section:

502 1. Construct a ~~new~~ manure storage facility or substantially alter an ~~existing~~ manure
503 storage facility, including the construction or substantial alteration of waste transfer
504 systems connected to a manure storage facility.

505 2. Upgrade, repair or replace a manure storage facility that has been identified as posing an
506 imminent threat to public health, fish and aquatic life, or groundwater.

507 3. Close an ~~existing~~ manure storage facility, including conversion of its use, regardless of
508 whether the facility must be closed in accordance with s. 49.08(8)(c).

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

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

517 2. A permit shall be required for any work deemed to constitute additional alteration or repair
518 to the facility in excess of that reasonably necessary to respond to the emergency. The
519 department's determination shall be rendered within 5 business days of the reporting. Work
520 done without a proper permit shall constitute noncompliance with the ordinance. The passage
521 of this ordinance is not to be construed as a requirement that livestock operations construct
522 manure storage facilities but rather that facilities that are constructed be required to obtain the
523 appropriate permits and approvals.

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

529 **(3) PERMIT DURATION.** Permits for manure storage facilities shall be valid for 20 years.

530 **(4) PERMIT EXPIRATION.** ~~Prior~~At the time the permit expires theThe landowner may
531 choose to either obtain a certificate of use in accordance with s. 49.16- or close the facility in
532 accordance with s. 49.12(3).

533 (a) To obtain a certificate of use, the ~~to the expiration date, the~~ manure storage facility may
534 shall be evaluated by a professional engineer in the last year of the permit to assess the
535 manure storage facility's structural condition and compliance with the standards listed in this
536 ordinance.

537 1. If the department determines, based on the engineering evaluation, that the facility meets
538 the intent of the standards listed in this ordinance, a certificate of use will be issued for the
539 facility.

540 2. If the department determines, based on the engineering evaluation, that repairs are
541 required, a certificate of use will not be issued until the required repairs are made to the
542 manure storage facility or a schedule of repairs is agreed upon by the landowner or operator
543 and the department. ~~The evaluation shall be used by the department to determine if repairs~~
544 ~~are required~~

545 ~~(b) prior to issuance of certificate of use.~~ If no evaluation is performed or if the landowner or
546 operator does not want to implement the repairs to bring the manure storage facility into
547 compliance with this chapter, the manure storage facility shall be closed in compliance with s.
548 49.12(3) prior to the expiration date of the permit.

549 **(5) PERMIT Modification.** Changes to a manure storage facility that fall under the activities
550 identified in s. 49.11(1) during the 20 year permit duration may require a new permit or may be
551 performed under a permit modification. Prior to making any changes the landowner or operator
552 shall submit an application to the department following the requirements in s. 49.12. The

553 department shall make a determination whether the activities proposed in the application
554 require a new permit or can be performed under a permit modification. A permit modification
555 does not alter the expiration date of the original permit.

556
557 **49.12 MANURE STORAGE FACILITY PLAN REQUIREMENTS.** Each application for a
558 manure storage permit under this section shall include the completion of the county permit
559 application and a detailed manure storage facility construction plan.

560 **(1) MANURE STORAGE FACILITY PLAN REQUIREMENTS.** Manure storage structures, and
561 any additions to such structures, shall maintain the following setbacks ~~pursuant to s. ATCP-~~
562 ~~51.12, Wis. Adm. Code,~~ and additional setbacks set forth in s. 49.09(2). herein.

563 **(a) SETBACKS FROM PROPERTY LINES AND ROAD RIGHTS-OF-WAY.** Manure storage
564 structures shall be setback 350 feet from any property line or road right-of-way, however, the
565 setback from the property line or road right-of-way may be reduced if the new manure storage
566 facility is located no closer than an existing manure storage facility that is in use. For
567 purposes of measuring this setback, property line is defined as the outermost boundary of a
568 property under common ownership as described on a deed recorded with the Dane County
569 Register of Deeds and the manure storage facility measurement will be from the inside top of
570 the liner of the structure. Setbacks do not apply to manure transfer facilities.

