



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**Wisconsin**

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## Nutrient Management Plans

### STATE OF WISCONSIN

- 1) Wis. Adm. Code ATCP 50.04(1), (3), 50.48; Wis. Adm. Code NR 151.04, .07
- 2) Wis. Stat. §§ 283.001, 283.01, 283.31; Wis. Adm. Code NR 243.03, .11, .12, .121, .14, .142, .19, .26

*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. Adm. Code ATCP 50.04(1), (3), 50.48; Wis. Adm. Code NR 151.04, .07

##### ATCP 50.04 Farm 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.

[...]

##### (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).  
(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](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](http://www.wi.nrcs.usda.gov), or the department website at: [https://datcp.wi.gov/Pages/Programs\\_Services/ATCP50.aspx](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](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](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.

[ . . . ]

#### **ATCP 50.48 Nutrient management planners**

(1) **QUALIFICATIONS.** To be qualified under ss. 281.65, 281.66, Stats., and this chapter, a nutrient management planner shall be knowledgeable and competent in all of the following areas:

- (a) Compliance with the NRCS technical guide standard 590.
- (b) Soil testing.
- (c) Calculating nutrient needs on a field-by-field basis.
- (d) Crediting manure, residual legume nitrogen, and other nutrient sources on a field-by-field basis.
- (e) Using conservation plans.
- (f) Relevant laws related to nutrient management.
- (g) Preparing nutrient management plans according to s. ATCP 50.04 (3).

(2) **PLANNERS PRESUMPTIVELY QUALIFIED.** An individual is considered a qualified nutrient planner under sub. (1), without any action by the department, if all of the following apply:

- (a) The individual is at least one of the following:
  1. Recognized as a certified professional crop consultant by the national alliance of independent crop consultants.
  2. Recognized as a certified crop adviser or professional agronomist by the American society of agronomy, Wisconsin certified crop advisers board.
  3. Registered as a soil scientist by the soil science society of America.
  4. The holder of other credentials that the department deems equivalent to those specified under subds. 1. to 3. A landowner is presumptively qualified to prepare a nutrient management plan for his or her farm, but not for others, if the landowner completes a department-approved training course that results in a nutrient management plan in compliance with s. ATCP 50.04 (3) and the course instructor approves the landowner's first annual plan. The landowner shall complete a department-approved training course at least once every 4 years to maintain his or her presumptive qualification. The course instructor is not required to hold credentials listed in subds. 1. to 3., but he or she must be knowledgeable and competent in accordance with sub. (1).
- (b) The nutrient management planner complies with sub. (3).

(c) The department has not disqualified the nutrient management planner under sub. (4).

Note: The department does not affirmatively certify nutrient management planners. A nutrient management planner who meets all of the requirements under sub. (2) may represent himself or herself as a qualified nutrient planner, without any certificate from the department. A person qualified only to prepare his or her own nutrient management plan under sub. (2) (a) 4. may not misrepresent that he or she is qualified to prepare nutrient management plans for others.

(3) NUTRIENT MANAGEMENT PLANS.

(a) A qualified nutrient management planner shall prepare nutrient management plans according to s. ATCP 50.04 (3).

(b) A qualified nutrient management planner may not approve a nutrient management plan that fails to comply with s. ATCP 50.04 (3).

(4) DISQUALIFICATION. The department may issue a written notice to an individual, declaring that the individual is not a qualified nutrient management planner under this section. The notice shall specify the basis for the department's declaration. The department may disqualify a nutrient management planner if the planner violates sub. (3) or lacks qualifications required under sub. (1).

Note: A person who is named in a disqualification notice under sub. (4) may request a contested case hearing under s. 227.42, Stats., and ch. ATCP 1.

(5) MISREPRESENTING QUALIFICATION. No person may do any of the following, directly or by implication:

(a) Misrepresent that an individual is a qualified nutrient management planner under this section.

(b) Represent, contrary to a valid written notice under sub. (4), that an individual is a qualified nutrient management planner under this section.

(c) Misrepresent that a person is qualified to perform nutrient management plans for others, if that is not the case.

(6) RECORDS. A qualified nutrient management planner shall keep copies of all nutrient management plans that the qualified nutrient management planner prepares or approves for funding under s. 281.65 or 281.66, Stats., or this chapter. The qualified nutrient management planner shall retain the records for at least 4 years, and shall make them available for inspection and copying by the department or its agent upon request. The qualified nutrient management planner under s. ATCP 50.48 (3) shall complete the nutrient management checklist form provided by the department. The qualified nutrient

management planner shall have reasonable documentation to substantiate each checklist response. The qualified nutrient management planner shall provide it to the department or its agent upon request.

**NR 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.

#### **NR 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.

**2) Wis. Stat. §§ 283.001, 283.01, 283.31; Wis. Adm. Code NR 243.03, .11, .12, .121, .14, .142, .19, .26**

**283.001. Statement of policy and purpose.**

(1) Although in recent years intensive efforts have been made toward the abatement of pollution of the waters of this state, pollution of these waters continues. Unabated pollution of the waters of this state continues to arouse widespread public concern. It continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water. It is the policy of this state to restore and maintain the chemical, physical, and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water. In order to achieve this policy, the legislature declares that:

(a) It is the goal of the state of Wisconsin to eliminate the discharge of pollutants into the waters of the state by 1985;

(b) It is also the goal of the state of Wisconsin that, wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by 1983;

(c) It is also the policy of the state of Wisconsin that the discharge of toxic pollutants in toxic amounts be prohibited.

(2) The purpose of this chapter is to grant to the department of natural resources all authority necessary to establish, administer and maintain a state pollutant discharge elimination system to effectuate the policy set forth under sub. (1) and consistent with all

the requirements of the federal water pollution control act amendments of 1972, P.L. 92-500; 86 Stat. 816.

### **283.01. Definitions.**

In this chapter:

- (1) “Biological monitoring” means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical and biological characteristic of the effluent and at appropriate frequencies and locations.
- (2) “Construction” means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises.
- (3) “Department” means the department of natural resources.
- (4) “Discharge” when used without qualification includes a discharge of any pollutant.
- (5) “Discharge of pollutant” or “discharge of pollutants” means any addition of any pollutant to the waters of this state from any point source.
- (6) “Effluent limitation” means any restriction established by the department, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of this state.
- (6m) “Environmental pollution” means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.
- (7) “Municipality” means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes or other wastes.
- (8)

(a) “New source” means, except as provided in par. (b), any point source the construction of which commenced after the effective date of a standard of performance under 33 USC 1316 that is applicable to the point source.

(b) If the federal environmental protection agency proposes a standard of performance under 33 USC 1316 that is applicable to a point source and if the standard of performance takes effect within 120 days of the publication of that proposed standard of performance, “new source” means a point source the construction of which commenced after the date of publication of that proposed standard of performance.

