



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Application Restrictions Statutes & Regulations

Wisconsin

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Application Restrictions

STATE OF WISCONSIN

1) Wis. Stat. § 283.31; Wis. Adm. Code NR 243.12; 243.14(6), (7)

2) Wis. Stat. §281.16; Wis. Admin. Code ATCP 50.04, 06; Wis. Admin. Code NR 151.01—151.097

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Wisconsin Legislative Council.

1) Wis. Stat. § 283.31; Wis. Adm. Code NR 243.12; 243.14(6), (7)

283.31. Water pollutant discharge elimination system; permits, terms and conditions.

(1) The discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work by any person is unlawful unless such discharge or disposal is done under a permit issued by the department under this section or s. 283.33. The department may by rule exempt certain classes or categories of vessels from this section.

(2) No permit shall be issued by the department for the discharge into the waters of the state of any of the following:

(a) Any radiological, chemical or biological warfare agent or high-level radioactive waste.

(b) Any discharge which the secretary of the army acting through the chief of the U.S. army corps of engineers has objected to in writing on the ground that anchorage and navigation would be substantially impaired.

(c) Any discharge to which the U.S. environmental protection agency has objected to in writing pursuant to s. 283.41.

(d) Any discharge from a point source which is in conflict with any existing area-wide waste treatment management plan approved by the department. No area-wide waste treatment management plan may require the abandonment of existing waste treatment facilities which meet the requirements of this chapter unless the abandonment of such facilities clearly represents the most efficient and cost-effective method of providing waste treatment for the entire planning area.

(3) The department may issue a permit under this section for the discharge of any pollutant, or combination of pollutants, other than those prohibited under sub. (2), upon

condition that such discharges will meet all the following, whenever applicable, subject to sub. (5m):

- (a) Effluent limitations.
- (b) Standards of performance for new sources.
- (c) Effluent standards, effluents prohibitions and pretreatment standards.
- (d) Any more stringent limitations, including those:
 - 1. Necessary to meet federal or state water quality standards, or schedules of compliance established by the department; or
 - 2. Necessary to comply with any applicable federal law or regulation; or
 - 3. Necessary to avoid exceeding total maximum daily loads established pursuant to a continuing planning process developed under s. 283.83.
- (e) Any more stringent legally applicable requirements necessary to comply with an approved areawide waste treatment management plan.
- (f) Groundwater protection standards established under ch. 160.

(4) The department shall prescribe conditions for permits issued under this section to assure compliance with the requirements of sub. (3). Such additional conditions shall include at least the following, subject to sub. (5m):

- (a) That the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;
- (b) That facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants at frequencies or levels in excess of the maximum discharges described in the permit shall be reported to the department under s. 283.59 (1);
- (c) That the permittee shall permit authorized representatives of the department upon the presentation of their credentials to enter upon any premises in which an effluent source is located or in which any records are required to be kept for the purpose of administering s. 283.55;
- (d) That the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit;

(e) That if a toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is established under s. 283.21 (1) for a toxic pollutant present in the permittee's discharge and, if such standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the department shall revise or modify the permit in accordance with the toxic effluent standard or prohibition;

(f) That, if the permit is for a discharge from a publicly owned treatment work, the permittee shall:

1. Inform the department of any new introduction of pollutants into the treatment works under s. 283.59 (2);
2. Require that any industrial user of such treatment work comply with the requirements of ss. 283.21 (2), 283.55 and 283.57.

(5) Each permit issued by the department under this section shall, in addition to those criteria provided in subs. (3) and (4), specify maximum levels of discharges. Maximum levels of discharges shall be developed from the permittee's reasonably foreseeable projection of maximum frequency or maximum level of discharge resulting from production increases or process modifications during the term of the permit.

(5m) The department shall include the requirements of 40 CFR 451.11 in permits issued under this section for concentrated aquatic animal production facilities described in 40 CFR 451.10. The department may not include additional conditions in a permit for a fish farm except as necessary for the farm to meet the applicable limitations, standards, and other provisions described in sub. (3) (a) to (f). Any conditions included in a permit issued under this section for a fish farm shall be limited to site-specific best management practices to the greatest extent allowed under federal law.

(6) Any permit issued by the department under this chapter which by its terms limits the discharge of one or more pollutants into the waters of the state may require that the location, design, construction and capacity of water intake structures reflect the best technology available for minimizing adverse environmental impact.

(7) The holder of a permit under this section shall pay \$100 to the department as a groundwater fee on January 1 if the permittee discharges effluent on land or if the permittee produces sludge from a treatment work which is disposed of on land. If the permittee discharges effluent on land and disposes of sludge from a treatment work on land, the permittee shall pay \$200 to the department as a groundwater fee on January 1. The moneys collected under this subsection shall be credited to the environmental fund for environmental management.

(8)

(a) The holder of a permit under this section for a concentrated animal feeding operation shall annually pay to the department a fee of \$345.

(b) Of each fee paid under par. (a), \$95 shall be credited to the appropriation account under s. 20.370 (4) (mi).

(c) The department shall annually submit a report to the joint committee on finance and, under s. 13.172 (3), to the standing committees of the legislature with jurisdiction over agricultural and environmental matters describing the use of the moneys credited to the appropriation account under s. 20.370 (4) (mi) under par. (b).

NR 243.12 WPDES permit application requirements

(1) GENERAL. A large CAFO may not discharge pollutants from manure or process wastewater to waters of the state unless the discharge is covered by and in compliance with a WPDES permit. Pursuant to s. 283.37 (2), Stats., a complete application for a WPDES permit shall be filed in accordance with the following requirements:

(a) Except as provided for in par. (c), a person who is proposing to own or operate a large CAFO that will store manure or process wastewater in a storage facility constructed at or below grade or that will land apply manure or process wastewater shall file a preliminary application for a WPDES permit at least 12 months prior to the intended date on which the operation will become a large CAFO. The preliminary application for a WPDES permit shall consist of completed forms 3400-25 and 3400-25A. The owner or operator shall then submit a completed final WPDES permit application under sub. (2) at least 180 days prior to the intended date on which the operation would become a large CAFO. The owner or operator of a proposed large CAFO may not discharge pollutants from manure or process wastewater to waters of the state until one of the following has occurred:

1. The department has issued an individual WPDES permit for the operation.
2. The department has granted general WPDES permit coverage to the operation under s. NR 243.121.

(b) An owner or operator of an operation that is defined as a large CAFO as of July 1, 2007, that is not already covered by a WPDES permit or that has not already submitted a WPDES permit application, shall submit a complete permit application to the department by no later than July 31, 2007.

(c) An owner or operator of an animal feeding operation with 999 animal units or less that becomes a large CAFO as a result of the purchase of another animal

feeding operation shall apply for a WPDES permit no later than 90 days from the date of the purchase.

Note: Owners or operators of an operation that has chickens or ducks with a non-liquid manure handling system, heifers, ducks or veal calves may become a CAFO for the first time due to the rule changes that became effective on July 1, 2007. Consequently, the department advises owners or operators to re-calculate the total number of animal units using the numbers in s. NR 243.05 and Table 2B to determine whether the operation has 1000 animal units or more and is required to obtain permit coverage.

(d) An owner or operator of a large CAFO that already holds a WPDES permit shall reapply at least 180 days prior to the expiration date of its current WPDES permit, unless all of the following apply:

1. The permittee has ceased operation or is no longer defined as a large CAFO under s. NR 243.03 (28).
2. The permittee has demonstrated to the department that there is no remaining potential for a discharge of manure or process wastewater pollutants to waters of the state that was generated while the operation was a CAFO.
3. The permittee submits a letter to the department documenting that subs. 1. and 2. have been satisfied.

Note: Due to the extent of water resources in the state, it is the department's position that if the manure or process wastewater from a CAFO is land applied to sites in Wisconsin, pollutants from the manure or process wastewater will reach waters of the state either via leaching to groundwater or surface runoff. Also, it is the department's position that storage facilities constructed at or below grade will have some pollutant discharges to groundwater. Therefore, all large CAFOs must apply for a WPDES permit.

(2) CONTENTS OF A FINAL PERMIT APPLICATION.

(a) For a person applying for a first time permit issuance, a complete final permit application shall consist of the following:

1. The location of the existing or proposed site on maps including aerial photographs and soil survey maps.
2. A scaled drawing of existing and proposed animal housing, feed storage structures and other raw materials storage areas. The production area shall be clearly delineated as well as ancillary service and storage areas. Existing features shall be clearly delineated from proposed features.

3. A description and scaled drawing of existing and proposed manure storage or composting facilities, process wastewater storage or treatment facilities and other treatment systems. Plans and specifications for new manure storage or composting facilities and process wastewater facilities or proposed modifications to existing storage, composting or treatment facilities or systems shall be submitted. Upon approval by the department, plans and specifications for proposed storage, composting or treatment facilities may be submitted during the term of the permit if construction of the facilities will begin during the term of the permit. In addition, evaluations of existing storage, composting or treatment facilities or systems not previously reviewed and approved by the department shall be submitted.

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

4. A description and scaled drawing of existing and proposed runoff control systems, groundwater monitoring systems, water supply wells, permanent spray irrigation systems or other landspreading or treatment systems. Plans and specifications for new systems or proposed modifications to existing systems shall be submitted. Upon approval by the department, plans and specifications for proposed systems may be submitted during the term of the permit if construction of these facilities is planned to begin during the term of the permit. In addition, evaluations of existing systems not previously reviewed and approved by the department shall be submitted.

Note: Department approval to submit plans and specifications for proposed systems and evaluations of existing systems during the term of the permit does not delay compliance with the requirements in s. NR 243.13.

5. A description and scaled drawing of any existing and proposed ancillary service and storage areas and outside animal lots, including a map showing the area's size and location, the number of animals to be using the area, projected number of days in use, and type and percent of vegetative cover to be maintained.

6. A complete nutrient management plan that meets the requirements of s. NR 243.14. The plan shall be based on the volume of manure that will be generated by the operation from 1,000 animal units or the number of animal units that are expected to be at the operation by the end of the first year of permit coverage, whichever is greater. The permittee shall specify the expected number of animal units at the operation for the first year of

the permit and during the permit term. The plan shall include all of the following information:

a. A narrative overview of the operation's nutrient management plan including a general description of anticipated amounts and types of manure and process wastewater produced on an annual basis, amount of manure and process wastewater to be land applied, anticipated frequency of land application for manure and process wastewater, methods of land application, and other methods of use, disposal, distribution or treatment.

b. Additional information the department requests for the purpose of identifying possible water quality impacts associated with an operation's land application activities.

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

Note: The department has developed an environmental analysis questionnaire identifying most of the information needed to comply with ch. NR 150 that is included as part of a large CAFO's application package for first time issuances.

(b) For operations submitting a reissuance application, a complete reissuance application shall consist of the following:

1. Information on changes to the operation that have occurred during the current permit term and changes that are anticipated during the upcoming permit term, including changes that are necessary to comply with this chapter.

2. The location of the existing site and proposed modifications to the site on maps such as aerial photographs and soil survey maps.

3. Scaled drawing and descriptions of existing and proposed animal housing, manure storage, composting and treatment facilities, process wastewater storage or treatment facilities or systems, runoff control structures or systems, feed storage structures, groundwater monitoring systems, water supply wells, ancillary and service storage areas, loafing and outside lot areas and feed storage structures. Existing features shall be clearly delineated from proposed features.

4. An updated nutrient management plan reflecting changes that have occurred at the operation since the previous permit issuance or reissuance and that incorporates the requirements in this chapter.

5. A description of permanent spray irrigation systems and any other landspreading or treatment systems.

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

(3) **APPLICATION FORMS.** Final permit and reissuance application information shall be submitted along with completed forms 3400-25 and 3400-25A. The department shall take action on a complete application pursuant to s. NR 200.10.

Note: Applications and forms 3400-25 and 3400-25A can be obtained at regional offices of the department or the department's Bureau of Watershed Management, 101.

NR 243.14 Nutrient management

[. . .]

(6) **SOLID MANURE WINTER RESTRICTIONS.** The restrictions in this subsection apply to the land application of solid manure on frozen or snow covered ground.

(a) *Frozen ground-solid manure.* Unless prohibited under par. (c), solid manure may be surface applied on frozen ground if the manure is applied in compliance with the restrictions in Table 4 or otherwise immediately incorporated.

(b) *Snow covered ground-solid manure.* Unless prohibited under par. (c), solid manure may only be land applied to snow covered ground in accordance with the following:

1. If less than one inch of snow is present on the area where manure is to be land applied, the permittee may surface apply or immediately incorporate the solid manure.