571 **(b) EXPANSION.** Manure storage structures located within a setback area may be
572 expanded provided the area to be expanded meets required setbacks.

573 **(2) MANURE STORAGE CONSTRUCTION PLAN REQUIREMENTS.** A complete permit
574 application for a ~~new or modified manure~~ storage facility shall meet or exceed the minimum
575 established limits and specific criteria within NRCS Technical Standard 313 for Waste
576 Storage, and additional Technical Standards, including, but not limited to, 342 Critical Area
577 Planting, 382 Fence, 558 Roof Runoff Structure, 590 Nutrient Management, and 634 Manure
578 transfer as applicable. The plan shall include all of the following:

579 **(a)** Number, type, and size of animals for which storage is provided and the duration for
580 which storage is to be provided.

581 **(b)** Type of bedding to be used in the operation and all aspects of handling and recovery of
582 this bedding material.

583 **(c)** Site plan of the facility and its location in relation to the following:

584 1. "Residences." The location of any residential buildings other than that of the landowner of
585 the premises, or owned by the landowner of the premises but occupied by his/her family,
586 agent or employee within 500 feet of the facility shall be identified.

587 2. "Property Lines." The location of any property lines within 500 feet of the facility shall be
588 identified.

589 3. "Wells." The location of any wells within 500 feet of the facility shall be identified.

590 4. "Utilities." The location of all utilities within 500 feet of the facility shall be identified.

591 5. "State and federal highways, county and town roads, and public streets designated as
592 roadways." The location of any roadway within 500 feet of the facility shall be identified.

593 6. "Navigable waters and navigable drainage ways." The location of any navigable water and
594 drainage ways within 500 feet of the facility shall be identified.

595 7. "Floodplains and other water bodies." The location of floodplains and other
596 waterways within 500 feet of the facility shall be identified.

597 **(d)** North arrow, scale of the drawing, legal description of the proposed facility parcel,
598 and location, description and elevation of a temporary benchmark.

599 **(e)** Structural details including, but not limited to, dimensions, cross-sections, concrete
600 thickness, reinforcing steel location and design loading details when other than NRCS pre-
601 qualified designs and drawings are used.

602 **(f)** Construction and material specifications including, but not limited to, applicable

603 specifications for earth fill, excavation, concrete, reinforcing steel, timber and pipes.
604 **(g)** Soil test pit locations, elevations, and soil descriptions to a depth as required for the
605 planned structure according to the NRCS Technical Standard 313.
606 **(h)** Elevation of groundwater, bedrock or seasonally saturated conditions if encountered in
607 the soil profile and the date of any such determinations.
608 **(i)** Provisions for adequate drainage and control of runoff to prevent pollution of surface
609 water and groundwater.
610 **(j)** Time schedule for construction of the facility.
611 **(k)** Details and plans for the method and structures used in transferring manure into and from
612 the facility.
613 **(l)** Plan to control erosion during the construction or modification of the facility.
614 **(m)** Plans that address the safety requirements of the facility as needed.
615 **(n)** Emergency response plan identifying the names and phone numbers of individuals –or
616 others to be notified in the event of any leaks, spills or other system failures that could
617 discharge manure.
618 **(o)** Certification by a professional engineer registered in the State of Wisconsin, or an
619 engineering practitioner certified by the Wisconsin Department of Agriculture, Trade and
620 Consumer Protection (DATCP) or the NRCS that the plans meet technical and ordinance
621 standards.
622 **(p)** Operation and maintenance plan for the manure storage facility signed by the landowner
623 or operator that identifies the basics of operation, the manure removal interval, the use of
624 agitation pads, and required repairs to berms and roads that are a necessary part of the
625 facility function and meets all other requirements of NRCS Technical Standards 313 and
626 634.
627 **(q)** Nutrient management plan that complies with s. ATCP 50.04, Wis. Adm. Code. The
628 nutrient management plan must be prepared by a nutrient management planner qualified
629 under s. ATCP 50.04 (3), Wis. Adm. Code, submitted and approved prior to issuance of the
630 permit.
631 **(r)** Any other additional information required by the department to protect water quality and
632 determine compliance with this section.
633 **(3)** MANURE STORAGE FACILITY CLOSURE APPLICATION REQUIREMENTS. A
634 complete permit application for waste-manure storage facility closure shall meet all
635 standards as outlined in NRCS Technical Standard 360 and shall specify:
636 **(a)** Provisions to remove and properly dispose of all accumulated wastes in the manure
637 storage- facility.
638 **(b)** Provisions to remove any concrete or synthetic liner, or properly use pieces of the
639 concrete or synthetic liner as clean fill at the site.
640 **(c)** Provisions to remove and properly dispose of any soil contaminated with waste from the
641 manure storage facility.
642 **(d)** Provisions to remove any soils, to the depth of significant manure contamination or 2 feet,
643 whichever is less, from the bottom and sides of a manure storage facility without a constructed
644 liner.
645 **(e)** Provision to remove or permanently plug the waste transfer system serving the
646 manure storage facility.
647 **(f)** Provisions to cover all disturbed area with topsoil, seeding the areas with a grass or native
648 plant mixture, and mulching the seeded area. This section does not apply if an alternative use
649 of the site is authorized under a manure storage-waste facility closure plan approved by the
650 county-department as part of the permit.
651 **(g)** Any other additional information required by the department to protect water quality and
652 determine compliance with this section.
653