(9) “Owner or operator” means any person owning or operating a point source of pollution.

(10) “Permit” means a permit for the discharge of pollutants issued by the department under this chapter.

(11) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(12) “Point source” means either of the following:

(a) A discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged either into the waters of the state or into a publicly owned treatment works except for a conveyance that conveys only storm water. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

(b) A discernible, confined, and discrete conveyance of storm water for which a permit is required under s. 283.33 (1). This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

(13) “Pollutant” means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

(14) “Pollution” means man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(15) “Schedule of compliance” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

(16) “Secretary” means the secretary of natural resources or his or her designee.

(17) “Toxic pollutants” means those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction or physical deformations, in such organisms or their offspring.

(18) “Treatment work” means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the work, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, “treatment work” means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

(19) “Vessel” means any watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

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

### **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 243.03 Definitions**

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

(1) "Accepted management practices" means practices, techniques or measures through which runoff, manure, milking center waste, leachate and other waste streams associated with an animal feeding operation are handled, stored, utilized or otherwise controlled in a manner that is intended to achieve compliance with livestock performance standards and prohibitions established in ch. NR 151 and

water quality objectives established under chs. 281 and 283, Stats. These practices, techniques or measures are established in this chapter as well as ch. NR 154 and ch. ATCP 50 and may include additional practices and procedures as approved by the department on a case-by-case basis.

(2) "Agricultural storm water discharge" means:

(a) For unpermitted animal feeding operations with 300 to 999 animal units, a precipitation-related discharge of manure or process wastewater pollutants to surface waters from a land application area that may occur after the owner or operator of the animal feeding operation has land applied manure or process wastewater in compliance with a nutrient management plan that meets the nutrient management requirements of this chapter; and

(b) For permitted CAFOs, a precipitation related discharge of manure or process wastewater pollutants to surface waters from a land application area that may occur after the owner or operator of the CAFO has land applied the manure or process wastewater in compliance with the nutrient management requirements of this chapter and the terms and conditions of its WPDES permit.

Note: The definition of agricultural storm water discharge does not include discharges of manure or process wastewater pollutants to surface waters from land application activities by an unpermitted small animal feeding operation, because these land application discharges to surface waters by a small operation are not a basis for requiring WPDES permit coverage. See s. NR 243.26 (2) (c).

(3) "Ancillary service and storage areas" means areas that are adjacent to the production area, but are not used for handling or managing livestock, livestock products, mortalities, manure, process wastewater or raw materials. These ancillary areas include areas such as access roads, shipping and receiving areas, pesticide and herbicide storage, oil or fuel storage, raw material handling equipment maintenance, crop equipment or vehicle storage and maintenance areas and refuse piles.

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

(a) The operations are adjacent.

(b) The operations utilize common systems for the landspreading of manure or other wastes, including a nutrient management plan or landspreading acreage.

Note: While it is not the sole factor used to determine whether operations have a common system for landspreading, use of common land application equipment is one of the factors the department considers when determining if operations have a common system for landspreading.

(c) Manure, barnyard runoff or other wastes are commingled in a common storage facility prior to landspreading.

(5) "Animal unit" means a unit of measure used to determine the total number of single animal types or combination of animal types, as specified in s. NR 243.11, that are at an animal feeding operation.

(6) "Applicant" means an owner or operator of a proposed or existing CAFO that is applying for a WPDES permit.

(7) "Areas of channelized flow" means channels or depressions that concentrate flow and are either:

(a) Man-made by a means other than typical field cultivation practices.

(b) A natural channel or depression that cannot be removed or rerouted using typical field cultivation practices or that form on a recurring basis in the same area.

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

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

(10) "Compost" has the meaning specified under s. NR 500.03 (44).

(11) "Composting" has the meaning specified under s. NR 500.03 (45).

(12) "Concentrated animal feeding operation" or "CAFO" means an animal feeding operation to which any of the following apply:

(a) The operation has 1,000 animal units or more at any time and stores manure or process wastewater in a below or at grade level storage structure or land applies manure or process wastewater.

(b) The operation has 300 to 999 animal units and has a category I unacceptable practice under s. NR 243.24 (1) (a).

(c) Under s. NR 243.26 (2), the operation is designated by the department as having a significant discharge of pollutants to navigable waters or has caused the fecal contamination of water in a well.

(13) "CAFO outdoor vegetated area" means an area that is part of the ancillary service and storage area that consists of a large open outdoor vegetated area of land used by CAFO animals that is owned or operated by a CAFO and is adjacent or connected to, but not part of, the production area.

(14) "Conduit to a navigable water" means a natural or man-made area or structure that discharges to a navigable water via channelized flow. This includes open tile line intake structures, open vent pipes, sinkholes, agricultural well heads, drainage ditches that discharge to navigable waters and grassed waterways that drain directly to a navigable water.

Note: Conduits to navigable waters do not include the components of a subsurface drainage system that are not present at the soil surface.

(15) "Contaminated runoff" means that portion of manure, process wastewater, leachate or other wastes or raw materials mixed with precipitation from animal feeding operations that transports pollutants such as organic matter, suspended solids or nutrients.

(16) "Corrective measures" means accepted management practices or technical standards specified in ch. NR 154 or ATCP 50 designed to address an unacceptable practice or other practices determined by the department to be necessary to protect water quality.

(17) "DATCP" means the Wisconsin department of agriculture, trade and consumer protection.

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

(19) "Designed structures" means groundwater monitoring systems, runoff control structures, permanent spray irrigation or other land application systems, manure, raw materials and waste storage facilities or other manure or waste transfer or treatment systems.

(20) "Direct conduits to groundwater" mean wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

(21) "Diversion" means a structure built to divert sheet flow or part or all of the water from an existing waterway into a different channel or area.

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

(23) "Existing source CAFO" means an operation that is covered by a WPDES permit as of July 1, 2007, and any other permitted operation that is not a new source CAFO.

Note: Existing source CAFOs include CAFOs that are permitted as of July 1, 2007, and animal feeding operations in existence on a site prior to April 14, 2003 that add animals and later apply for a WPDES permit.

(24) "Frozen ground" means soil that is frozen anywhere between the first 1/2" and 8" of soil as measured from the ground surface. Note: Under the definition of frozen ground, soil that is that frozen to a depth of 1/2" or less as measured from the ground surface is not considered frozen ground.

(25) "Governmental unit" means a municipality as defined in s. 281.01 (6), Stats.

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

(27) "Hydrologic soil group" means a group of soils having similar runoff potential under similar storm and cover conditions.

(28) "Incorporation" means mixing the manure or process wastewater with surface soil so that at least 80% of applied manure or process wastewater is covered with soil and the application rate is controlled to ensure that applied material stays in place and does not run off. Incorporation includes standard agricultural practices such as tillage or other practices that are the equivalent to providing 80% soil coverage.