Note: If there is less than one inch of snow on the ground and the ground is frozen, pursuant to par. (a), Table 4 restrictions must be followed when surface applying solid manure.

2. If one to 4 inches of snow is present on the area where manure is to be land applied, the permittee shall surface apply the manure in compliance with restrictions in Table 4 or otherwise immediately incorporate the solid manure.

3. If more than 4 inches of snow is present on the area where manure is to be land applied, the permittee shall surface apply the solid manure in compliance with the restrictions in Table 4. Incorporation of solid manure is prohibited.

Note: It is assumed that proper incorporation of solid manure is not achievable if more than 4 inches of snow is present at the time of application.

(c) *High-risk runoff period.* 1. Beginning January 1, 2008, solid manure may not be surface applied from February 1 through March 31 if any of the following conditions exist on the area of the field where the manure is to be applied:

- a. Snow is present to a depth of one inch or greater.
- b. The ground is frozen.

Note: Under the initial applicability provisions, the prohibition of surface application of solid manure during the high-risk period does not apply to an operation permitted as of July 1, 2007, until permit reissuance or modification. An exception to delaying compliance until permit reissuance or modification is if an operation is permitted as of July 1, 2007, and the permit requires compliance upon written department notification. Under par. (c), department notification may not require compliance prior to January 1, 2008.

Note: Solid manure may be surface applied at other times of the winter, or may be incorporated at other times during the winter, including high-risk runoff periods, if the application is done in accordance with pars. (b) and (c) and other land application requirements in this chapter.

(d) To meet the requirements of par. (c), a permittee may choose to stack solid manure generated at a production area location in accordance with s. NR 243.141 (1) rather than use a storage facility that meets the design requirements in s. NR 243.15.

Criteria	Restrictions for fields With 0–6% slopes	Restrictions for fields with slopes > 6% and up to 9%	Restrictions for fields with slopes grater than 9%
Required fall tillage practice prior to application	Chisel or moldboard plow, no-till or a department approved equivalent <A>	Chisel or moldboard plow, no-till or department approved equivalent<A>	Not allowed
Minimum % solids allowed	12%	> 20%	Not allowed
Application rate (cumulative per acre)	Not to exceed 60 lbs. P2O5 per winter season, the following growing season’s	Not to exceed 60 lbs. P2O5 per winter season, the following growing season’s	Not allowed

	crop P2O5 budget taking into account nutrients already applied, or phosphorus application restrictions specified in a department approved nutrient management plan, whichever is less	crop P2O5 budget taking into account nutrients already applied, or phosphorus application restrictions specified in a department approved nutrient management plan, whichever is less	
Setbacks from surface waters	No application allowed within SWQMA	No application allowed within 2.0 x SWQMA	Not allowed
Setbacks from downslope areas of channelized flow, vegetated buffers, and wetlands	200 feet	400 feet	Not allowed
Setbacks from direct conduits to groundwater	300 feet	600 feet	Not allowed
<p><A> All tillage and farming practices shall be conducted in accordance with the following requirements; 0–2% slope = no contouring required, >2–6% slope = tillage and practices conducted along the general contour, >6% slope = tillage and farming practices conducted along the contour. The department may approve alternative tillage practices on a case-by-case basis in situations where conducting practices along the contour is not possible. Allowances for application on no-till fields only apply to fields where no-till practices have been in place for a minimum of 3 years.</p>			

(7) LIQUID MANURE WINTER RESTRICTIONS. The following additional restrictions in this subsection apply to the land application of liquid manure on frozen or snow covered ground:

(a) *Frozen ground-liquid manure.* Surface application of liquid manure on frozen ground is prohibited, except for an emergency situation under par. (d) or if allowed under par. (e). Injection or immediate incorporation of liquid manure is allowed on frozen ground, except if prohibited due to snow covered conditions under par. (b).

(b) *Snow covered ground-liquid manure.* Unless prohibited under par. (c) and subject to the frozen ground prohibition in par. (a), liquid manure may only be land applied to snow covered ground in accordance with the following:

1. If less than one inch of snow is present on the area where liquid manure is to be applied, surface application, injection or immediate incorporation of liquid manure is allowed.
2. If there is one to 4 inches of snow present on the area where liquid manure is to be applied, surface application of liquid manure is prohibited, except for department approved emergencies under par. (d) or if allowed

under par. (e). Immediate incorporation or injection is allowed on areas where there is one to 4 inches of snow.

3. If there is greater than 4 inches of snow on the area where liquid manure is to be applied, surface application and incorporation of liquid manure is prohibited, except for department approved emergencies under par. (d) or if allowed under par. (e). Injection of liquid manure is allowed on areas where there is greater than 4 inches of snow.

(c) *High-risk runoff period.* 1. Unless there is a department approved emergency situation under par. (d), liquid manure may not be surface applied from February 1 through March 31.

Note: Prior to January 1, 2010, existing source CAFOs may surface apply liquid manure at other times of the winter. Also, during the high-risk period, liquid manure may be injected or incorporated if allowed under pars. (b) and (c) and other requirements in this chapter.

(d) *Emergency applications for liquid manure.*

1. Except as provided in subd. 3., a permittee may surface apply liquid manure on frozen or snow covered ground on an emergency basis in accordance with the restrictions in Table 5 if all of the following conditions are met:

a. The manure is from a storage or containment facility that is designed and maintained in accordance with ss. NR 243.15 and 243.17 to provide 180 days of storage for the manure.

b. The application of manure is necessitated by exceedances or expected exceedances of the margin of safety level that were unavoidable due to unusual weather conditions, equipment failure or other unforeseen circumstances beyond the control of the permittee.

c. The permittee has notified the department verbally prior to the emergency application. Unless necessitated by imminent impacts to the environment or human or animal health, the permittee may not apply manure to a field on an emergency basis until the department has verbally approved the application.

d. The permittee submits a written description of the emergency application and the events leading to the emergency application to the department within 5 days of the emergency application.

2. Allowances for emergency surface applications of liquid manure do not apply to situations where a permittee has failed to properly maintain storage capacity either through improper design or management of the storage facility, including failure to properly account for the number or volume of wastestreams entering the facility, failure to empty a storage or containment facility in accordance with permit conditions prior to the onset of frozen or snow covered ground conditions or due to an increase in animal units.

Note: The allowance for emergency surface applications in compliance with permit conditions is intended to avoid more significant impacts to human health and water quality associated with uncontrolled overflows of manure storage facilities. Causes of emergency surface applications could include conditions such as prolonged storm events or early onset of frozen ground conditions that preclude applications of manure prior to the onset of frozen or snow covered ground conditions provided that the operation made all other attempts to maintain storage volume before an emergency application became necessary.

3. The permittee shall conduct emergency surface applications of liquid manure in accordance with the restrictions in Table 5. The permittee may only conduct emergency surface applications on fields that the department has approved for emergency applications, in writing, as part of a nutrient management plan. The department may approve alternate fields and impose alternative restrictions, in writing and on a case-by-case basis, if fields that meet the restrictions in Table 5 are not available at the time of the emergency application, the permittee has explored all other options identified in its emergency response plan and the application results in a winter acute loss index value of 4 or less using the phosphorus index.

Note: The winter acute loss index value is displayed under the heading "Acute Loss Frozen Soil PI" in the cropping screen of the Snap-Plus nutrient management software program.

Note: Reporting requirements for emergency surface applications are contained in s. NR 243.19.

(e) *Existing source CAFOs-liquid manure exception.* Prior to January 1, 2010, if an existing source CAFO does not have 180 days of storage for liquid manure as specified in s. NR 243.15, the permittee may surface apply liquid manure on frozen or snow covered ground in accordance with the restrictions in Table 5 without satisfying the emergency criteria in par. (d). If a permittee does not have access to sites that meet the criteria in Table 5, the department may approve alternate sites and restrictions, in writing on a case-by-case basis as part of a nutrient management plan provided the application results in a winter acute loss

index value of 4 or less using the phosphorus index. This allowance for existing source CAFOs to surface apply liquid manure on frozen or snow covered ground without satisfying the emergency criteria in par. (d) is not applicable after January 1, 2010.

Note: An existing source CAFO is defined under s. NR 243.03 (23).

(f) *Frozen liquid manure.* Liquid manure that is frozen and cannot be transferred to a manure storage facility may be surface applied on frozen or snow-covered ground in accordance with the restrictions in Table 5. Surface applications of frozen liquid manure do not require prior department approval or notification provided application sites for frozen liquid manure are identified in the approved nutrient management plan. During February and March, the permittee shall notify the department if the permittee expects to surface apply frozen liquid manure more than 5 days in any one month.

Note: Applications of frozen manure under par. (f) are limited to times when the operation's manure handling system is not functioning due to very cold weather.

Criteria	Restrictions for fields with 0–2% slopes	Restrictions for fields with >2–6% slopes	Restrictions for fields with slopes greater than 6%
Required fall tillage practice prior to application	Chisel or moldboard plow or department approved equivalent<A>	Chisel or moldboard plow or department approved equivalent<A>	Not allowed
Application rate (cumulative per acre)	Maximum application volume of 7,000 gallons per acre per winter season, not to exceed 60 lbs. P2O5, the following growing season’s crop P2O5 budget taking into account nutrients already applied or other phosphorus application restrictions specified in a department approved nutrient management plan, whichever is less	Maximum application volume of 3,500 gallons per acre per winter season, not to exceed 30 lbs. P2O5, the following growing season’s crop P2O5 budget taking into account nutrients already applied, or other phosphorus application restrictions specified in a department approved nutrient management plan, whichever is less	Not allowed
Setbacks from surface waters	No application allowed within SWQMA	No application allowed within SWQMA	Not allowed
Setbacks from direct conduits to groundwater	200 feet	200 feet	Not allowed

Setbacks from direct conduits to groundwater	300 feet	300 feet	Not allowed
<p><A> All tillage and farming practices shall be conducted along the contour in accordance with the following requirements; 0–2% slope = no contouring required, >2–6% slope = tillage and practices conducted along the general contour. The department may approve alternative tillage practices on a case–by–case basis in situations where conducting practices along the contour is not possible.</p>			

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2) Wis. Stat. § 281.16; Wis. Adm. Code ATCP 50.04, 06; Wis. Adm. Code NR 151.01—151.097

§ 281.16. Water quality protection; nonpoint sources.

(1) Definitions. In this section:

(a) “Agricultural facility” means a structure associated with an agricultural practice.

(b) “Agricultural practice” means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

(bg) “Artificial water body” has the meaning given in s. 30.19 (1b) (a).

(br) “Covered municipality” means a municipality that has been issued an individual municipal separate storm sewer permit under s. 283.33 or that is covered by a general municipal separate storm sewer permit under s. 283.35.

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

(d) “Navigable waters” has the meaning given in s. 281.31 (2) (d).

(e) “Nonpoint source” means a facility or practice that causes, or has the potential to cause, nonpoint source water pollution.

(f) “Nonpoint source water pollution” means pollution of waters of the state that does not result from a point source, as defined in s. 283.01 (12).

(g) “Water quality management area” means any of the following:

1. The area within 1,000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, “water quality management area” means the area within 1,000 feet from the high-water mark of the lake.

2. The area within 300 feet from the ordinary high-water mark of navigable waters that consist of a river or stream.

3. A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

(h) Notwithstanding s. 281.01 (18), “waters of the state” has the meaning given in s. 283.01 (20).

(2) Nonpoint sources that are not agricultural.

(a) The department shall, by rule, prescribe performance standards for nonpoint sources that are not agricultural facilities or agricultural practices. The performance standards shall be designed to achieve water quality standards by limiting nonpoint source water pollution.

(am)

1. In this paragraph:

a. “Covered municipality” means a municipality that has been issued an individual municipal separate storm sewer permit under s. 283.33 or that is covered by a general municipal separate storm sewer permit under s. 283.35.

c. “New development” means development resulting from the conversion of previously undeveloped land or agricultural land.

d. “Redevelopment” means development that replaces older development.

2. Except as provided in subd. 3., the department may not enforce a provision in a rule that establishes a date by which a covered municipality must implement methods to achieve a specified reduction in the level of total suspended solids carried by runoff, if the provision requires the covered municipality to achieve a reduction of more than 20 percent. This subdivision does not apply to total suspended solids carried by runoff from new development or redevelopment in a covered municipality.

3. If a covered municipality has achieved, on July 1, 2011, a reduction of more than 20 percent of total suspended solids carried by runoff, the municipality shall, to the maximum extent practicable, maintain all of the best management practices that the municipality has implemented on or before July 1, 2011, to achieve that reduction.

(b) The department shall, by rule, specify a process for the development and dissemination of technical standards to implement the performance standards under par. (a).