654 **49.13 REVIEW OF APPLICATION.** The department shall receive and review all permit
655 applications. The department shall determine if the proposed manure storage facility and
656 nNutrient mManagement pPlan, if applicable, meets required standards set forth in s. 49.12.
657 Within 30 calendar days after receiving the completed application and fee, the department
658 shall inform the applicant, in writing, whether the permit application is approved and issue the
659 permit or shall inform the applicant, in writing, of the reasons for disapproval. If additional
660 information is required, the department shall notify the permit applicant. The department has
661 30 calendar days to approve or deny the permit application, in writing, from receipt ~~of the~~
662 requested additional information. If the department fails to approve or deny the permit
663 application in writing within 30 calendar days of the receipt of the permit application or
664 additional information, as appropriate, the application shall be deemed approved and the
665 applicant may proceed as if a permit had been issued.

666 **49.14 PERMIT CONDITIONS.** All permits issued under this subchapter shall be issued
667 subject to the following conditions and requirements:

668 (1) Manure storage facility design, construction, operations, management, utilization, and
669 closure activities shall be carried out in accordance with the manure facility plan and
670 applicable standards specified in s.49.12.

671 (2) The permittee shall give 5 ~~working-calendar~~ days' notice to the department before starting
672 any construction or closure activity authorized by the permit.

673 (3) The permittee, engineer and contractor shall participate in a pre-construction conference
674 with county staff before initiating construction of a new facility to outline the requirements
675 and responsibilities of all of the involved parties.

676 (4) Written approval from the department must be obtained prior to ~~any~~ modifications to the
677 permitted plans.

678 (5) The permittee ~~and~~, design engineer or consultant, ~~and the contractor~~ shall certify, in
679 writing, that a manure storage ~~new~~ facility was installed as planned. This certification shall
680 include an as-~~built~~ survey and as-built drawings signed and stamped by the engineer
681 depicting the as-~~built~~ survey and any changes to the construction plan in red.

682 (6) The department shall provide onsite inspection and verification for all construction projects
683 conducted under a permit issued under this chapter. To receive final verification, a manure
684 storage facility must be fully constructed as designed including the marking of the maximum
685 operating level and implementation of all safety devices.

686 (7) No permitted manure storage facilities may receive manure until the county provides final
687 verification.

688 (8) Construction activities authorized by permit must be completed and certified within 2
689 years from the date of issuance, after which any additional construction activities will require
690 a new manure storage permit application to be submitted and approved.

691 **49.15 PERMIT REVOCATION.** The department may revoke the permit issued under this
692 subchapter if the holder of the permit has misrepresented any material fact in the permit
693 application or manure storage facility plan, or if the holder of the permit violates any of the
694 conditions of the permit.