(29) "Injection" means the placement of liquid manure or process wastewater 4 to 12 inches below the soil surface in the crop root zone using equipment specifically designed for that purpose and where the applied material is retained by the soil and does not concentrate or pool below the soil surface.

(30) "Land application" means surface application, injection or incorporation of manure, process wastewater or other waste generated by a CAFO on cropland using manure hauling vehicles or equipment.

(31) "Large CAFO" means an animal feeding operation that has 1,000 animal units or more at any time.

(32) "Liquid manure" means manure with a solids content of less than 12%.

(33) "Livestock facility" means a structure or system constructed or established on a livestock operation or animal feeding operation, including a runoff control system associated with an outside feedlot, manure storage facility or feed bunker.

(34) "Livestock performance standards and prohibitions" means performance standards and prohibitions contained in ss. NR 151.05, 151.06, 151.07 and 151.08.

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

(36) "Manure" means a material that consists primarily of litter or excreta, treated or untreated, from livestock, poultry or other animals. Manure includes material mixed with runoff, bedding contaminated with litter or excreta, or process wastewater.

(37) "Margin of safety level" means the level in a liquid storage or containment facility that is vertically one foot below the lowest point of the top of the facility or structure.

(38) "Maximum operating level" means the level in a liquid storage or containment facility, measured vertically from the lowest point of top of the facility, that is the sum of the margin of safety level and the level necessary to contain the precipitation and runoff that will enter the facility as a result of 100-year, 24-hour rainfall event for swine, veal and poultry operations that are new source CAFOs or a 25-year, 24-hour storm event for all other operations.

(39) "Medium CAFO" means an animal feeding operation with 300 to 999 animal units that has a category I discharge to navigable waters under s. NR 243.24, or that is designated by the department as a CAFO under s. NR 243.26 (2).

(40) "Milking center waste" means all wastes generated at a milking center or milkhouse including waste milk, detergents, acids, sanitizers, manure, bedding materials and footbath chemicals.

(41) "New source CAFO" means any of the following:

(a) An operation that is a large CAFO that has been or will be constructed on or after April 14, 2003, on a new site where no other animal feeding operation is located.

(b) An operation that is a large CAFO that was in existence prior to April 14, 2003, but that completely replaces all of its production or processing equipment on or after April 14, 2003.

(c) A new addition to an existing operation that is a large CAFO that is essentially a new production area added on or after April 14, 2003 that is completely independent of the production area in existence on the site before April 14, 2003.

(d) An animal feeding operation that has been constructed on or after April 14, 2003, on a new site where no other animal feeding operation is located and later becomes a large CAFO.

Note: New operations are operations that essentially build on a brand new site or significantly modify most or all facilities at an existing site, on or after April 14, 2003.

(42) "NOD" means notice of discharge.

(43) "NRCS" means the Wisconsin natural resources conservation service.

(44) "NRCS Standard 590" means the technical standard for nutrient management contained in Appendix B to ch. ATCP 51, except for section V.D.  
Note: Appendix B to ch. ATCP 51 includes the September 2005 version of NRCS Standard 590.

(45) "100-year, 24-hour rainfall event" means a rainfall event measured in terms of the depth of rainfall occurring within a 24-hour period and having an expected recurrence interval of once in 100 years as identified in Table 1.

(46) "Outstanding resource water" means any surface water, or portion thereof, specified in s. NR 102.10.

(47) "Pasture or grazing area" means an area where animals graze in large open areas, that is not adjacent to, or connected to, a CAFO production area, and where stocking densities, management systems and management of feed sources ensure that sufficient vegetative cover is maintained over the entire area at all times. A pasture or grazing area is not an animal feeding operation.

Note: Operations that have milking centers for animals on pasture or grazing areas are animal feeding operations since the milking center is considered to be an area of confinement.

Note: A CAFO may have multiple production areas located at different sites or farms, such as a main farm and satellite feedlots or farms.

(48) "Permanent runoff control systems" means constructions or devices installed to permanently contain, control, divert or retard surface runoff water.

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

(50) "Permittee" means an owner or operator of a WPDES permitted CAFO.

(51) "Phosphorus index" means the method for assessing and minimizing phosphorus delivery to surface waters associated with manure or process wastewater applications referenced in section V.C.2. of NRCS Standard 590.

(52) "Phosphorus index value" means the value calculated using the phosphorus index that identifies the relative level of risk for phosphorus delivery from a field where manure or process wastewater, along with other nutrients sources, have been or will be applied.

(53) "Process wastewater" means wastewater from the production area directly or indirectly used in the operation of animal feeding operation that results from any or all of the following:

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

(54) "Production area" means that part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas but not CAFO outdoor vegetated areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.



(55) "Raw materials" means materials typically stored at an agricultural operation that are directly used in livestock production such as bedding material, silage, haylage, grain and other feed sources, but this term does not include pesticides, motor oil or fuel.

(56) "Reviewable facility or system" means runoff control structures, feed and other raw materials storage, permanent spray irrigation or other land application systems, groundwater monitoring systems, manure storage facilities, manure treatment or transfer systems, or other structures or systems associated with the storage, containment, treatment or handling of manure or process wastewater.

(57) "Saturated soils" means soils where all pore spaces are occupied by water and where any additional inputs of water or liquid wastes cannot infiltrate into the soil.

(58) "Solid manure" means manure with a solids content of 12% or more.

(59) "Small CAFO" means an animal feeding operation with less than 300 animal units that is designated by the department as a CAFO under s. NR 243.26 (2).

(60) "Snow covered ground" means areas of a field covered with any amount of snow.

(61) "Source water protection area" means an area delineated by the department for a public water system or including numerous public water systems, whether the source is ground water or surface water or both, as part of the state source water assessment program approved by the U.S. environmental protection agency under 42 USC 300j-13.

(62) "Spray irrigation" means the application of liquid manure or process wastewater to cropland using equipment that discharges manure into the air via a single nozzle or multiple nozzles or hoses and disperses the manure over distances greater than could be achieved using typical moving vehicle or manure hauling equipment.

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

(64) "Sufficient vegetative cover" means that crop residue or vegetation is present over an entire area in an amount and density of stand that slows the movement of and limits contaminated runoff and soil erosion.

(65) "Surface applied manure" means manure applied to the ground surface by moving vehicles that is not incorporated or injected.

(66) "Surface water quality management areas" or "SWQMA" means all of the following:

- (a) The area within 1,000 feet from the ordinary high water mark of navigable waters that consist of a lake, pond or flowage.
- (b) The area within 1,000 feet from the high water mark of navigable waters that consist of a glacial pothole lake.
- (c) The area within 300 feet from the ordinary high water mark of navigable waters that consist of a river or stream or other non-lake navigable waters.
- (d) The area within 300 feet of conduits to navigable waters.