(c) If a covered municipality has obtained all permits required for the construction of a storm water management pond in an artificial water body, whether navigable or nonnavigable, the department may not prohibit the construction of the storm water management pond as a method by which the covered municipality may achieve compliance with performance standards under par. (a) or with an approved total maximum daily load under 33 USC 1313 (d) (1) (C). The department shall give credit to the covered municipality for any pollutant reduction achieved by the storm water management pond in determining compliance with performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr) or an approved total maximum daily load under 33 USC 1313 (d).

(3) Nonpoint sources that are agricultural.

(a) The department of natural resources, in consultation with the department of agriculture, trade and consumer protection, shall promulgate rules prescribing performance standards and prohibitions for agricultural facilities and agricultural practices that are nonpoint sources. The performance standards and prohibitions shall be designed to achieve water quality standards by limiting nonpoint source water pollution. At a minimum, the prohibitions shall include all of the following:

1. That a livestock operation may have no overflow of manure storage structures.
2. That a livestock operation may have no unconfined manure pile in a water quality management area.
3. That a livestock operation may have no direct runoff from a feedlot or stored manure into the waters of the state.
4. That a livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

(b) The department of agriculture, trade and consumer protection, in consultation with the department of natural resources, shall promulgate rules prescribing

conservation practices to implement the performance standards and prohibitions under par. (a) and specifying a process for the development and dissemination of technical standards to implement the performance standards and prohibitions under par. (a).

(c) Using the process specified under par. (b), the department of agriculture, trade and consumer protection shall develop and disseminate technical standards to implement the performance standards and prohibitions under par. (a). The department of agriculture, trade and consumer protection shall disseminate alternative technical standards for situations in which more than one method exists to implement the performance standards and prohibitions.

(d) The conservation practices and technical standards under pars. (b) and (c) shall at a minimum cover animal waste management, nutrients applied to the soil and cropland sediment delivery.

(e) An owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by this state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards under this subsection unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source, to the owner or operator. For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that specify criteria for determining whether cost-sharing is available under s. 281.65 and the department of agriculture, trade and consumer protection shall promulgate rules that specify criteria for determining whether cost-sharing is available under s. 92.14 or from any other source. The rules may not allow a determination that cost-sharing is available to meet local regulations under s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance standards, prohibitions, conservation practices or technical standards under this subsection unless the cost-sharing is at least 70 percent of the cost of compliance or is from 70 percent to 90 percent of the cost of compliance in cases of economic hardship, as defined in the rules.

(4) Application to animal feeding operations. If the department issues a notice of discharge under ch. 283 for an animal feeding operation, the performance standards, prohibitions, conservation practices and technical standards under sub. (3) apply to the animal feeding operation, except that if the animal feeding operation is in existence before October 14, 1997, the performance standards, prohibitions, conservation practices and technical standards only apply if the department determines that cost-sharing is available to the owner or operator of the animal feeding operation under s. 92.14 or 281.65 or from any other source.

50.04 Farm conservation practices.

Except as provided in s. ATCP 50.08, a landowner engaged in agricultural practices in this state shall implement the following conservation practices:

(1) **NONPOINT SOURCE POLLUTION CONTROL.** A landowner shall implement conservation practices that achieve compliance with DNR performance standards under ss. NR 151.02 to 151.08, in effect on May 1, 2014. A nutrient management plan developed in accordance with sub. (3) may be used to demonstrate compliance with s. NR 151.04.

Note: Landowners who claim farmland preservation tax credits must comply with conservation standards as required under s. 91.80, Stats.

(2) **SOIL EROSION CONTROL.** A landowner shall manage all fields including pastures, and related field practices, so that soil erosion rates on cropped and pastured soils do not exceed T-value.

Note: See s. 92.025 (1), Stats., and s. NR 151.02. Soil erosion includes erosion caused by wind or water. For most soils, "T-value" is equivalent to 2 to 5 tons of soil loss per acre per year.

Sheet and rill soil erosion from water is calculated according to the RUSLE 2 equation, published by NRCS. Wind erosion is calculated according to the NRCS Wind Erosion Prediction System (WEPS) model. Copies of RUSLE 2 and the NRCS WEPS model are on file with the department and the legislative reference bureau. Copies of both models may also be obtained from the NRCS website at: <http://www.wi.nrcs.usda.gov/technical>.

(3) **NUTRIENT MANAGEMENT PLAN.**

(a) A landowner shall have and follow an annual nutrient management plan when applying nutrients to any field, including pastures, after the date specified in par. (h). A nutrient management plan shall comply with this subsection.

(b) The plan shall include every field on which nutrients are applied, including pastures, and pastures stocked at an average rate of more than one animal unit per acre during the grazing season. Pastures are not required to be included in the plan if all of the following requirements are met:

1. The pastures are stocked at an average stocking rate of one animal unit per acre or less at all times during the grazing season.
2. The pastures do not receive mechanical applications of nutrients.

Note: The grazing season includes the months of the year when pasture vegetation is actively growing.

(c) A nutrient management planner qualified under s. ATCP 50.48 shall prepare or approve the plan.

Note: A landowner who has the knowledge and skills described in s. ATCP 50.48 (1) may prepare his or her own nutrient management plan. ATCP 50.48 does not require a planner to obtain a state certification, complete a training program, or hold specific professional credentials. Persons holding certain credentials are presumed to be qualified, but other persons may also demonstrate their qualifications by preparing sound nutrient management plans. A person may not misrepresent himself or herself as a qualified nutrient management planner.

(d) The plan shall be based on soil nutrient tests conducted at a laboratory certified under s. ATCP 50.50 to conduct those tests. Soil tests are not required on pastures that do not receive mechanical applications of nutrients if either of the following applies:

1. The pastures are stocked at an average stocking rate of one animal unit per acre or less at all times during the grazing season.
2. The pastures are stocked at an average stocking rate of more than one animal unit per acre during the grazing season, and a nutrient management plan for the pastures complies with s. NR 151.04 (2), using an assumed soil test phosphorus level of 150 parts per million and organic matter content of 6%.

(de) A landowner may be required to provide documentation to the county land conservation committee that animal stocking rate and soil test values for pastures do not exceed the levels in par. (b) 1. and (d) 2., respectively.

(dm) If the nutrient management plan uses manure nutrient values, other than nutrient values of organic by-products regulated under ch. NR 113, 204 or 214, the manure nutrient values shall be based on one of the following:

1. Standard values specified in Nutrient Application Guidelines for Field, Vegetable and Fruit Crops, UWEX publication A2809 referenced in the NRCS technical guide standard 590.

Note: The current 2012 version of UWEX pub. A2809 and subsequent editions are available at: https://datcp.wi.gov/Pages/Programs_Services/ATCP50.aspx.

2. Manure analyses conducted at a laboratory that complies with s. ATCP 50.50 (8).

(e) The plan shall comply with the NRCS technical guide nutrient management standard 590 (December, 2015) except for sections IV. D., IV. E., and V., and shall also comply with the Wisconsin Conservation Planning Technical Note WI-1 (February, 2016).

Note: The NRCS technical guide standard 590 (December, 2015) and the companion document Wisconsin Conservation Planning Technical Note WI-1 (February, 2016) are on file with the department and the legislative reference bureau. Copies are available from a county land conservation department, a NRCS field office, the national NRCS website at: <http://www.nrcs.usda.gov>, the Wisconsin NRCS website at: www.wi.nrcs.usda.gov, or the department website at: https://datcp.wi.gov/Pages/Programs_Services/ATCP50.aspx. The NRCS technical guide standard 590 (December, 2015) includes the options for the development of a P management strategy when manure or organic by-products are applied during the crop rotation using either the Phosphorus Index (PI) or Soil Test Phosphorus Management Strategy. A person may obtain a checklist to gather information for a nutrient management plan by visiting the department's website at: https://datcp.wi.gov/Pages/Programs_Services/ATCP50.aspx.

(f) The plan may not recommend nutrient applications that exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin-Extension in the 2012 edition of Nutrient Application Guidelines for Field, Vegetable and Fruit Crops, UWEX publication A2809, or in the latest edition of that publication if preferred by the landowner, unless the nutrient management planner can show that one or more of the following circumstances justifies the recommended application:

1. A soil or tissue test reveals a specific nutrient deficiency.
2. Excess nutrients are the result of an unforeseen change in the type of crop planted.

3. Excess nutrients are the result of manure applications made in the last year prior to the implementation of the nutrient management plan.

4. Other special agronomic conditions documented by the planner. A planner who wishes to justify higher applications shall include credible information to show that the higher applications will not materially increase environmental damage.

Note: The 2006 and subsequent editions of the UWEX publication A2809 are available from a county extension agent. The 2006 and 2012 editions are also on file with the department and the legislative reference bureau. The latest edition of A2809 is available from the UWEX website

at: <http://learningstore.uwex.edu>. Copies are also available from the department website

at: https://datcp.wi.gov/Pages/Programs_Services/ATCP50.aspx.

(g) The plan shall be consistent with any nutrient management plan required under ch. NR 113, 204, or 214 if the landowner applies septage, municipal sludge, industrial waste, or industrial by-products to the land and in accordance with s. ATCP 65.22 (6) (c). A landowner is not required to have a nutrient management plan under this subsection if the landowner applies primarily septage, municipal sludge, industrial waste, or industrial byproducts according to ch. NR 113, 204, or 214.

(gm) A landowner or nutrient management planner qualified under s. ATCP 50.48 (2) shall annually review a nutrient management plan to determine whether the plan accurately reflects the planned cropping, tolerable soil loss, nutrient application rates, and application methods. The plan shall be updated, by a nutrient management planner qualified under s. ATCP 50.48, when necessary to reflect changes in those planned activities.

(h) Paragraph (a) first applies on the following dates for the following nonpasture lands:

1. January 1, 2005, for land located in watersheds draining to outstanding or exceptional resource waters designated in ch. NR 102.

2. January 1, 2005, for land located in watersheds draining to impaired waters that DNR has listed pursuant to 33 USC 1313 and 40 CFR 130.7, if the impairment relates to excessive nutrients.

3. January 1, 2005, for land located in source water protection areas defined in s. NR 243.03.

4. January 1, 2008, for other lands, except that it first applies to new cropland as described by s. NR 151.09 (4) (b) on October 1, 2003.

Note: The delayed effective dates under par. (h) correspond to the delayed effective dates under s. NR 151.07.

(i) A landowner is rebuttably presumed to comply with this section if the landowner complies with a nutrient management plan that is prepared or approved by a nutrient management planner, other than the farmer, who is qualified under s. ATCP 50.48.

(4) TILLAGE SETBACK.

(a) A landowner shall manage cropland to achieve compliance with the DNR performance standard for tillage setback under s. NR 151.03.

(b) A landowner is not required to establish a tillage setback distance greater than 5 feet unless all of the following conditions are met:

1. The 5-foot setback distance is increased by the smallest increment necessary to achieve the purposes of s. NR 151.03, but in no case greater than a total setback distance of 20 feet.
2. In determining whether to increase the setback distance, county or other conservation professionals shall do all of the following:
 - a. Consider bank materials, height, slope, cause of bank erosion, soil type, and other factors that affect bank integrity.
 - b. Use best professional judgment, based on the latest technical standards and practices required under this chapter.
 - c. Follow a consistent approach in making determinations for increased setback distances by consulting with NRCS or department engineering specialists.
 - d. Provide the landowner with a written statement documenting the findings and conclusions in support of the increased setback distance.

Note: Conservation practices such as critical area stabilization, grade stabilization, and shoreland protection should be installed if necessary to stabilize the bank and protect its integrity.

Determinations regarding compliance with this standard may be appealed as authorized under s. 227.42, Stats., or other provisions

of law. Landowners may achieve compliance with this standard by enrolling riparian land in the CREP program or other federal set-aside programs.

50.06 Installing conservation practices.

(1) GENERAL. A landowner may use any of the following to comply with s. ATCP 50.04, unless s. ATCP 50.04 mandates a specific practice:

(a) Conservation practices identified in subch. VIII or the NRCS technical guide.

(b) Other conservation practices that comply with s. ATCP 50.04.

(2) FUNDED PRACTICES. Conservation practices for which a landowner receives a cost-share grant under this chapter shall comply with subch. VIII.

Note: A county land conservation committee can provide landowners with a helpful document called "Farmland Conservation Choices: A Guide to Environmentally Sound Practices for Wisconsin Farmers." The committee can also recommend conservation practices that are appropriate for the landowner's farm. Cost-share grants may be available to help landowners install or maintain recommended practices. Landowners may contact their county land conservation committee to apply for cost-share grants. If a landowner receives a cost-share grant for a conservation practice, that practice must comply with subch. VIII.