695 **49.16 CERTIFICATE OF USE. (1) CERTIFICATE REQUIREMENT.** No person may
696 operate or use a manure storage facility, or any portion of a manure storage facility, ~~that was~~
697 constructed without a permit issued by the dDepartment or has an expired permit unless the
698 person has a valid certificate of use for the manure storage facility or that portion of the
699 manure storage facility that is being operated or used.

700 (2) OPERATING REQUIREMENTS. The operator of a manure storage facility is in
701 compliance with the certificate of use if the person does all of the following:
702
703
704

- 705 (a) Updates and follows an annual nutrient management plan that complies with
 706 requirements in this ordinance, and covers all manure land applied from the manure
 707 storage facility covered by the certificate of use.
- 708 (b) Provides a nutrient management plan annually to the department by June 1 to
 709 document compliance with ordinance requirements.
- 710 (c) ~~O~~ Properly operates the manure storage facility in accordance with performance standards
 711 in s. 49.08(8) and consistent with the recommended operating methods as defined by the
 712 NRCS Technical Guide, Agricultural Waste Management Field Handbook, and Engineering
 713 Field Handbook.
- 714 (d) ~~M~~ Properly maintains the manure storage facility free from visible and serious damage,
 715 erosion, or deformities that would impair the manure storage facility's safety or function as
 716 determined by the NRCS Technical Guide, Agricultural Waste Management Field Handbook,
 717 and Engineering Field Handbook.
- 718 (e) ~~M~~ Properly maintains the safety devices for a manure storage facility.
- 719 (f) Provides the department proof of compliance with the requirements in subs (c) and
 720 (d) upon request and submits to periodic inspections of the manure storage facility with
 721 advance notice from the department.
- 722 (g) Develops and implements a plan for closure of the manure storage facility within 2 years
 723 of when the landowner or operator ceases use of the manure storage facility or when closure
 724 is required based on conditions specified in this ordinance.
- 725 (3) CERTIFICATE REVOCATION. The department may revoke a certificate of use if there is a
 726 misrepresentation of any material fact in the permit application, a misrepresentation of any
 727 material fact in the manure storage facility plan, a misrepresentation of any material fact in
 728 the animal waste nutrient management plan, a failure to comply with the nutrient management
 729 plan requirements, a failure to provide the department with a copy of the nutrient
 730 management plan upon request, or for multiple or repeat violations of this ordinance. The
 731 department will immediately provide written notice of the revocation and the reason for the
 732 revocation.

733
 734 **SUBCHAPTER V**
 735 **WINTER SPREADING PERMIT**
 736

737 **49.17 PERMIT REQUIREMENT. (1)** No person may apply manure on frozen, snow-
 738 covered, or ice-covered ground without first obtaining a winter spreading permit issued under
 739 this subchapter. Said permit shall be issued after review and approval of a winter manure
 740 spreading plan meeting the requirements of this Subchapter. The permit shall remain in
 741 effect for a period of 4 years unless revoked by the department pursuant to s. 49.23(4).
 742

743 **49.18 WINTER MANURE SPREADING PLAN COMPONENTS. (1)** WINTER MANURE
 744 SPREADING PLAN. The winter manure spreading application plan ~~must shall~~ be updated
 745 and submitted to the department annually no later than October 15 prior to the winter during
 746 which the permittee intends to apply manure in order to validate the permit for that year.
 747 These requirements do not apply to manure deposited through winter gleaning or pasturing
 748 of plant residue. At a minimum, a winter manure application-spreading plan ~~must shall~~ include
 749 the following components:

- 750 (a) Capacity of storage for each manure type generated on the farm.
- 751 (b) Quantity of manure anticipated to be spread during periods of frozen or snow-
 752 covered soil, or the amount generated in 14 days, whichever is greater.
- 753 (c) Capacity for stacking manure that is \geq 16% solids without permanent storage. Refer to
 754 NRCS Technical Guide-Standard 313 or 318 to locate potential stacking sites.