(67) "Swallet" means a sinkhole or rock hole that intercepts a stream, diverting all or a portion of it to groundwater.

(68) "303 (d) listed waters" means the list of impaired waters in the state developed by the department pursuant to 33 USC 1313 and 40 CFR 130.7.

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

Note: Soil loss will be calculated according to the revised universal soil loss equation II as referenced in ch. ATCP 50 or, potentially, SNAP-Plus software currently being developed by UW-Extension.

(70) "25-year, 24-hour rainfall event" means a rainfall event measured in terms of the depth of rainfall occurring within a 24-hour period and having an expected recurrence interval of once in 25 years as identified in Table 1.

(71) "Unacceptable practice" means a practice that causes or has caused the discharge of pollutants to waters of the state or that results in an operation's failure to comply with livestock performance standards and prohibitions outlined in ch. NR 151.

(72) "Wastewater treatment strip" means a constructed strip or area of vegetation for reducing sediment, organic matter and other pollutants.

(73) "Waters of the state" has the meaning specified under s. 283.01 (20), Stats.

(74) "Water quality management area" or "WQMA" has the meaning in s. NR 151.015 (24).

(75) "Wetland" means areas delineated on a hydric soils map that are dominated by hydrophytic vegetation. Wetlands do not include prior converted or farmed wetlands.

(76) "Wetland functional values" means the values or uses of wetlands established in s. NR 103.03 (1).

(77) "Wet soil" means soil that is not saturated but has a moisture content that limits its ability to absorb significant amounts of additional liquid.

(78) "Winter acute loss index value" means the value calculated using the phosphorus index that identifies the relative level of risk for acute losses of manure and process wastewater pollutants associated with surface applications during frozen or snow-covered conditions.

(79) "WPDES" means the Wisconsin pollutant discharge elimination system established under ch. 283, Stats.

### **NR 243.11 Large concentrated feeding operations**

(1) **APPLICABILITY.** The provisions of this subchapter are applicable to existing large CAFOs, proposed expansions of existing animal feeding operations that will become large CAFOs and newly proposed large CAFOs.

Note: Owners or operators of animal feeding operations are responsible for obtaining all necessary state and local permits and approvals in addition to those outlined in this subchapter.

(2) **CALCULATION OF ANIMAL UNITS.** The determination as to whether an existing, proposed or expanded operation meets the criteria of a large CAFO shall be based on the total number of animal units at the animal feeding operation calculated pursuant to s. NR 243.05. Based on the provisions of this subchapter and information provided as part of an operation's application for a WPDES permit, as required in s. NR 243.12, the department shall determine whether a WPDES permit is required for an operation.

(3) **WPDES PERMIT COVERAGE REQUIRED.**

(a) Except as provided in par. (b), any person owning or operating a large CAFO that stores manure or process wastewater in a structure that is at or below grade or that land applies manure or process wastewater shall have a WPDES permit. A discharge of pollutants from manure or process wastewater to waters of the state by an unpermitted animal feeding operation with 1,000 animal units or more is prohibited. A pasture or grazing area may operate without WPDES permit coverage.

(b) If a person owns or operates an animal feeding operation with 999 animal units or less, and that person expands its operation to 1000 animal units or more due to the purchase of another animal feeding operation, that person has 90 days from the date of the purchase to apply for a WPDES permit.

(4) ADDITIONAL INFORMATION. If requested by the department, owners or operators of animal feeding operations indicating that their operation will have 900 animal units or more shall submit additional information to the department regarding how the estimated number of animal units was calculated in accordance with Table 2A and 2B.

#### **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 243.121 General permit coverage**

(1) **GENERAL PERMIT.**

(a) The department may issue a WPDES general permit to cover a category or group of CAFOs where the department has determined that the operations will not be covered by an individual permit issued pursuant to s. 283.37 (2), Stats.

(b) For purposes of this section, a category or group of CAFOs may be defined by size of operation, type of livestock or species, geographic or watershed area, method of managing manure or any other feature or attribute that the department determines is appropriate for defining a category of coverage.

(2) **GENERAL PERMIT APPLICATION REQUIREMENTS.** An owner or operator seeking coverage under a general permit shall submit an application to the department in accordance with s. NR 243.12 and shall include information documenting that the operation qualifies for the general permit based on the eligibility criteria specified in the general permit.

(3) **GENERAL PERMIT ELIGIBILITY.** The department shall specify criteria for determining eligibility for general permit coverage in the WPDES general permit.

(4) **INDIVIDUAL PERMIT COVERAGE.** Under s. 283.35 (3), Stats., the department may withdraw general permit coverage for a CAFO and issue an individual permit to the CAFO. The CAFO shall submit additional information requested by the department that is needed for issuance of an individual permit.

Note: The department may allow a permittee to participate in a cooperative compliance program to assist the CAFO with maintaining compliance with a general permit. A cooperative compliance program is an organization comprised of several CAFOs that have been granted permit coverage under a general permit. Cooperative compliance programs primarily assist facilities in maintaining



compliance with general permits. Cooperative compliance programs retain environmental experts with substantial experience and knowledge in the management of manure and nutrients, design and maintenance of agricultural best management practices and environmental protection.

## **NR 243.14 Nutrient management**

### **(1) NUTRIENT MANAGEMENT PLANS.**

(a) *General.* Permittees shall submit a nutrient management plan developed by a nutrient management planner qualified under s. ATCP 50.48 to the department for review and approval outlining the amounts, timing, locations, methods and other aspects regarding the land application of manure and process wastewater. A complete nutrient management plan shall be submitted with a permit application in accordance with s. NR 243.12. The nutrient management plan shall comply with the requirements of this section and the permittee's WPDES permit. Subject to additional requirements specified in this section and in a WPDES permit, the land application practices identified in the nutrient management plan shall, at a minimum, conform with the nutrient budgeting, soil test recommendations, application practices and restrictions contained in NRCS Standard 590.

(b) *Plan content.* The permittee's nutrient management plan shall contain information necessary to document how the operation's land application activities will comply with the restrictions in NRCS Standard 590, this chapter and the conditions of the operation's WPDES permit. In cases where there is limited acreage available for application, the department may require that the permittee submit additional or more specific information, including verification that the permittee has permission to land apply manure on fields not owned by the permittee. The department may require additional management practices be included in the nutrient management plan to ensure compliance with the requirements of this chapter and the permittee's WPDES permit.

Note: The Wisconsin Conservation Planning Technical Note WI-1 contains additional detail on the information that needs to be included in a plan drafted in accordance with NRCS Standard 590, as well as additional background information useful for nutrient management planning. While additional information beyond that outlined in the technical note is needed to comply with the requirements of this section, the technical note does provide general guidance on how to create a nutrient management plan.