Counties have land and water resource management plans to promote compliance with farm conservation requirements (see s. ATCP 50.12). Counties will seek voluntary compliance and will offer information, cost-sharing, and technical assistance to help landowners comply.

As a last resort, a county may seek enforcement action against a landowner who refuses to implement required conservation practices. A county may not seek enforcement action until it complies with applicable cost-sharing requirements under s. ATCP 50.08. A county may pursue any of the following enforcement options, as appropriate:

- The county may suspend a violator's eligibility for farmland preservation tax credits (see s. ATCP 50.16(6)).
- DNR may issue a notice of discharge, requiring a violator to obtain a pollution discharge permit from DNR (see ch. NR 243).
- The department of justice or a district attorney may file a civil forfeiture action against the violator (see s. 281.98, Stats.).

- The county may take action to enforce its own ordinance, if any.
- A town, city, or village may take action to enforce its own ordinance, if any.

County compliance procedures should be consistent with this chapter and ss. NR 151.09 and 151.095. A county should spell out compliance procedures in its land and water resource management plan, as provided in s. ATCP 50.12 (2). The department and DNR will work with counties to develop suggested guidelines for county compliance programs.

151.01 Purpose.

The purpose of this subchapter is to prescribe performance standards and prohibitions in accordance with the implementation and enforcement procedures contained in ss. NR 151.09 and 151.095 for agricultural facilities, operations and practices.

151.015 Definitions.

In this subchapter:

(1) "Accounting period" means the crop rotation period over which compliance is measured and consists of the current year and extends back the previous 7 years moving forward each consecutive year creating a rolling time period not to exceed 8 years.

(2) "Closed depression" means a topographical basin where water ponds to a seasonal high water mark, has no external drainage, and drainage may occur either through direct conduits to groundwater or low areas where water ponds and infiltrates into the groundwater. Closed depressions may be identified using topographic maps and visual interpretation, ArcGIS tools, or other methods. A seasonal high water mark may include, but is not limited to, areas that collect and retain water for extended time periods (days or weeks) that result in areas of reduced or no crop growth.

(2m) "Concentrated flow channel" means a natural channel or constructed channel that has been shaped or graded to required dimensions and established in perennial vegetation for the stable conveyance of runoff. Concentrated flow channel may also include non-vegetated channels caused by ephemeral erosion, intermittent streams, drainage ditches, and drainage ends identified on the NRCS soil survey and may be identified as contiguous up-gradient deflections of contour lines on the USGS 1:24,000 scale topographic map.

(3) "Conservation practice" means a best management practice designed to reduce or prevent soil or sediment loss to the waters of the state.

(4) "Crop producer" means an owner or operator of an operation engaged in crop related agricultural practices specified in s. 281.16 (1) (b), Stats.

(5) "Cropland practice" means the method, activity or management measure used to produce or harvest crops.

(6) "County land conservation committee" means the committee created by a county board under s. 92.06, Stats. "County land conservation committee" includes employees or agents of the committee whom, with committee authorization, act on behalf of the committee.

(7) "Direct runoff" includes any of the following:

(a) Runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.

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

(c) Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with s. NR 154.04 (3).

(d) Discharge of a significant amount of leachate from stored manure to waters of the state.

(7m) "Established crop" means a growing annual crop, perennial crop, or cover crop that provides vegetative cover of the soil.

(8) "Feedlot" means a barnyard, exercise area, or other outdoor area where livestock are concentrated for feeding or other purposes and self-sustaining vegetative cover is not maintained. "Feedlot" does not include a winter grazing area or a bare soil area such as a cattle lane or a supplemental feeding area located within a pasture, provided that the bare soil area is not a significant source of pollution to waters of the state.

(8d) "Incorporation" has the meaning given in s. NR 243.03 (28).

(8h) "Infield bedrock verification" means determining bedrock depth using available data which may include well construction reports, location of drill cores or other subsurface investigations, location of quarries and natural bedrock outcrops, geophysical investigations, and uneven crop growth patterns that are linked to fracture traces in the field.

(8p) "Injection" has the meaning given in s. NR 243.03 (29).

(8t) "Liquid manure" has the meaning given in s. NR 243.03

(32) when applied to facilities subject to ch. NR 243, and the meaning given in UW A2809 for all other agricultural facilities where manure is generated.

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is also available electronically at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>.

(9) "Livestock facility" means a structure or system constructed or established on a livestock operation.

(10) "Livestock producer" means an owner or operator of a livestock operation.

(11) "Livestock operation" has the meaning given in s. 281.16

(1)

(c) , Stats.

(11m) "Long term no-till" means no-till farming that has been implemented a minimum of 3 consecutive years.

(12) "Manure" means a material that consists primarily of excreta from livestock, poultry or other animals.

(13) "Manure storage facility" means an impoundment made by constructing an embankment or excavating a pit or dugout or by fabricating a structure to contain manure and other animal or agricultural wastes.

(13g) "Margin of safety level" has the meaning given it in s. NR 243.03 (37).

(13j) "Mechanical application" means surface application, injection, or incorporation of manure on cropland or pastures using manure hauling vehicles or equipment.

(13m) "Municipality" has the meaning given in s. 281.01 (6), Stats.

(14) "NOD" means a notice of discharge issued under s. NR 243.24 (4).

(15) "Operator" means a person responsible for the oversight or management of equipment, facilities or livestock at a livestock operation, or is responsible for land management in the production of crops.

(15e) "Overflow" means discharge of manure to the environment resulting from flow over the brim of a facility or from flow directed onto the ground through a man-made device including a pump or pipe.

(15m) "Pasture" means land on which livestock graze or otherwise seek feed in a manner that maintains the vegetative cover over the grazing area. Pasture may include limited areas of bare soil such as cattle lanes and supplemental feeding areas provided the bare soil areas are not significant sources of pollution to waters of the state.

(15n) "Pathogens" has the meaning given in s. NR 204.03 (38).

(15s) "Phosphorus index" or "P-index" means Wisconsin's agricultural land management planning tool for assessing the potential of a cropped or grazed field to contribute phosphorus to the surface water.

(15w) "Pre-tillage" means using mechanical equipment to reduce soil preferential flow paths, worm holes, root holes, and cracks by turning and mixing the soil prior to and at least 2 inches below the depth of manure application.

(16) "Process wastewater" has the meaning given in s. NR 243.03 (53).

(17) "Silurian bedrock" means the area in Wisconsin where the bedrock consists of Silurian dolomite with a depth to bedrock of 20 feet or less. This area comprises portions of the following counties: Brown, Calumet, Dodge, Door, Fond du Lac, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington, and Waukesha. Areas where Silurian bedrock occurs in Wisconsin can be identified by the most current NRCS, Wisconsin Geological Natural History Survey, department of agriculture, trade and consumer protection, department of natural resources, county maps, or infield bedrock verification methods.

(18) "Site that is susceptible to groundwater contamination" under s. 281.16 (1) (g), Stats., means any one of the following:

- (a) An area within 250 feet of a private well.
- (b) An area within 1000 feet of a municipal well.
- (c) An area within 300 feet upslope or 100 feet downslope of a direct conduit to groundwater.
- (d) A channel that flows to a direct conduit to groundwater.
- (e) An area where the soil depth to groundwater or bedrock is less than 2 feet.
- (f) An area where the soil does not exhibit one of the following soil characteristics:

1. At least a 2-foot soil layer with 40% fines or greater above groundwater and bedrock.
2. At least a 3-foot soil layer with 20% fines or greater above groundwater and bedrock.
3. At least a 5-foot soil layer with 10% fines, or greater above groundwater and bedrock.

Note: See s. NR 151.002 (32) for definition of percent fines.

(18g) "Soil texture" means the surface texture of the Silurian bedrock soil map unit.

(18r) "Solid manure" has the meaning given in s. NR 243.03

(58) when applied to facilities subject to ch. NR 243, Wis. Adm. Code and the meaning given in UW A2809 for all other agricultural facilities where manure is generated.

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is also available electronically at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>.

(19) "Stored manure" means manure that is kept in a manure storage facility or an unconfined manure pile.

(20) "Substantially altered" means a change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, depth or configuration of a structure or facility including:

- (a) Replacement of a liner in a manure storage structure.
- (b) An increase in the volumetric capacity or area of a structure or facility by greater than 20%.
- (c) A change in a structure or facility related to a change in livestock management from one species of livestock to another such as cattle to poultry.

(21) "Tolerable soil loss" or "T" means the maximum rate of erosion, in tons per acre per year, allowable for particular soils and site conditions that will maintain soil productivity.

(22) "Unconfined manure pile" means a quantity of manure that is at least 175 ft³ in volume and which covers the ground surface to a depth of at least 2 inches and is not

confined within a manure storage facility, livestock housing facility or barnyard runoff control facility or covered or contained in a manner that prevents storm water access and direct runoff to surface water or leaching of pollutants to groundwater.

(22m) "UW A2809" means the 2012 version of the University of Wisconsin -- Extension Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin (A2809).

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is also available electronically at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>.

(24) "Water quality management area" or "WQMA" means the area within 1,000 feet from the ordinary high water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, the term means the area within 1,000 feet from the high water mark of the lake; the area within 300 feet from the ordinary high water mark of navigable waters that consist of a river or stream; and a site that is susceptible to groundwater contamination, or that has the potential to be a direct conduit for contamination to reach groundwater.

(25) "Winter grazing area" means a cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period of October 1 to April 30.

151.02 Sheet, rill and wind erosion performance standard.

(1) All land where crops or feed are grown, including pastures, shall be managed to achieve a soil erosion rate equal to, or less than, the "tolerable" (T) rate established for that soil.

(2) This standard first applies to pastures beginning July 1, 2012.

Note: Soil loss will be calculated according to the revised universal soil loss equation II as referenced in ch. ATCP 50 and appropriate wind loss equations as referenced in ch. ATCP 50.

151.03 Tillage setback performance standard.

The purpose of this standard is to prevent tillage operations from destroying stream banks and depositing soil directly in surface waters. In this section, "surface water" has the meaning given in s. NR 102.03 (7).

- (1) No crop producer may conduct a tillage operation that negatively impacts stream bank integrity or deposits soil directly in surface waters.
- (2) No tillage operations may be conducted within 5 feet of the top of the channel of surface waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be required to meet this standard.
- (3) Crop producers shall maintain the area within the tillage setback required under sub. (2) in adequate sod or self-sustaining vegetative cover that provides a minimum of 70% coverage.
- (4) This section does not apply to grassed waterways installed as conservation practices.

151.04 Phosphorus index performance standard.

- (1) All crop and livestock producers shall comply with this section.
- (2)
 - (a) Croplands, pastures, and winter grazing areas shall average a phosphorus index of 6 or less over the accounting period and may not exceed a phosphorus index of 12 in any individual year within the accounting period.
 - (b) Except as provided under sub. (3), for purposes of compliance with this section the phosphorus index shall be calculated using the version of the Wisconsin Phosphorus Index available as of January 1, 2011.

Note: The Wisconsin Phosphorus Index is maintained by the University of Wisconsin department of soil science and can be found at <http://wpindex.soils.wisc.edu/>.

Note: Soil test phosphorus concentration may be used to help identify fields that are high priority for evaluation with the Wisconsin Phosphorus Index. For example, croplands with soil test phosphorus concentrations of 35 parts per million or greater should be given higher priority for evaluation.

Note: Best management practices developed by the department of agriculture, trade and consumer protection may be used alone or in combination to meet the requirements of this section.

- (c) The accounting period required under par. (a) shall meet the following conditions:

1. The accounting period shall begin once a nutrient management plan meeting the requirements of s. NR 151.07 and s. ATCP 50.04 (3) is completed.

2. During the first 8 years of implementation of this standard by a producer, computation of the phosphorus index may be based on a combination of planned crop management and historic data. Planned crop management data is based on projected management and crop rotations. Historic data is based on management and crop rotations that have actually occurred.

3. Once the nutrient management plan under s. NR 151.07 and s. ATCP 50.04 (3) is developed, historic data shall be used for each year as it becomes available.

(3) If the phosphorus index is not applicable to a particular crop or situation, an equivalent calculation approved by the department shall be used to meet the requirements of this section.

Note: The requirement provides for alternative methods to calculate a phosphorus index. Some strategies for assessing and reducing phosphorus index values, algorithms, and software can be found at <http://wpindex.soils.wisc.edu/>.

(4) Producers may not apply nutrients or manure directly, through mechanical means, to surface waters as defined in s. NR 102.03 (7).

(5) The phosphorus index requirement under sub. (2) (a) first takes effect for pastures beginning July 1, 2012.