- 755 (d) Aerial maps showing township, range, section and landowner, field boundaries,
- 756 identification numbers, acreage, soil types, and areas not spreadable because of
- 757 prohibitions.
- 758 (e) Fields/location of planned manure applications as well as previous year's crop and
- 759 planned crop.
- 760 (f) ~~I~~An identified method(s) for tracking applications that includes dates, field/locations, and
- 761 the rates of manure application.
- 762 (g) ~~E~~An emergency response procedure(s) that ~~identifies-include~~ contacts, steps to be taken
- 763 to contain and clean up the manure, and the documentation to be recorded in the event of a
- 764 discharge event.

765
766 **49.19 LIMITATIONS TO APPLICATION OF MANURE TO FROZEN, SNOW-**
767 **COVERED, OR ICE-COVERED GROUND. (1)** Manure shall not be applied in the
768 following areas:

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

790
791 **49.20 PERMIT CONDITIONS. (1)** Record Keeping Requirements. The permittee shall
792 maintain an accurate record of the date, location and rate of application for every application
793 of manure on land subject to the winter spreading permit. This record will be retained for a
794 period of one year following the date of application. All manure application records shall be
795 made available to the department ~~immediately~~ upon request.

796
797 **SUBCHAPTER VI PROCEDURES**
798 **AND ADMINISTRATION**

799
800 **49.21 ADMINISTRATION. (1)** DELEGATION OF AUTHORITY. The County of Dane
801 hereby designates its Land and Water Resources Department to administer and enforce this
802 chapter.
803 (2) ADMINISTRATIVE DUTIES. In the administration and enforcement of this ordinance, the
804 department shall:
805 (a) Inventory and ensure landowner compliance with agricultural performance standards and

806 prohibitions in s. 49.08 and s. 49.09.

807 **(b)** Review manure storage facility and winter spreading permit applications, and issue

808 permits and certificates of use, in accordance with this chapter.

809 **(c)** Keep an accurate record of all permit applications, manure storage facility plans,

810 permits issued, certificates of use issued, inspections made and other official actions.

811 **(d)** Review the nutrient management plan prepared for the manure storage facility.

812 **(e)** Review designs of best management practices and conduct inspections during

813 construction and implementation to ensure that they are constructed and maintained

814 according to technical standards, design specifications, and the operation and

815 maintenance plan.

816 **(f)** Investigate complaints relating to compliance with the ordinance.

817 **(g)** Perform other duties as specified in this ordinance.

818 **(3) INSPECTION AUTHORITY.** The department is authorized to enter upon any lands

819 affected by this chapter to inspect the land, and request records to determine compliance with

820 this chapter including inspection of sites prior to or after the issuance of a permit or certificate,

821 and sites with unpermitted storage facilities. If permission cannot be received from the

822 applicant or permittee, entry by the department shall request a special inspection warrant

823 pursuant to s. 66.0119 Wis. Stats. Refusal to grant permission to enter lands subject to a

824 permit under this ordinance shall be grounds for denial of or revocation of the permit.

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

826

827 **49.22 VARIANCES. (1)** A permit applicant may request a variance from the

828 requirements under ss. 49.12 or 49.18 if the applicant demonstrates and county

829 conservationist agrees that all of the following conditions are present:

830 **(a)** Enforcement of the standards set forth in this ordinance will result in unnecessary

831 hardship to the landowner.

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

833 **(c)** Granting the variance will not adversely affect the public health, safety or welfare, nor be

834 contrary to the spirit, purpose and intent of this ordinance.

835 **(2)** If all of the conditions set forth in sub. (1) are met, a variance may only be granted to the

836 minimum extent necessary to afford relief from unnecessary hardship, with primary

837 consideration to water quality and impact to downstream conditions.

838 **(3)** A person aggrieved by a variance determination may appeal that decision to the

839 committee pursuant to s. 49.24.

840 **(4)** No variance from the standards in s. 49.09 may be granted by the department unless the

841 applicant or department receives a written justification from the NRCS or other qualified

842 engineering authority.