(c) *Amendments.*

1. The nutrient management plan shall be reviewed and amended by the permittee on an annual basis to reflect any changes in operations. Except as provided in subd. 2., the management plan may be amended at any time provided the proposed amendments are approved in writing by the

department. An amendment does not become effective until the department has reviewed and approved the amendment.

2. The department may establish a condition in the WPDES permit that allows the permittee to implement certain types of nutrient management plan amendments without obtaining, or prior to obtaining, department approval.

## (2) GENERAL REQUIREMENTS.

(a) A discharge of manure or process wastewater pollutants to waters of the state by a CAFO as a result of the land application of manure or process wastewater is subject to the WPDES permit terms and conditions except where the discharge is an agricultural storm water discharge. A permittee's land application practices for manure and process wastewater shall comply with this section, the terms and conditions of the WPDES permit and the permittee's approved nutrient management plan. Except as provided in s. NR 243.142 (2), the permittee is responsible for ensuring that the manure and process wastewater generated or handled at the operation is land applied or disposed of in a manner that complies with this subchapter and the terms and conditions of the WPDES permit.

(b) A permittee who land applies manure or process wastewater shall land apply all manure and process wastewater in compliance with the following requirements:

1. Manure or process wastewater may not pond on the application site.
2. During dry weather conditions, manure or process wastewater may not run off the application site, nor discharge to waters of the state through subsurface drains.
3. Manure or process wastewater may not cause the fecal contamination of water in a well.
4. Manure or process wastewater may not run off the application site nor discharge to waters of the state through subsurface drains due to precipitation or snowmelt except if the permittee has complied with all land application restrictions in this subchapter and the WPDES permit, and the runoff or discharge occurs as a result of a rain event that is equal to or greater than a 25-year, 24-hour rain event.
5. Manure or process wastewater may not be applied to saturated soils.
6. Land application practices shall maximize the use of available nutrients for crop production, prevent delivery of manure and process wastewater to waters of the state, and minimize the loss of nutrients and other

contaminants to waters of the state to prevent exceedances of groundwater and surface water quality standards and to prevent impairment of wetland functional values. Practices shall retain land applied manure and process wastewater on the soil where they are applied with minimal movement.

7. Manure or process wastewater may not be applied on areas of a field with a depth to groundwater or bedrock of less than 24 inches.

8. Manure or process wastewater may not be applied within 100 feet of a direct conduit to groundwater.

9. Manure or process wastewater may not be applied within 100 feet of a private well or non-community system as defined in ch. NR 812 or within 1000 feet of a community well as defined in ch. NR 811.

10. On a field with soils that are 60 inches thick or less over fractured bedrock, manure or process wastewater may not be applied on frozen ground or where snow is present.

11. Manure or process wastewater may not be applied on fields when snow is actively melting such that water is flowing off the field.

12. Where incorporation of land applied manure is required under NRCS Standard 590, the incorporation shall occur within 48 hours of application.

13. Manure or process wastewater may not be surface applied when precipitation capable of producing runoff is forecast within 24 hours of the time of planned application.

(c) Land application of process wastewater shall be included in the permittee's nutrient management plan and shall be done in accordance with the requirements of this section, except that process wastewater may be applied to frozen or snow covered ground in accordance with the requirements in s. NR 214.17 (2) to (6) instead of subs. (6) and (7). The permittee shall specify in the nutrient management plan or permit application whether process wastewater will be applied to frozen or snow-covered ground in accordance with subs. (6) and (7) or s. NR 214.17 (2) to (6).

(d) If incorporation is required under this section or the WPDES permit, the permittee shall specify the method of incorporation in the nutrient management plan.

Note: In addition to implementing practices specified in a nutrient management plan, the permittee should consider the following factors when making decisions about the timing of application and placement of manure and process wastewater on fields: the ability of the soil to absorb

or otherwise hold liquids associated with manure and process wastewater based on the soil's moisture content or permeability, if snow is present on a field or the ground is frozen, the prediction of temperature increases that will likely result in sudden snowmelts or pollutant movement, upslope areas contributing runoff or snow melt to the site where applications occur, and other field conditions that may contribute to runoff events.

(e) A permittee shall identify as part of its nutrient management plan, to the maximum extent practicable, the presence of subsurface drainage systems in fields where its manure or process wastewater is applied.

(f) Subject to other restrictions on application rates in this section, the permittee shall use results of manure, process wastewater and soil analyses to determine nutrient application rates for manure and process wastewater.

Note: Under s. NR 243.19, the permittee shall conduct sampling of manure, process wastewater and soils, keep records associated with sampling and land application activities and submit reports to the department regarding the sample results and land application of manure and process wastewater.

Note: Pursuant to s. NR 243.142, the permittee is responsible for land application activities of the manure and process wastewater generated by the large CAFO, including the land application activities of contract haulers and employees.

(3) NUTRIENT CREDITING. A permittee's manure and process wastewater application rates shall take into account soil nutrient levels prior to landspreading, nutrient applications from other sources, including commercial fertilizers, biosolids, first and second year manure and legume credits, and other sources of nutrients that are expected to be applied or have already been applied to land where manure or process wastewater will be applied. Adjustments shall be made to assumed nutrient credits based on actual crop yields.

#### (4) SWQMA APPLICATION RESTRICTIONS.

(a) Subject to additional restrictions in subs. (6) and (7) for the winter season, a permittee shall choose and implement one of the following options whenever manure or process wastewater is applied on areas of fields within the SWQMA:

1. Not apply manure or process wastewater within 25 feet of a navigable water, conduit to a navigable water or wetland; and inject or immediately incorporate manure and process wastewater in all other areas within the SWQMA.

2. Not apply manure or process wastewater within 25 feet of a navigable water, conduit to a navigable water or wetland; and surface apply liquid manure and process wastewater in all other areas of the SWQMA provided that all of the following conditions are met:

- a. The application is on long-term no-till ground.
- b. The ground has 30% crop residue or more at the time of application.
- c. The hydraulic application rate is limited to that specified in Table 3.

3. Establish a 35-foot wide vegetated buffer adjacent to the navigable water, conduit to a navigable water or wetland where there is no application of manure or process wastewater on the buffer; and comply with a practice in this subd. 3. a. or b. For the purposes of this subdivision, a vegetated buffer means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching navigable waters.

- a. Inject or immediately incorporate manure and process wastewater in all other areas within the SWQMA, or
- b. Surface apply in all other areas of the SWQMA provided the ground has 30% residue or more at the time of application and the hydraulic application rate is limited in accordance with Table 3.

4. Establish a filter strip that is a minimum of 21 feet wide adjacent to the navigable water, conduit to a navigable water or wetland; and comply with a practice in this subd. 4. a. or b. The filter strip shall be designed in accordance with NRCS Standard 393, dated January 2001. NRCS Standard 393, dated January 2001, is incorporated by reference in s. NR 243.07.