151.05 Manure storage facilities performance standards.

(1) **APPLICABILITY.** All livestock producers building new manure storage facilities, substantially altering manure storage facilities, or choosing to abandon their manure storage facilities shall comply with this section.

(2) **NEW CONSTRUCTION AND ALTERATIONS.**

(a) New or substantially altered manure storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility and minimize leakage of the facility in order to comply with groundwater standards. The levels of materials in the storage facility may not exceed the margin of safety level.

(am) Storage facilities that are constructed or significantly altered on or after January 1, 2011, shall be designed and operated to contain the additional volume

of runoff and direct precipitation entering the facility as a result of a 25-year, 24-hour storm.

(b) A new manure storage facility means a facility constructed after October 1, 2002.

(c) A substantially altered manure storage facility is a manure storage facility that is substantially altered after October 1, 2002.

(3) CLOSURE.

(a) Closure of a manure storage facility shall occur when an operation where the facility is located ceases operations, or manure has not been added or removed from the facility for a period of 24 months. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters.

(b) The owner or operator may retain the facility for a longer period of time by demonstrating to the department that all of the following conditions are met:

1. The facility is designed, constructed and maintained in accordance with sub. (2).
2. The facility is designed to store manure for a period of time longer than 24 months.
3. Retention of the facility is warranted based on anticipated future use.

(4) EXISTING FACILITIES.

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

(b) Levels of materials in storage facilities may not exceed the margin of safety level.

Note: Manure storage facilities are sometimes used to store non-agricultural wastes, such as septage or organic food wastes. These facilities may be subject to additional regulatory and cost-sharing requirements.

151.055 Process wastewater handling performance standard.

(1) All livestock producers shall comply with this section.

(2) There may be no significant discharge of process wastewater to waters of the state.

(3) The department shall consider all of the following factors when determining whether a discharge of process wastewater is a significant discharge to waters of the state:

- (a) Volume and frequency of the discharge.
- (b) Location of the source relative to receiving waters.
- (c) Means of process wastewater conveyance to waters of the state.
- (d) Slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of process wastewater discharge to waters of the state.
- (e) Available evidence of discharge to a surface water of the state or to a direct conduit to groundwater as defined under s. NR 151.002 (11m).
- (f) Whether the process wastewater discharge is to a site that is defined as a site susceptible to groundwater contamination under s. NR 151.015 (18).
- (g) Other factors relevant to the impact of the discharge on water quality standards of the receiving water or to groundwater standards.

Note: Existing technical standards contained in the U.S. department of agriculture natural resources conservation service field office technical guide may be used for managing process wastewater. When such standards are not applicable, the landowner or operator is expected to take reasonable steps to reduce the significance of the discharge in accordance with the agricultural performance standard and prohibition compliance requirements of this chapter. The Wisconsin department of agriculture, trade and consumer protection is responsible under s. 281.16 (3) (c), Stats., for developing additional management practices if needed.

151.06 Clean water diversion performance standard.

- (1) All livestock producers within a water quality management area shall comply with this section.
- (2) Runoff shall be diverted away from contacting feedlot, manure storage areas and barnyard areas within water quality management areas except that a diversion to protect a private well under s. NR 151.015 (18) (a) is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well.

151.07 Nutrient management.

- (1) All crop producers and livestock producers that apply manure or other nutrients directly or through contract to agricultural fields shall comply with this section.

Note: Manure management requirements for concentrated animal feeding operations covered under a WPDES permit are contained in ch. NR 243.

(2) This performance standard does not apply to the application of industrial waste and byproducts regulated under ch. NR 214, municipal sludge regulated under ch. NR 204, and septage regulated under ch. NR 113, provided the material is not commingled with manure prior to application.

Note: In accordance with ss. ATCP 50.04, 50.48 and 50.50, nutrient management planners, Wisconsin certified soil testing laboratories and dealers of commercial fertilizer are advised to make nutrient management recommendations based on the performance standard for nutrient management, s. NR 151.07, to ensure that their customers comply with this performance standard.

Note: If an application of material to cropland is regulated under ch. NR 113, 204, or 214, the management practices, loading limitations, and other restrictions specified in the applicable regulation apply to that application. However, nutrient management plans developed in accordance with this performance standard must account for all nutrient sources, including industrial waste and byproducts, municipal sludge, and septage. This means that the future application of manure and commercial fertilizer may be restricted by this performance standard due to other applications of industrial waste and byproducts, municipal sludge, and septage. In addition, it means that if industrial waste and byproducts, municipal sludge, or septage are placed in a manure storage structure and mixed with manure, the commingled material is also covered by this standard and must be accounted for by the producer when preparing and implementing a nutrient management plan.

(3) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan.

(a) The nutrient management plan shall be designed to limit or reduce the discharge of nutrients to waters of the state for the purpose of complying with state water quality standards and groundwater standards.

(b) Nutrient management plans for croplands in watersheds that contain impaired surface waters or in watersheds that contain outstanding or exceptional resource waters shall meet the following criteria:

1. Unless otherwise provided in this paragraph, the plan shall be designed to manage soil nutrient concentrations so as to maintain or reduce delivery of nutrients contributing to the impairment of impaired surface waters and to outstanding or exceptional resource waters.

2. The plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.

3. For lands in watersheds containing exceptional or outstanding resource waters, the plan may allow an increase in soil nutrient concentrations if the plan documents that any potential nutrient delivery to the exceptional or outstanding resource waters will not alter the background water quality of the exceptional or outstanding resource waters. For lands in watersheds containing impaired waters, the plan may allow an increase in soil nutrient concentrations if a low risk of delivery of nutrients from the land to the impaired water can be demonstrated.

(c) In this standard, impaired surface waters are waters identified as impaired pursuant to 33 USC 1313 (d) (1) (A) and 40 CFR 130.7. Outstanding or exceptional resource waters are identified in ch. NR 102.

(4) This section is in effect on January 1, 2005 for existing croplands under s. NR 151.09(4) that are located within any of the following:

(a) Watersheds containing outstanding or exceptional resource waters.

(b) Watersheds containing impaired waters.

(c) Source water protection areas defined in s. NR 243.03 (61).

(5) This section is in effect on January 1, 2008 for all other existing croplands under s. NR 151.09 (4).

(6) This section is in effect for all new croplands under s. NR 151.09 (4) on October 1, 2003.

Note: The purpose of the phased implementation of this standard is to allow the department sufficient time to work with the Department of Agriculture, Trade and Consumer Protection and local governmental units to develop and implement an information, education and training program on nutrient management for affected stakeholders.

151.075 Silurian bedrock performance standards.

(1) All crop producers and livestock producers that mechanically apply manure directly or through contract or other agreement to cropland or pasture areas that meet the definition of Silurian bedrock under s. NR 151.015 (17) must comply with this section.

(2) Mechanical manure application may not cause the fecal contamination of water in a well.

(3) Manure may not be mechanically applied on areas of cropland or pastures that have 24 inches or less of separation between the ground surface and apparent water table.

(4) Manure must be applied in conformance with a nutrient management plan that meets the requirements under all the following:

(a) The plan must be consistent with s. NR 151.07.

(b) The plan must be consistent with NRCS Technical Standard 590, dated December 2015.

Note: Copies of the Wisconsin Natural Resources Conservation Service ("NRCS") Nutrient Management Standard 590, dated December 2015, including the Technical Note (TN-1) referenced in the standard, may be inspected at the offices of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection, county land conservation departments and the legislative reference bureau, Madison Wisconsin. NRCS 590 (and TN-1) is also available electronically at: [https://efotg.sc.egov.usda.gov/references/public/WI/590_Standard-\(2015-12\).pdf](https://efotg.sc.egov.usda.gov/references/public/WI/590_Standard-(2015-12).pdf) and https://efotg.sc.egov.usda.gov/references/public/WI/Conservation_Planning-TN-1.pdf.

(c) The plan must be designed and implemented consistent with this section to manage manure so as to reduce the risk of pathogen delivery to groundwater and prevent exceedances of groundwater water quality standards.

(d) The plan must use NRCS soil survey maps/information or other methods as a planning tool to identify Silurian bedrock within or adjacent to cropland and pastures.

(5) Manure may not be mechanically applied on croplands or pastures until infield bedrock verification or Silurian bedrock map information is used to identify areas where the Silurian bedrock soil depth is less than 5 feet. If infield bedrock verification uses drill cores or other subsurface investigations, they must be backfilled with soil within 72 hours of being created.

Note: Silurian bedrock map information developed by the department of agriculture, trade and consumer protection and/or department of natural resources, may be used alone or in combination to meet the requirements of this section.

Note: Silurian bedrock map information, available from the University of Wisconsin department of soil science, can be found at <https://snapplus.wisc.edu/maps/>.

(6) Manure may not be mechanically applied on croplands or pastures where the Silurian bedrock soil depth is less than 5 feet until such fields are evaluated and ranked for risk of pathogen delivery to groundwater. Areas determined to have a high risk for pathogen

delivery to groundwater must be avoided or must be lowest priority for manure application.

(7) Mechanical application of manure and headland stacking of manure is prohibited on soils with 5 feet or less to Silurian bedrock when soils are frozen or snow covered.

(8) Mechanical application of manure is prohibited within Silurian bedrock having soil depths less than 5 feet when rainfall greater than one inch is forecast within 24 hours of planned application.

(9) Mechanical application of manure is prohibited for soils with less than 2 feet to Silurian bedrock.

(10) For soils with 2 to 3 feet to Silurian bedrock, all the following apply:

(a) No mechanical application of solid manure unless all the following are met:

1. Solid manure is incorporated within 72 hours to no more than 4 inches below ground.

2. At least one of the following is implemented:

a. Solid manure is applied at a rate no greater than 15 tons/acre/year, or the rate that supplies the crop nitrogen recommendation from UW A2809, whichever is less.

b. Solid manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.

c. Solid manure is composted or treated to reduce pathogen levels via practices to a fecal coliform bacteria density of less than 500,000 colony-forming units or most probable number per gram total solids on a dry weight basis.

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is also available electronically at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>.

(b) No mechanical application of liquid manure unless all the following are met:

1. Pre-tillage is completed, unless exempt under par. (c) or (d).
2. Liquid manure is injected or incorporated within 24 hours to no more than 4 inches below ground, unless exempt under par. (c).
3. At least one of the following is implemented:
 - a. Total liquid manure application is applied in compliance with UW A2809, or limited to Table 1, whichever is less, to prevent hydraulic overloading of the soil.

Table 1. Silurian Bedrock Maximum Liquid Manure Application Rates

Soil Texture	2 to 3 Feed Depth (gal/ac/yr)	3 to 5 Feed Depth (gal/ac/wk)
Sand	6,750	6,750
Sandy Loam	13,500	13,500
Loam	13,500	13,500
Silt Loam	13,500	13,500
Clay Loam	13,500	13,500
Clay	6,750	6,750

Table 1. Silurian Bedrock Maximum Liquid Manure Application Rates

Soil Texture	5 to 20 Feed Depth (gal/ac/wk)
Sand	13,500
Sandy Loam	27,000*
Loam	27,000*
Silt Loam	27,000*
Clay Loam	20,000*
Clay	13,500

*It is anticipated that this rate would exceed the UW A2809 annual (crop year) application rate.

- b. Liquid manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.
- c. Liquid manure is treated to substantially reduce pathogen levels via practices to a fecal coliform bacteria density of less than

500,000 most probable number or colony-forming units per 100 milliliter sample.

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is also available electronically at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>.

(c) Pre-tillage, incorporation or injection is not required if cropland or pastures meet long term no-till or have a perennial or established crop. Each surface application of liquid manure must not exceed 6,750 gallons per acre.

(d) Pre-tillage is not required if demonstrated to the department that a field cannot meet s. NR 151.02 over an eight-year crop rotation using a combination of the following practices: tillage, crops, contouring, filter strips, or cover crops.

(11) For soils with 3 to 5 feet to Silurian bedrock, all the following apply:

(a) No mechanical application of solid manure unless all the following are met:

1. Incorporated within 72 hours to no more than 6 inches below ground.

2. At least one of the following is implemented:

a. Manure is applied in accordance with UW A2809 annual application rate, or at a rate of 15 tons/acre/year, whichever is less.

b. Manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.

c. Manure is composted or treated to reduce pathogen levels via practices to a fecal coliform bacteria density of 500,000 colony-forming units, or most probable number per gram total solids on a dry weight basis.