843 **(5)** No variance from the performance standards in s. 49.08 may be granted unless the

844 landowner or operator complies with the requirements for variances specified in s. NR

845 151.097, Wis. Adm. Code, and receives approval from the Wisconsin Department of Natural

846 Resources and the department.

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

848 **(b)** The department shall forward the variance request to the Wisconsin Department of

849 Natural Resources within 10 days of receiving the request.

850 **(c)** The request for variance from the standards in 49.08 shall include documentation of the

851 following:

852 1. Compliance with the performance standard or technical standard is not feasible due to

853 site conditions.

854 2. The landowner or operator will implement best management practices or other corrective

855 measures that ensure a level of pollution control that will achieve a level of water quality

856 protection comparable to that afforded by the performance standards in ch. NR 151, Wis.
857 Adm. Code,
858 3. The landowner or operator or their agents or assigns did not create the conditions for which
859 the variance is requested.

860

861 **49.23 ENFORCEMENT. (1) PROCEDURES.** The department may do the following:

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

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

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

867 **(2) INVESTIGATION AND NOTICE OF VIOLATION.** Department staff are responsible for
868 conducting the necessary inspection and investigation to ensure compliance with this
869 chapter and documenting the presence of violations by completing and sending a Notice
870 of Violation (NOV) to the landowner.

871 **(3) ENFORCEMENT OF VIOLATIONS. (a)** Violations of a permit, certificate, compliance
872 determination, or other approval issued under this chapter, or any condition or approved plan
873 associated with such permit or other approval, shall be deemed a violation of this chapter
874 and shall constitute grounds for revocation of the permit, certificate, compliance
875 determination, or other approval as well as fines, forfeitures, and any other available
876 remedies. A permit, certificate, compliance determination, or other approval may be revoked
877 only by action of the body that initially granted it following procedures required for its initial
878 issuance to the extent practical. The decision of the appropriate body shall be furnished to
879 the permit, certificate, or compliance determination holder in writing, stating the reasons
880 thereof.

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

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

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

896 1. date of issuance;

897 2. town and section number or equivalent information within a municipality;

898 3. reason for posting; and

899 4. signature of inspector posting the order.

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

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

905 **(a)** The permittee, landowner, operator, contractor or other person shall have 24 hours from
906 time of notification by the department to correct any noncompliance with the plan when

907 notification is by either personal communication of noncompliance to the landowner,
908 operator, contractor, person or their respective agents, or written notice sent by certified mail
909 to the landowner or operator.

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

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

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

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

927 **(7) FORFEITURES.** Any person, firm, company, or corporation that violates, disobeys,
928 omits, neglects, or refuses to comply with; or who resists the enforcement of any of the
929 provisions of this chapter; shall be subject to a fine of not less than \$50 or more than
930 \$500 together with the costs of action. Any person found guilty of violating this chapter who
931 has previously been convicted of a violation of the same ordinance, shall be subject to a fine
932 of not less than twice the established forfeiture for each such offense, together with the costs
933 of action. Each day a violation exists or continues constitutes a separate offense.

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

938
939 **49.24 APPEALS. (1) AUTHORITY.** The committee shall hear and decide appeals where it
940 is alleged that there is error in any order, requirement, decision or determination by
941 department staff in administering this ordinance.

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

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

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

955
956 **49.25 FEES.** All fees under this ordinance are established pursuant to a fee schedule

957 adopted by the Committee. Copies of the current fee schedule are kept on file at the
958 department. Any permit fee is payable upon submission of a permit application.

959
960 ARTICLE 4. NON-CODE PROVISION. The effective date of this ordinance shall be July 1,
961 2019.

962
963 *[EXPLANATION: The manure management portion of Chapter 14 is rescinded and a new*
964 *Chapter 49 is created entitled Agricultural Performance Standards and Manure*
965 *Management. The updated ordinance is consistent with current state administrative codes*
966 *and federal technical standards and incorporates recommendations from the Healthy Farms*
967 *Healthy Lakes Task Force.]*