Note: Copies of NRCS Standard 393, dated January 2001 and documents referenced in this standard may be inspected at the offices of the department, DATCP, NRCS, county land conservation departments and the legislative reference bureau, Madison, Wisconsin.

- a. Inject or immediately incorporate manure and process wastewater in all other areas within the SWQMA, or

b. Surface apply in all other areas of the SWQMA provided the ground has 30% residue or more at the time of application and the hydraulic application rate is limited in accordance with Table 3.

5. Not apply manure or process wastewater within 100 feet of a navigable water or conduit to a navigable water.

6. Implement other practices within the SWQMA that are approved, in writing, by the department provided that the permittee demonstrates pollutant reductions are equivalent to, or better than, reductions achieved by not applying manure or process wastewater within 100 feet of downgradient navigable waters or conduits to navigable waters.

Note: The Wisconsin buffer initiative may provide additional information on the proper design and use of riparian buffers to best protect water quality.

Note: Demonstrations of equivalent practices may consist of model outputs, calculations or other means of demonstrating equivalent pollutant reductions.

(b) The nutrient management plan shall specify the land application practices that have been selected and will be followed on each field to meet the requirements of this subsection. Permittees implementing practices under par. (a) 1., 2. or 4. shall demonstrate to the department how the practices provide for pollutant reductions equivalent to, or better than, reductions achieved by not applying manure and process wastewater within 100 feet of down-gradient navigable waters or conduits to navigable waters.

(c) If the application rates in Table 3 apply pursuant to any of the requirements in par. (a) 2. to 4., any additional applications made to meet the allowed nutrient crop budget shall be done with a minimum of 7 days between applications, provided the soils are not saturated.

<b>Surface Texture Class&lt;1&gt;</b>	<b>Max Application Rate (gallons/acre)</b>
Fine	5,000
Medium	7,500
Coarse	10,000

<1> Fine – clay, silty clay, silty clay loam, clay loam.

Medium – sandy clay, sandy clay loam, loam, silt loam, silt.

Coarse – loamy sand, sandy loam, sand. This category includes peat and muck based on their infiltration capacity.

(5) PHOSPHORUS DELIVERY.

(a) The permittee shall assess and minimize the potential for delivery of phosphorus to waters of the state from fields by applying its manure and process wastewater in accordance with one of the methods specified in subd. 1. or 2. The permittee shall specify the method it will apply to a field in the nutrient management plan.

1. Use the soil test phosphorus method specified in NRCS Standard 590. In addition, for applications to fields directly adjacent to, or that have been determined by the department to have a high potential to deliver phosphorus to, 303 (d) listed waters impaired by nutrients or outstanding or exceptional resource waters, the permittee may not increase soil test phosphorus levels over a crop rotation unless the permittee receives department approval, and the permittee can demonstrate that deliverability of phosphorus to these waters will not increase as a result of increases in soil test phosphorus in the field. The permittee may not raise soil test phosphorus levels over a rotation above the optimum level for the highest phosphorus demanding crop in a rotation for a field with soil test phosphorus levels below optimum levels.

Note: Maps or written descriptions of the locations of outstanding and exceptional resource and 303 (d) listed waters can be found on the department's website at <http://dnr.wi.gov>.

Note: In accordance with s. NR 243.14 (1) (a) and NRCS Standard 590, a permittee shall determine optimum soil phosphorus levels for various Wisconsin crops as specified in University of Wisconsin-Extension Publication A2809, "Soil Test Recommendations for Field, Vegetable and Fruit Crops."

2. Use the phosphorus index method specified in NRCS Standard 590.

(b) If a permittee applies manure or process wastewater on fields with soil test levels greater than 100 ppm, the permittee shall comply with the requirements in both subd. 1. and 2.:

1. For fields with soil test phosphorus levels between 100 ppm and 200 ppm, the permittee shall calculate the planned average phosphorus index value for the crop rotation or for the next 4-year period, whichever time period is less. If the calculated average phosphorus index value is greater than 6, manure and process wastewater applications to that field are prohibited. If the calculated phosphorus index value is 6 or less, applications are allowed provided that the cumulative application of phosphorus from manure and process wastewater does not exceed 50% of

the cumulative annual crop phosphorus removal over the rotation or the next 4-year period, whichever is less.

2. For fields with soil test phosphorus levels of 200 ppm and greater, applications of phosphorus from manure and process wastewater are prohibited unless the permittee receives department approval. The department may only approve the application if all of the following requirements are met:

- a. The permittee can demonstrate that additional applications of manure or process wastewater will not significantly increase phosphorus delivery to surface waters or wetlands.
- b. The permittee calculates the planned average phosphorus index value for the rotation or the next 4-year period, whichever is less and the planned average phosphorus index value is 6 or less.
- c. The cumulative application of phosphorus from manure and process wastewater does not exceed 50% of the cumulative annual crop phosphorus removal over the rotation or the following 4-year period, whichever is less.

Note: Strategies for assessing and reducing phosphorus index (PI) values, algorithms, and software for calculating the Wisconsin PI can be found at <http://wpindex.soils.wisc.edu/>.

Note: A permittee that complies with the requirements of this section and its WPDES permit also addresses delivery of nitrogen to waters of the state.

Note: Also see s. NR 217.04 (1) (a) 5.

(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

(1) rather than use a storage facility that meets the design requirements in s. NR 243.15.

<b>TABLE 4</b>			
<b>Restrictions for Surface Applying Solid Manure on Frozen and Snow Covered Ground</b>			
<b>Criteria</b>	<b>Restrictions for fields With 0–6% slopes</b>	<b>Restrictions for fields with slopes &gt; 6% and up to 9%</b>	<b>Restrictions for fields with slopes grater than 9%</b>
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 crop P2O5 budget taking into account nutrients already applied, or phosphorus application restrictions specified in a department approved nutrient management plan, whichever is less	Not to exceed 60 lbs. P2O5 per winter season, the following growing season’s crop P2O5 budget taking into account nutrients already applied, or 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 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
<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.			

(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.

<b>Frozen and Snow Covered Ground Restrictions – Emergency Surface Applications of Liquid Manure</b>			
<b>Criteria</b>	<b>Restrictions for fields with 0–2% slopes</b>	<b>Restrictions for fields with &gt;2–6% slopes</b>	<b>Restrictions for fields with slopes greater than 6%</b>
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	Maximum application volume of 3,500 gallons per acre per winter season, not to exceed 30	Not allowed

	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	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	
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>&lt;A&gt; All tillage and farming practices shall be conducted along the contour in accordance with the following requirements; 0–2% slope = no contouring required, &gt;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>			

(8) IDENTIFICATION OF SITES. The permittee shall submit sites that meet or are expected to meet the criteria in Tables 4 and 5 for manure and the criteria in s. NR 214.17 (2) to (6) for process wastewater to the department for review and approval as part of its nutrient management plan. In addition, the permittee shall evaluate each field at the time of application to determine if conditions are suitable for applying manure and complying with the requirements of this section. All surface applications of manure or process wastewater on frozen or snow-covered ground shall occur on those fields that represent the lowest risk of pollutant delivery to waters of the state and where the application results in a winter acute loss index value of 4 or less using the phosphorus index.