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is

also available electronically
at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>

(b) No mechanical application of liquid manure unless all the following are met:

1. Pre-tillage is completed unless exempt under par. (c) or (d).
2. Liquid manure is injected or incorporated within 24 hours to no more than 6 inches below ground, unless exempt under par. (c).
3. At least one of the following is implemented:
 - a. Total liquid manure application is applied in compliance with UW A2809, or limited to sub. (10) (b) 3. Table 1 rates, whichever is less, to prevent hydraulic overloading of the soil.
 - b. Liquid manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.
 - c. Liquid manure is treated to substantially reduce pathogen levels via practices to a fecal coliform bacteria density of less than 500,000 most probable number or colony-forming units per 100 milliliter sample.

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is also available electronically at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>.

(c) Pre-tillage, incorporation or injection is not required if cropland or pastures meet long term no-till or have a perennial or established crop. Each surface application of liquid manure must not exceed 6,750 gallons per acre.

(d) Pre-tillage is not required if demonstrated to the department that a field cannot meet s. NR 151.02 over an eight-year crop rotation using a combination of the following practices: tillage, crops, contouring, filter strips, or cover crops.

(12) For soils with 5 to 20 feet to Silurian bedrock, all the following apply:

(a) No mechanical application of liquid manure unless all the following are met:

1. Pre-tillage is completed unless exempt under par. (b) or (c).
2. Liquid manure is injected or incorporated within 24 hours to no more than 6 inches below ground, unless exempt under par. (b).
3. At least one of the following is implemented:
 - a. Total liquid manure application is applied in compliance with UW A2809, or limited to sub. (10) (b) 3. Table 1 rates, whichever is less, to prevent hydraulic overloading of the soil.
 - b. Liquid manure is applied in compliance with UW A2809 and within 10 days of the planting date or applied on a perennial or established crop.
 - c. Liquid manure is treated to substantially reduce pathogen levels via practices to a fecal coliform bacteria density of less than 500,000 most probable number or colony-forming units per 100 milliliter sample.

Note: Copies of the University of Wisconsin -- Extension publication A2809 Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin, dated 2012 (A2809) may be inspected at the office of the department, the Wisconsin Department of Agriculture, Trade and Consumer Protection and the legislative reference bureau, Madison, Wisconsin. A2809 is also available electronically at: <http://learningstore.uwex.edu/assets/pdfs/A2809.pdf>.

(b) Pre-tillage, incorporation or injection is not required if cropland or pastures meet long term no-till or have a perennial or established crop. Each surface application of liquid manure must not exceed 10,000 gallons per acre.

(c) Pre-tillage is not required if demonstrated to the department that a field cannot meet s. NR 151.02 over an eight-year crop rotation using a combination of the following practices: tillage, crops, contouring, filter strips, or cover crops.

Note: Silurian bedrock map information for soils with 5 to 20 feet to Silurian bedrock, developed by the department of agriculture, trade and consumer protection and/or department of natural resources, may be used alone or in combination to meet the requirements of this section.

(13) Mechanical manure applications are prohibited within any of the following:

- (a) 1000 feet of a community water system as defined in s. NR 811.02.

(b) 250 feet of a private water system or a non-community water system as defined in s. NR 812.07.

(c) An area within 300 feet upslope or 100 feet downslope of a direct conduit to groundwater as defined in s. NR 151.002 (11m).

(d) 100 feet of a concentrated flow channel that leads to a water system included in par. (a) or (b) or direct conduit to groundwater in par. (c).

(14) Mechanical manure applications are prohibited on or within 100 feet of Silurian bedrock in a closed depression unless the manure is injected or incorporated within 24 hours or prior to precipitation capable of producing runoff, whichever comes first. The prohibition of mechanical application of manure does not apply to areas following long term no-till practices or with a perennial or established crop.

(15) No surface application of manure on slopes of 6 percent or greater in cropland and pasture areas that have concentrated flow channels that drain to a closed depression in Silurian bedrock, unless the material is incorporated within 24 hours or prior to precipitation capable of producing runoff, whichever comes first. The prohibition of surface application of manure does not apply to areas following long term no-till practices or with a perennial or established crop.

(16) Practices must retain land applied manure on the soil where they are applied with minimal movement to maintain setback distances specified in subs. (13) and (14).

151.08 Manure management prohibitions.

(1) All livestock producers shall comply with this section.

(2) A livestock operation shall have no overflow of manure storage facilities.

(3) A livestock operation shall have no unconfined manure pile in a water quality management area.

(4) A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state.

(5)

(a) A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover.

(b) This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

151.09 Implementation and enforcement procedures for cropland performance standards.

(1) **PURPOSE.** The purpose of this section is to identify the procedures the department will follow in implementing and enforcing the cropland performance standards pursuant to ss. 281.16 (3) and 281.98, Stats. This section will also identify circumstances under which an owner or operator of cropland is required to comply with the cropland performance standards. In this section, "cropland performance standards" means performance standards in ss. NR 151.005, 151.02, 151.03, 151.04, 151.07, and 151.075.

(2) **ROLE OF MUNICIPALITIES.** The department may rely on municipalities to implement the procedures and make determinations established in this section.

Note: In most cases, the department will rely on municipalities to fully implement the cropland performance standards. The department intends to utilize the procedures in this section in cases where a municipality has requested assistance in implementing and enforcing the cropland performance standards or in cases where a municipality has failed to address an incident of noncompliance with the performance standards in a timely manner. The department recognizes that coordination between local municipalities, the Department of Agriculture, Trade and Consumer Protection and other state agencies is needed to achieve statewide compliance with the performance standards. Accordingly, the department plans on working with counties, the Department of Agriculture, Trade and Consumer Protection and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards that recognizes the procedures in these rules, state basin plans and the priorities established in land and water conservation plans.

Note: The department implementation and enforcement procedures for livestock performance standards relating to manure management are included in s. NR 151.095 and ch. NR 243.

(3) **LANDOWNER AND OPERATOR REQUIREMENTS.**

(a) **Introduction.** This section identifies compliance requirements for landowners and operators based on whether the cropland is existing or new and whether cost sharing is required and made available to the landowner or operator.

(b) **General requirements.** If any cropland is meeting a cropland performance standard on or after the effective date of the standard, the cropland performance standard shall continue to be met by the existing landowner or operator, heirs or subsequent owners or operators of the cropland. If a landowner or operator alters or changes the management of the cropland in a manner that results in noncompliance with the performance standard, the landowner or operator shall bring the cropland back into compliance, regardless of whether cost-sharing is

made available. This paragraph does not apply to croplands completing enrollment determined to be existing under sub. (4) (b) 2.

Note: The department or a municipality may use conservation plans, cost share agreements, deed restrictions, personal observations, landowner records, or other information to determine whether a change has occurred.

(c) Existing cropland requirements.

1. A landowner or operator of an existing cropland, defined under sub. (4) (b), shall comply with a cropland performance standard if all of the following have been done by the department:

a. Except as provided in subds. 2. and 3., a determination is made that cost sharing has been made available in accordance with sub. (4) (d) on or after the effective date of the cropland performance standard.

b. The landowner or operator has been notified in accordance with sub. (5) or (6).

2. A landowner or operator of existing cropland, defined under sub. (4) (b), shall comply with a cropland performance standard, regardless of whether cost sharing is available, in situations where the best management practices and other corrective measures needed to meet the performance standards do not involve eligible costs.

3. A landowner or operator of an existing cropland that voluntarily proposes to construct or reconstruct a manure storage system shall comply with s. NR 151.07, regardless of whether cost sharing is made available, if the nutrient management plan is required pursuant to a local permit for the manure storage system.

Note: Although the requirement for the nutrient management plan in this subd. 3 is tied to construction of a new manure storage system, the department intends to implement the nutrient management standard through s. NR 151.09 rather than through s. NR 151.095.

(d) New cropland requirements. A landowner or operator of a new cropland, defined under sub. (4) (b), shall comply with the cropland performance standards, regardless of whether cost sharing is available.

Note: Under s. 281.16 (3) (e), Stats., a landowner or operator may not be required by the state or a municipality through an ordinance to bring existing croplands into compliance with the cropland performance

standards, technical standards or conservation practices unless cost-sharing is available in accordance with this section.

(4) DEPARTMENT DETERMINATIONS.

(a) Scope of determinations. If croplands are not in compliance with a cropland performance standard, the department shall make determinations in accordance with the procedures and criteria in this subsection.

(b) Cropland status. The department shall classify non-complying croplands to be either new or existing for purposes of administering this section and s. 281.16 (3) (e), Stats. In making the determination, the department shall base the decision on the following:

1. An existing cropland is one that meets all of the following criteria:
 - a. The cropland was being cropped as of the effective date of the standard.
 - b. The cropland is not in compliance with a cropland performance standard in this subchapter as of the effective date of the standard. The reason for non-compliance of the cropland may not be failure of the landowner or operator to maintain an installed best management practice in accordance with a cost-share agreement or contract.
2. An existing cropland also includes land enrolled on October 1, 2002, in the conservation reserve or conservation reserve enhancement program administered by the U.S. department of agriculture. This subdivision does not apply to croplands re-enrolled after October 1, 2002.
3. A new cropland is one that does not meet the definition under subd. 1. or 2., including:
 - a. Land without a previous history of cropping that is converted to cropland after the effective date of the standard. "Without a previous history of cropping" means land where crops have not been grown and harvested for agricultural purposes in the last 10 years prior to the conversion to cropland.
 - b. Cropland that is in existence and in compliance with a performance standard on or after the effective date of the standard and that undergoes a change in a cropland practice that results in noncompliance with the performance standards.

Note: The department or a municipality may use conservation plans, cost share agreements, deed restrictions, personal observations, landowner records, or other information to determine whether a change has occurred. 4. Change in ownership may not be used as the sole basis for determining whether a cropland is existing or new for purposes of administering this subsection.

(c) Eligible costs.

1. If cost sharing is required to be made available under sub. (3) (c), the department shall determine the total cost of best management practices and corrective measures needed to bring a cropland into compliance with performance standards and shall determine which of those costs are eligible for cost-sharing for the purposes of administering this section and s. 281.16 (3) (e), Stats.
2. The cost-share eligibility provisions identified in chs. NR 153 and 154 shall be used in identifying eligible costs for installation of best management practices and corrective measures.
3. Eligible technical assistance costs include best management practice planning, design, installation supervision, and installation certification.
4. If cost sharing is provided by DATCP or the department, the corrective measures shall be implemented in accordance with the BMPs and technical standards specified in ch. NR 154 or subch. VIII of ch. ATCP 50.

Note: Under chs. NR 153 and 154, eligible costs typically include capital costs and significant other expenses, including design costs, incurred by the landowner or operator. Eligible costs do not include the value or amount of time spent by a landowner or operator in making management changes.

(d) Determination of cost-share availability.

1. For purposes of administering this section and s. 281.16 (3) (e), Stats., if cost sharing is required to be made available under sub. (3), the department shall make a determination as to whether cost sharing has been made available on or after the effective date of the cropland standard to cover the eligible costs for a landowner or operator to comply with the cropland performance standard.
2. Cost sharing under s. 281.65, Stats., shall be considered available when all of the following have been met:

a. Cost share dollars are offered in accordance with either of the following: the department has entered into a runoff management grant agreement under ch. NR 153 or a nonpoint source grant agreement under ch. NR 120, and a notice under sub. (5), including any required offer of cost sharing, has been issued by the department or a municipality; or the department directly offers cost share assistance and issues a notice under sub. (5).

b. The grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., provide at least 70% of the eligible costs to implement the best management practices or other corrective measures for croplands needed to meet a cropland performance standard.

c. In cases of economic hardship determined in accordance with s. NR 154.03 (3), the grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., provide cost sharing consistent with the hardship determination.

3. For funding sources other than those administered by s. 281.65, Stats., the department may make a determination of cost share availability after consulting with DATCP and ch. ATCP 50.

Note: Under s. 281.16 (3) (e), DATCP is responsible for promulgating rules that specify criteria for determining whether cost-sharing is available from sources other than s. 281.65, Stats., including s. 92.14, Stats. Pursuant to s. 281.16 (3) (e), Stats., a municipality is required to follow the department's definition of cost-share availability if funds are utilized under s. 281.65, Stats. If funds are utilized from any other source, a municipality must defer to DATCP's definition of cost-share availability.

(5) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR EXISTING CROPLANDS WHEN COST-SHARING IS REQUIRED.

(a) Landowner notification.

1. The department shall notify a landowner or operator in writing of the determinations made under sub. (4) and implementation requirements for existing croplands where cost sharing is required for compliance.

2. The notice shall be sent certified mail, return receipt requested or personal delivery.

3. The following information shall be included in the notice:

- a. A description of the cropland performance standard being violated.
- b. The cropland status determination made in accordance with sub. (4) (b).
- c. The determination made in accordance with sub. (4) (c) as to which best management practices or other corrective measures that are needed to comply with cropland performance standards are eligible for cost sharing.

Note: Some best management practices required to comply with cropland performance standards involve no eligible cost to the landowner or operator and are not eligible for cost sharing.

- d. The determination made in accordance with sub. (4) (d) that cost sharing is available for eligible costs to achieve compliance with cropland performance standards, including a written offer of cost sharing.
- e. An offer to provide or coordinate the provision of technical assistance.
- f. A compliance period for meeting the cropland performance standard.
- g. An explanation of the possible consequences if the landowner or operator fails to comply with provisions of the notice, including enforcement or loss of cost sharing, or both.

(b) Compliance schedule.

1. A landowner or operator that receives the notice under par. (a) shall install or implement best management practices and corrective measures to meet the performance standards in the time period specified in the notice, if cost sharing is available in accordance with sub. (4) (d) 2.
2. The compliance period identified in the notice in par. (a) shall be determined by the department as follows:
 - a. The compliance period shall begin on the postmark date of the notice or the date of personal delivery.

- b. The length of the compliance period shall be not less than 60 days nor more than 3 years unless otherwise provided for in this subdivision.
- c. The length of the compliance period may be less than 60 days if the site is an imminent threat to public health, fish and aquatic life.
- d. The department may authorize an extension up to 4 years on a case-by-case basis provided that the reasons for the extension are beyond the control of the landowner or operator. A compliance period may not be extended to exceed 4 years in total.

3. Once a landowner or operator achieves compliance with a cropland performance standard, compliance with the standard shall be maintained by the existing landowner or operator and heirs or subsequent owners, regardless of cost sharing.

(6) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR EXISTING CROPLANDS IN SITUATIONS WHEN NO ELIGIBLE COSTS ARE INVOLVED.

(a) Landowner notification.

- 1. The department shall notify a non-complying landowner or operator of existing croplands of the determinations made under sub. (4).
- 2. The notice shall be sent certified mail, return receipt requested, or via personal delivery.
- 3. The following information shall be included in the notice:
 - a. A description of the cropland performance standard that is being violated and the determination that corrective measures do not involve eligible costs under sub. (4) (c).
 - b. The cropland status determination made in accordance with sub. (4) (b).
 - c. A compliance period for achieving the cropland performance standard. The compliance period may not exceed the time limits in par. (b).
 - d. An explanation of the consequences if the landowner or operator fails to comply with provisions of the notice.

(b) Compliance period.

1. The compliance period for existing croplands where best management practices and other corrective measures do not involve eligible costs shall be in accordance with the following:

a. The compliance period shall begin on the postmark date of the notice or the date of personal delivery.

b. The length of the compliance period shall be not less than 60 days nor more than 3 years unless otherwise provided for in this subsection.

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

2. Once compliance with a cropland performance standard is attained, compliance with the standard shall be maintained by the existing landowner or operator and heirs or subsequent owners.

(c) Combined notices. The department may meet multiple notification requirements under par. (a), sub. (5) and s. NR 151.095 within any single notice issued to a landowner or operator.

(7) ENFORCEMENT.

(a) Authority to initiate enforcement. The department may take enforcement action pursuant to s. 281.98, Stats., or other appropriate actions, against the landowner or operator of a cropland for failing to comply with the cropland performance standards in this subchapter or approved variances to the cropland performance standards provided by the department under s. NR 151.097.

(b) Enforcement following notice and direct enforcement. The department shall provide notice to the landowner or operator of an existing cropland in accordance with subs. (5) and (6) prior to the department initiating enforcement action under s. 281.98, Stats., except in cases of repeated mismanagement. In such cases, the department may pursue direct enforcement under s. 281.98, Stats., for the second and any subsequent offenses.

Note: The implementation and enforcement procedures in this section are limited to actions taken by the department under s. 281.98, Stats., for noncompliance with a cropland performance standard. Pursuant to other statutory authority, the department may take direct enforcement action without cost sharing against a crop producer for willful or intentional acts or other actions by a landowner or operator that pose an immediate or imminent threat to human health or the environment.

Note: An owner or operator of a new cropland is required to meet the cropland performance standards by incorporating necessary management measures at the time the new cropland is created. This requirement shall be met regardless of cost sharing. The department may pursue direct enforcement under s. 281.98, Stats., against landowners or operators of new croplands not in compliance.

(8) NOTIFICATION TO MUNICIPALITIES. The department shall notify the appropriate municipality, including a county land conservation committee, prior to taking any of the following actions under this section:

- (a) Contacting a landowner or operator to investigate compliance with cropland performance standards.
- (b) Issuing a notice under sub. (5) or (6) to a landowner or operator.
- (c) Taking enforcement action under s. 281.98, Stats., against a landowner or operator for failing to comply with cropland performance standards in this subchapter.
- (d) Notification is not required if the site is an imminent threat to public health or fish and aquatic life.

151.095 Implementation and enforcement procedures for livestock performance standards and prohibitions.

(1) PURPOSE. The purpose of this section is to identify the procedures the department will follow in implementing and enforcing the livestock performance standards and prohibitions pursuant to ss. 281.16 (3) and 281.98, Stats. If a livestock performance standard is also listed as a cropland performance standard under s. NR 151.09, the department may choose the procedures of either s. NR 151.09 or this section to obtain compliance with the standard. This section will also identify circumstances under which an owner or operator of a livestock facility is required to comply with livestock performance standards and prohibitions. In this section, "livestock performance standards and prohibitions" means the performance standards and prohibitions in ss. NR 151.005, 151.05, 151.055, 151.06, and 151.08.

Note: The nutrient management standard in s. NR 151.07 should be implemented through the procedures in s. NR 151.09.

(2) ROLE OF MUNICIPALITIES. The department may rely on municipalities to implement the procedures and make determinations outlined in this section.

Note: In most cases, the department will rely on municipalities to fully implement the livestock performance standards and prohibitions. The department intends to utilize the procedures in this section in cases where a municipality has requested assistance in implementing and enforcing the performance standards or prohibitions or in cases where

a municipality has failed to address an incident of noncompliance with the performance standards or prohibitions in a timely manner. The department recognizes that coordination between local municipalities, the department of agriculture, trade and consumer protection and other state agencies is needed to achieve statewide compliance with the performance standards and prohibitions. Accordingly, the department plans on working with counties, the department of agriculture, trade and consumer protection and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in land and water conservation plans.

Note: Additional implementation and enforcement procedures for livestock performance standards and prohibitions are in ch. NR 243, including the procedures for the issuance of a NOD.

(3) EXEMPTIONS. The department may follow the procedures in ch. NR 243 and is not obligated to follow the procedures and requirements of this section in the following situations:

(a) If the livestock operation holds a WPDES permit.

(b) If the department has determined that the issuance of a NOD to the owner or operator of the livestock operation is warranted. Circumstances in which a NOD may be warranted include:

1. The department has determined that a livestock facility has a point source discharge under s. NR 243.24.
2. The department has determined that a discharge to waters of the state is occurring and the discharge is not related to noncompliance with the performance standards or prohibitions.
3. The department has determined that a municipality is not addressing a facility's noncompliance with the performance standards and prohibitions in a manner consistent with the procedures and timelines established in this section.

(4) LIVESTOCK OWNER AND OPERATOR REQUIREMENTS.

(a) Introduction. This section identifies compliance requirements for a livestock owner or operator based on whether a livestock facility is existing or new and whether cost sharing is required to be made available to a livestock owner or operator.

(b) General requirements. If any livestock facility is meeting a livestock performance standard or prohibition on or after the effective date of the standard

or prohibition, the livestock performance standard or prohibition shall continue to be met by the existing owner or operator, heirs or subsequent owners or operators of the facility. If an owner or operator alters or changes the management of the livestock facility in a manner that results in noncompliance with a livestock performance standard or prohibition, the owner or operator shall bring the livestock facility back into compliance regardless of cost-share availability.

Note: The department or a municipality may use conservation plans, cost share agreements, deed restrictions, personal observations, landowner records, or other information to determine whether a change has occurred.

(c) Existing livestock facility requirements.

1. An owner or operator of an existing livestock facility, defined under sub. (5) (b), shall comply with a livestock performance standard or prohibition if all of the following have been done by the department:

a. Except as provided in subd. 2., a determination is made that cost sharing has been made available in accordance with sub. (5) (d) on or after the effective date of the livestock performance standard or prohibition.

b. The owner or operator of the livestock facility has been notified in accordance with sub. (6) or (7).

2. An owner or operator of an existing livestock facility, defined under sub. (5) (b), shall comply with the livestock performance standards and prohibitions, regardless of whether cost sharing is available, in situations where best management practices and other corrective measures needed to meet the performance standards do not involve eligible costs.

(d) New livestock facility requirements. An owner or operator of a new livestock facility, defined under sub. (5) (b), shall comply with the livestock performance standards and prohibitions, regardless of whether cost sharing is available.

Note: Under s. 281.16 (3) (e), Stats., an owner or operator may not be required by the state or a municipality through an ordinance or regulation to bring existing livestock facilities into compliance with the livestock performance standards or prohibitions, technical standards or conservation practices unless cost-sharing is available in accordance with this section.

(5) DEPARTMENT DETERMINATIONS.

(a) Scope of determinations. If a livestock facility is not in compliance with a livestock performance standard or prohibition, the department shall make determinations in accordance with the procedures and criteria in this subsection.

(b) Livestock facility status. The department shall classify a non-complying livestock facility on an operation to be either new or existing for purposes of administering this section and s. 281.16 (3) (e), Stats. In making the determination, the department shall base the decision on the following:

1. An existing livestock facility is one that meets all of the following criteria:

- a. The facility is in existence as of the effective date of the livestock performance standard or prohibition.
- b. The facility is not in compliance with a livestock performance standard or prohibition in this subchapter as of the effective date of the livestock performance standard or prohibition. The reason for noncompliance of the livestock facility may not be failure of the owner or operator to maintain an installed best management practice in accordance with a cost-share agreement or contract.

2. A new livestock operation or facility is one that does not meet the definition under subd. 1., including:

- a. A livestock operation or facility that is established or installed after the effective date of the livestock performance standard or prohibition, including the placement of livestock structures on a site that did not previously have structures, or placement of animals on lands that did not have animals as of the effective date of the livestock performance standard or prohibition, unless the land is part of an existing rotational grazing or pasturing operation.
- b. For a livestock operation that is in existence as of the effective date of the livestock performance standard or prohibition that establishes or constructs or substantially alters a facility after the effective date of the livestock performance standard or prohibition, the facilities constructed, established or substantially altered after the effective date of the livestock performance standard or prohibition are considered new, except as specified in subd. 3.
- c. A livestock facility that is in existence and in compliance with a livestock performance standard or prohibition on or after the effective date of the livestock performance standard or prohibition and that undergoes a change in the livestock facility that results in noncompliance with the livestock performance standard or prohibition. This includes manure storage facilities that fail to meet the requirements of s. NR 151.05 (3) and were either: constructed on or after October 1, 2002; or were constructed prior to October 1,

2002, and subject through October 1, 2002, to the operation and maintenance provisions of a cost share agreement.

3. Pursuant to the implementation procedures in this section, if the department or a municipality directs an owner or operator of an existing livestock facility to construct a facility as a corrective measure to comply with a performance standard or prohibition on or after the effective date of the livestock performance standard or prohibition, or directs the owner or operator to reconstruct the existing facility as a corrective measure on or after the effective date of the livestock performance standard or prohibition, the constructed facilities are not considered new for purposes of installing or implementing the corrective measure.
4. A livestock facility that meets the criteria in subd. 1. and has subsequently been abandoned shall retain its status as an existing livestock facility if livestock of similar species and number of animal units are reintroduced within 5 years of abandonment.
5. Change in ownership may not be used as the basis for determining whether a livestock facility is existing or new for purposes of administering this subsection.

(c) Eligible costs.

1. If cost sharing is required to be made available under sub. (4) (c), the department shall determine the total cost of best management practices and corrective measures needed to bring a livestock facility into compliance with a livestock performance standard or prohibition and shall determine which of those costs are eligible for cost sharing for the purposes of administering this section and s. 281.16 (3) (e), Stats.
2. The cost-share eligibility provisions identified in chs. NR 153 and 154 shall be used in identifying eligible costs for installation of best management practices and corrective measures.
3. Eligible technical assistance costs include best management practice planning, design, installation supervision, and installation certification.
4. If cost sharing is provided by DATCP or the department, the corrective measures shall be implemented in accordance with the best management practices and technical standards specified in ch. NR 154 or subch. VIII of ch. ATCP 50.

Note: Under chs. NR 153 and 154, eligible costs typically include capital costs and significant other expenses, including design costs, incurred by the owner or operator of the livestock operation.