(9) ADEQUATE STORAGE. All permittees shall have and maintain adequate storage for all manure and process wastewater generated at the operation to ensure that wastes can be properly stored and land applied in compliance with the conditions and timing restrictions of the permit, nutrient management plan and this chapter. As part of the nutrient management plan, the permittee shall provide the department with documentation that it has adequate storage and methods of maintaining adequate storage for manure and process wastewater generated at the operation. For liquid manure, adequate storage means a minimum of 180 days of storage designed and maintained in accordance with ss. NR 243.15 (3) (i) to (k) and 243.17 (3) and (4).

(10) ADDITIONAL RESTRICTIONS. The department may require the permittee to implement practices in addition to or that are more stringent than the requirements specified in this section when necessary to prevent exceedances of groundwater quality standards, prevent impairments of wetland functional values, prevent runoff of manure or

process wastewater during dry weather conditions or to address previous manure or process wastewater runoff events or discharges from a site to waters of the state that occurred despite compliance with this section and the conditions of a WPDES permit. These conditions may include additional restrictions on nitrogen and phosphorus loadings or other nutrients and pollutants associated with the manure or process wastewater, injection or incorporation requirements, restrictions on winter landspreading, distribution schedules, and other management or site restrictions. The department may also consider nutrient management conditions contained in ch. ATCP 50 as well as the following site-specific factors when developing permit conditions or reviewing and approving the nutrient management plan or any proposed amendments to an approved nutrient management plan:

- (a) Soil limitations such as permeability, infiltration rate, drainage class and flooding hazard.
- (b) Volume and water content of the waste material.
- (c) Available storage capacity and method of application.
- (d) Nutrient requirements of the crop or crops to be grown on the fields utilizing the manure.
- (e) The presence of subsurface drainage systems.
- (f) Potential impacts to waters identified as source water protection areas.
- (g) Potential impact to groundwater in areas with direct conduits to groundwater, shallow soils over bedrock, highly permeable soils and shallow depth to groundwater.

#### **NR 243.142 Responsibility for large CAFO manure and process wastewater**

(1) GENERAL. Except as provided in sub. (2), the owner or operator shall be responsible for the storage, management and land application of all manure and process wastewater generated by the operation in accordance with terms and conditions contained in the WPDES permit and the approved nutrient management plan.

Note: If manure or process wastewater is stored or sent out of the state of Wisconsin, it is not regulated under ch. NR 243 or the WPDES permit once it is out of the state.

(2) EXEMPTIONS. Upon written department approval as required under sub. (3), once the manure or process wastewater is distributed offsite, the permittee is not responsible for the land application, use or disposal of manure or process wastewater if the manure or process wastewater is distributed in compliance with the conditions of the department approval and in accordance with any of the following:

(a) *De minimus quantity of solid manure distributed.* A de minimus amount of solid manure is sold or given away to another person. Under this paragraph, a de minimus amount of solid manure means the total quantity of manure distributed to the other person is no more than 175 cubic feet within a 30-day period and no more than 525 cubic feet within a 12-month period.

(b) *Distributed as a commercial product.*

1. The manure is sold or given away to another person and that person manipulates the manure, and distributes it as a commercial fertilizer pursuant to a fertilizer license issued by DATCP or distributes it as a soil or plant additive pursuant to a soil and plant additive license issued by DATCP.

2. The permittee manipulates the manure and distributes it as a commercial fertilizer pursuant to a fertilizer license issued by DATCP or distributes it as a soil or plant additive pursuant to a soil and plant additive license issued by DATCP. The permittee is responsible for the manipulated manure until it is distributed off-site to another person.

Note: If the permittee manipulates the manure and distributes the manure under a DATCP license, the permittee responsible for the manure and the manipulated manure is subject to the WPDES permit requirements until it is distributed off-site (off of any part of the CAFO) to another person. Transfer of responsibility can only occur if the conditions in sub. (3) are met.

(c) *Alternative uses of distributed manure.* For solid manure, the manure is sold or given away to another person for landscaping, greenhouse use, use as an animal bedding product or for other beneficial purposes that do not include application to croplands.

(d) *Manure or process wastewater is distributed to another permittee.* The manure or process wastewater is sold or given away to another operation permitted under a WPDES permit that has a department approved management plan that addresses the manure or process wastewater, and the manure or process wastewater will be land applied under the other permit.

(e) *Composted manure.* The manure is sold or given away to another person who composts the manure and the department has determined that the composting process and land application or use of the distributed manure will be more appropriately regulated under ch. NR 518.

(3) DEPARTMENT APPROVAL. If a permittee wants to transfer responsibility to another person for the land application, disposal or use of manure or process wastewater



that will be distributed in accordance with one of the methods in sub. (2) (b) to (e), the permittee shall obtain written department approval for the distribution. If written approval is not obtained, the permittee remains responsible for the land application, disposal and use of the distributed manure or process wastewater in accordance with the terms of the permit and this chapter. To obtain department approval for the purposes of transferring responsibility, the permittee shall comply with all of the following conditions:

- (a) Neither the permittee, its agent or a contract hauler working on behalf of the permittee may land apply the distributed manure.
- (b) The permittee shall demonstrate to the department that the distributed manure will be beneficially used.
- (c) If the manure is distributed in accordance with sub. (2) (b) or (c), and if the person receiving the manure intends to store the manure, the permittee shall demonstrate to the department that the distributed manure will be delivered to proper storage. For purposes of this paragraph, proper storage means one of the following:

1. The distributed manure will be stored in a facility that complies with NRCS Standard 313, December 2005.
2. The distributed manure will be stored in a manner that will not cause exceedances of groundwater and surface water quality standards and will not impair wetland functional values.

Note: Proper storage may include manure stored in bags provided that the manure is dry enough to avoid leachate generation.

Note: A permittee does not need to obtain approval from the department to transfer responsibility for de minimus amounts of manure under sub. (2) (a).

(4) **REVOCATION OF APPROVAL.** The department may revoke its approval of the responsibility transfer if the department determines that the conditions of approval are not being met by the permittee or recipients of the manure.

(5) **RECORDKEEPING AND REPORTING.**

- (a) The permittee shall estimate the amount of manure and process wastewater distributed under sub. (2) in its nutrient management plan and record the actual amount distributed at the time of distribution. The permittee shall create and maintain records that identify the name and address of the recipient of the distributed manure or process wastewater, the quantity distributed, and the dates of distribution. The permittee shall keep these records for at least 5 years and shall make them available to the department upon request. The permittee shall report

the amount of manure distributed under sub. (2) to the department in the annual report.