Eligible costs do not include the value or amount of time spent by an owner or operator in making management changes.

(d) Determination of cost-share availability.

1. For purposes of administering this section and s. 281.16 (3) (e), Stats., if cost sharing is required to be made available under sub. (4) (c), the department shall make a determination as to whether cost sharing has been made available on or after the effective date of the livestock performance standard or prohibition to cover eligible costs for an owner or operator to comply with a livestock performance standard or prohibition.

2. Cost sharing under s. 281.65, Stats., shall be considered available when all of the following have been met:

a. Cost share dollars are offered in accordance with either of the following: the department has entered into a runoff management grant agreement under ch. NR 153 or a nonpoint source grant agreement under ch. NR 120, and a notice under sub. (6) or under s. NR 243.24 (4), including any required offer of cost sharing, has been issued by the department or a municipality; or the department directly offers cost sharing and issues a notice under sub. (6) or s. NR 243.24 (4).

b. The grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., provide at least 70% of the eligible costs to implement the best management practices or other corrective measures needed for a livestock facility to meet a livestock performance standard or prohibition.

c. In cases of economic hardship determined in accordance with s. NR 154.03 (3), the grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., provide cost sharing consistent with the hardship determination.

d. If an existing livestock operation with less than 250 animal units wants to expand at the time it is upgrading a facility to meet a performance standard or prohibition pursuant to a notice in sub. (6) or under s. NR 243.24 (4), the grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., shall also provide at least 70% of eligible costs needed to bring any expansion of facilities of up to 300 animal units into compliance with the performance standard or prohibition. In cases of economic hardship, the grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., shall also provide between 70% and 90% of the eligible

costs needed to bring any expansion of facilities of up to 300 animal units into compliance with the performance standards and prohibitions.

Note: For livestock operations with less than 250 animal units, that portion of any expansion of facilities to accommodate more than 300 animal units is not eligible for cost sharing under s. NR 153.15 (2) (d) 1. For an existing livestock operation with greater than 250 animal units, but less than the number of animal units requiring a WPDES permit under s. NR 243.12 (1) (a), (b) or (c), cost sharing may be provided under s. NR 153.15 (2) (d) 2., for at least 70% of eligible costs to bring up to a 20% increase in livestock population into compliance with the performance standards and prohibitions; however, cost sharing for eligible costs up to a 20% expansion in livestock population is not required to be made available for compliance.

3. For funding sources other than those administered by s. 281.65, Stats., the department may make a determination of cost share availability after consulting with DATCP and ch. ATCP 50.

Note: Under s. 281.16 (3) (e), Stats., DATCP is responsible for promulgating rules that specify criteria for determining whether cost sharing is available from sources other than s. 281.65, Stats., including s. 92.14, Stats. Pursuant to s. 281.16 (3) (e), Stats., a municipality is required to follow the department's definition of cost share availability if funds are utilized under s. 281.65, Stats. If funds are utilized from any other source, a municipality shall defer to DATCP's definition of cost share availability.

(6) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR EXISTING LIVESTOCK FACILITIES WHEN COST SHARING IS REQUIRED.

(a) Owner or operator notification.

1. The department shall notify an owner or operator in writing of the determinations made under sub. (5) and implementation requirements for existing livestock facilities where cost sharing is required for compliance.
2. The notice shall be sent certified mail, return receipt requested or personal delivery.
3. The following information shall be included in the notice:

- a. A description of the livestock performance standard or prohibition being violated.
- b. The livestock facility status determination made in accordance with sub. (5) (b).
- c. The determination made in accordance with sub. (5) (c) as to which best management practices or other corrective measures needed to comply with a livestock performance standard or prohibition are eligible for cost sharing.

Note: Some best management practices required to comply with a livestock performance standard or prohibition involves no eligible costs to the owner or operator.

- d. The determination made in accordance with sub. (5) (d) that cost sharing is available for eligible costs to achieve compliance with a livestock performance standard or prohibition, including a written offer of cost sharing.
- e. An offer to provide or coordinate the provision of technical assistance.
- f. A compliance period for meeting the livestock performance standard or prohibition.
- g. An explanation of the possible consequences if the owner or operator fails to comply with provisions of the notice, including enforcement or loss of cost sharing, or both.

(b) Compliance period.

1. An owner or operator that receives the notice under par. (a) shall install or implement best management practices and corrective measures to meet a performance standard or prohibition in the time period specified in the notice, if cost sharing is available in accordance with sub. (5) (d) 2.
2. The compliance period identified in the notice in par. (a) shall be determined by the department as follows:
 - a. The compliance period shall begin on the post-mark date of the notice or the date of personal delivery.
 - b. The length of the compliance period shall be not less than 60 days nor more than 3 years unless otherwise provided for in this subdivision.

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

d. The department may authorize an extension up to 4 years on a case-by-case basis provided that the reasons for the extension are beyond the control of the owner or operator of the livestock facility. A compliance period may not be extended to exceed 4 years in total.

3. Once an owner or operator achieves compliance with a livestock performance standard or prohibition, compliance with the standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators, regardless of cost sharing.

(7) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR EXISTING LIVESTOCK FACILITIES IN SITUATIONS WHEN NO ELIGIBLE COSTS ARE INVOLVED.

(a) Owner or operator notification.

1. The department shall notify a non-complying owner or operator of an existing livestock facility of the determinations made under sub. (5).

2. The notice shall be sent certified mail, return receipt requested or personal delivery.

3. The following information shall be included in the notice:

a. A description of the livestock performance standard or prohibition that is being violated and the determination that corrective measures do not involve eligible costs under sub. (5) (c).

b. The livestock operation status determination made in accordance with sub. (5) (b).

c. A compliance period for meeting the livestock performance standard or prohibition. The compliance period may not exceed the time limits in par. (b).

d. An explanation of the consequences if the owner or operator fails to comply with provisions of the notice.

(b) Compliance period.

1. The compliance period for existing livestock facilities where best management practices and other corrective measures do not involve eligible costs shall be in accordance with the following;

a. The compliance period shall begin on the postmark date of the notice or the date of personal delivery.

b. The length of the compliance period shall be not less than 60 days nor more than 3 years unless otherwise provided for in this subsection.

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

2. Once compliance with a livestock performance standard or prohibition is attained, compliance with the performance standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators.

(c) Combined notices. The department may meet multiple notification requirements under par. (a), sub. (6) and s. NR 151.09 within any single notice issued to the owner or operator.

(8) ENFORCEMENT.

(a) Authority to initiate enforcement. The department may take action pursuant s. 281.98, Stats., or other appropriate actions, against the owner or operator of a livestock operation for failing to comply with the livestock performance standards and prohibitions in this subchapter or approved variances to the livestock performance standards provided by the department under s. NR 151.097.

(b) Enforcement following notice and direct enforcement. The department shall provide notice to the owner or operator of an existing livestock facility in accordance with sub. (6) or (7) prior to the department initiating enforcement action under s. 281.98, Stats., except in cases of repeated mismanagement, such as allowing repeated manure storage overflows, where the department may pursue direct enforcement under s. 281.98, Stats., for the second and subsequent offenses.

Note: The implementation and enforcement procedures in this section are limited to actions taken by the department under s. 281.98, Stats., for noncompliance with a livestock performance standard or prohibition. Pursuant to other statutory authority, the department may take direct enforcement action without cost sharing against a livestock producer for

willful or intentional acts or other actions by a producer that pose an imminent or immediate threat to human health or the environment.

Note: An owner or operator of a new livestock facility is required to meet the livestock performance standards and prohibitions at the time the new facility is created. This requirement shall be met regardless of cost sharing.

(9) **NOTIFICATION TO MUNICIPALITIES.** The department shall notify the appropriate municipality, including a county land conservation committee, prior to taking any of the following actions under this subsection:

- (a) Contacting an owner or operator to investigate compliance with livestock performance standards and prohibitions.
- (b) Issuing a notice under sub. (6) or (7) to an owner or operator.
- (c) Taking enforcement action under s. 281.98, Stats., against an owner or operator for failing to comply with a livestock performance standard or prohibition in this subchapter.
- (d) Notification is not required if the site is an imminent threat to public health or fish and aquatic life.

151.096 Local livestock operation ordinances and regulations.

(1) **LOCAL REGULATIONS THAT EXCEED STATE STANDARDS; APPROVAL REQUIRED.**

- (a) Except as provided in par. (b), a local governmental unit may not enact a livestock operation ordinance or regulation for water quality protection that exceeds the performance standards or prohibitions in ss. NR 151.05 to 151.08 or the related conservation practices or technical standards in ch. ATCP 50, unless the local governmental unit obtains approval from the department under sub. (2), or receives approval from DATCP pursuant to s. ATCP 50.60.
- (b) Paragraph (a) does not apply to any of the following:

1. Local ordinances or regulations that address cropping practices that are not directly related to the livestock operation.
2. Local ordinances or regulations enacted prior to October 1, 2002.

Note: See s. 92.15, Stats. A person adversely affected by a local livestock regulation may oppose its adoption at the local level. The person may also challenge a local regulation in court if the person

believes that the local governmental unit has violated sub. (1) or s. 92.15, Stats. A local governmental unit is responsible for analyzing the legal adequacy of its regulations, and may exercise its own judgment in deciding whether to seek state approval under this section.

Note: Subsection (1) does not limit or expand the application of s. 92.15, Stats., to ordinances or regulations enacted prior to October 1, 2002.

(2) DEPARTMENT APPROVAL.

(a) To obtain department approval under sub. (1) for an existing or proposed regulation, the head of the local governmental unit or the chair of the local governmental unit's governing board shall do all of the following:

1. Submit a copy of the livestock operation ordinance or regulation or portion thereof to the department and to the department of agriculture, trade and consumer protection.
2. Identify the provisions of the regulation for which the local governmental unit seeks approval.
3. Submit supporting documentation explaining why the specific regulatory provisions that exceed the performance standards, prohibitions, conservation practices or technical standards are needed to achieve water quality standards, and why compliance cannot be achieved with a less restrictive standard.

(b) The department shall notify the local governmental unit in writing within 90 calendar days after the department receives the ordinance or regulation as to whether the ordinance or regulation, or portion thereof is approved or denied and shall state the reasons for its decision. Before the department makes its decision, the department shall solicit a recommendation from DATCP. If the department finds the regulatory provisions are needed to achieve water quality standards, the department may approve the ordinance or regulation or portion thereof.

(3) LOCAL PERMITS. Local permits or permit conditions are not subject to the review and approval procedures in this section unless the permit conditions are codified in a local ordinance or regulation.

Note: A local permit requirement does not, in and of itself, violate sub. (1), but permit conditions codified in a local ordinance or regulation must comply with sub. (1). If a local governmental unit routinely requires permit holders to comply with uncodified water quality protection standards that exceed state standards, those uncodified requirements may be subject to court challenge for

noncompliance with s. 92.15, Stats., and sub. (1) as de facto regulatory enactments. A local governmental unit may forestall a legal challenge by codifying standard permit conditions and obtaining any necessary state approval under this section. The department will review codified regulations, but will not review individual permits or uncodified permit conditions under sub. (2).

151.097 Variances.

- (1) The department may grant a variance to the performance standards, technical standards or other non-statutory requirements in this subchapter.
- (2) The department may not grant a variance solely on the basis of economic hardship.
- (3) The department may grant a variance only if all of the following conditions are met:
 - (a) Compliance with the performance standard or technical standard is not feasible due to site conditions. This condition does not apply to research activities conducted as part of a planned agricultural research and farming curriculum.
 - (b) The landowner or operator will implement best management practices or other corrective measures that ensure a level of pollution control that will achieve a level of water quality protection comparable to that afforded by the performance standards in this subchapter.
 - (c) The conditions for which the variance is requested are not created by the landowner or operator or their agents or assigns. This condition does not apply to research activities conducted as part of a planned agricultural research and farming curriculum.
- (4) The department shall use the following process when administering a variance request:
 - (a) The landowner or operator shall submit the variance request to the department or governmental unit, including a county land conservation committee within 60 days of receiving the notice.
 - (b) The governmental unit shall forward any variances that it receives to the department. The department may consider a recommendation from the governmental unit concerning acceptance of the variance request.
 - (c) The department shall make its determination based on the factors in sub. (3).
 - (d) The department shall notify the landowner or operator and the governmental unit of its determination. If the variance is granted, the department or governmental unit shall send to the landowner or operator an amended notice.

(e) The period of time required to make a ruling on a variance request does not extend the compliance periods allowed under ss. NR 151.09 and 151.095.

Note: The department may consider decisions made by a governmental unit, in accordance with local ordinance provisions, when making its determination whether to accept or deny the variance.