(b) Prior to distribution, the permittee shall notify the recipient, in writing, of the nutrient content of the distributed manure and process wastewater based on the most recent representative sampling information that has been conducted in accordance with the permittee's WPDES permit. At a minimum, the permittee shall provide information to the recipient regarding the nitrogen and phosphorus content of the manure.

### **NR 243.19 Inspections, record keeping and reporting**

(1) **MONITORING AND INSPECTION PROGRAM.** In accordance with a WPDES permit, the permittee shall submit a monitoring and inspection program designed to determine compliance with permit conditions that identifies the areas that the permittee will inspect in accordance with this section, the person responsible for conducting the inspections and how inspections will be recorded and submitted to the department. The monitoring and inspection program shall be consistent with the requirements in this subsection.

(a) *Inspections.* Visual inspections shall be completed by the permittee or designee in accordance with the following frequencies:

1. Daily inspection for leakage of all water lines that potentially come into contact with pollutants or drain to storage or containment structures or runoff control systems, including drinking or cooling water lines.
2. Weekly inspections to ensure proper operation of all storm water diversion devices and devices channeling contaminated runoff to storage or containment structures.
3. Weekly inspections of liquid storage and containment structures. For liquid storage and containment facilities, the berms shall be inspected for leakage, seepage, erosion, cracks and corrosion, rodent damage, excessive vegetation and other signs of structural weakness. In addition, the level of material in all liquid storage and containment facilities shall be measured and recorded in feet or inches above or below the margin of safety level.
4. Quarterly inspections of the production area, including outdoor animal pens, barnyards and raw material storage areas. CAFO outdoor vegetated areas shall be inspected quarterly.
5. Periodic inspections and calibration of landspreading equipment to detect leaks and ensure accurate application rates for manure and process wastewater. An initial calibration of spreading equipment shall be followed by additional calibration after any equipment modification that

may impact application of manure or process wastewater or after changes in product or manure or process wastewater consistency. Spreading equipment for both liquid and solid manure shall be inspected just prior to the hauling season, and equipment used for spreading liquids shall be inspected at least once per month during months when hauling occurs.

6. Inspections each time manure or process wastewater is surface applied on frozen or snow-covered ground to determine if applied materials have run off the application site. Inspections shall occur during and shortly after application.

(b) *Corrective actions.* The permittee shall take corrective actions as soon as practicable to address any equipment, structure or system malfunction, failure or other problem identified through monitoring or inspections in par. (a).

(c) *Sampling.* Manure, process wastewater and soil on fields used for land application shall be sampled by the permittee in accordance with this chapter and WPDES permit conditions. Manure or process wastewater shall be analyzed on at least an annual basis for nitrogen, phosphorus and percent solids in years when the manure or process wastewater is applied. The department may require more frequent monitoring and monitoring for other parameters as part of a WPDES permit where necessary to provide representative samples of manure and process wastewater. Manure and soil samples shall be analyzed by a laboratory certified under s. ATCP 50.50. Samples of process wastewater that are not mixed with manure shall be analyzed using applicable methods specified in ch. NR 219. The department may specify alternative methods for sampling in the WPDES permit. The permittee shall submit appropriate quality control information for sampling and analysis upon written request of the department.

Note: NRCS Standard 590 requires soil testing once every 4 years.

(2) **RECORD KEEPING.** The permittee shall retain complete records onsite of all information required as part of this subchapter for a period of at least 5 years from the date the records are created. Results of inspection information, sampling and other information required under this section shall be recorded at the time the information is obtained.

(a) *Record keeping requirements for the production area.* The permittee shall create and retain records documenting the following information for the production area:

1. Current design of any manure storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.

2. Sampling and inspection information required under sub. (1)(a) and (c).

Note: This subsection requires that specific information must be recorded when samples are taken or inspections are conducted.

3. The date that liquid storage facilities were emptied to the 180-day level indicator.

4. The date, time and estimated volume of any overflow.

5. Any actions taken to correct deficiencies as required under sub. (1) (b). Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing correction.

6. Mortality management and practices used by the permittee to meet the requirements of s. NR 243.13 (8), including the dates and methods of disposal.

(b) *Record keeping requirements for land application activities.* The permittee shall create and retain the following records for activities associated with land application:

1. A copy of the nutrient management plan.

2. Daily logs recorded using form 3200-123A or a department approved equivalent, indicating the following.

a. The dates manure or process wastewater is applied to each field.

b. Fields used.

c. Acres applied.

d. Manure source and waste type.

e. Spreader volume.

f. Number of loads.

g. Whether the soil was dry, wet, saturated, frozen or snow covered at the time of application.

h. Weather conditions at time of application.

i. Whether manure was injected, incorporated or surface applied.

j. Dates of emergency applications in winter.

k. For surface applications on frozen or snow-covered ground, whether any applied manure or process wastewater ran off the application site.

3. A weather log for all dates that manure and process wastewater is spread, including weather 24 hours prior to and following application.

4. Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied.

5. Results from manure, process wastewater and soil sampling.

6. Dates of manure application equipment inspection.

7. Records of the date, recipient name and address, approximate amount and nutrient content of manure or process wastewater distributed to another person in accordance with s. NR 243.142.

(c) *Record keeping for sampling.* For each manure, process wastewater and soil sample taken, the permittee shall record the following information:

1. The date, exact place, method and time of sampling or measurements.

2. The individual or lab that performed the sampling or measurements.

3. The date the analysis was performed.

4. The individual who performed the analysis.

5. The analytical techniques or methods used.

6. The results of the analysis.

(d) *Record keeping for inspections.* For each inspection conducted by the permittee, the permittee shall record the following information:

1. The date and name of persons performing the inspection.

2. An inspection description, including components inspected.

3. Details of what was discovered during the inspection.

4. Recommendations for repair or maintenance.

5. Any corrective actions taken.

(3) REPORTING REQUIREMENTS.

(a) *Corrective actions.* If the permittee fails to take corrective action within 30 days of identifying a malfunction, failure or other problem identified under sub. (1), the permittee shall contact the department immediately following the 30-day period and provide an explanation for its failure to take action.

(b) *Quarterly reporting requirements.* The permittee shall summarize the results of the inspections conducted at the production area in a written quarterly report. The reports shall be maintained onsite until submittal as part of the annual report in par. (c). The report shall include the following information:

1. Identified permit violations including all discharges of manure or process wastewater to surface waters, overflows of liquid manure or process wastewater storage and containment structures, and number of missed inspections.
2. Dates, times and approximate volume of discharges in subd. 1.
3. Corrective actions taken.
4. A summary of the condition of runoff control systems and storage and containment structures.
5. A summary of recorded levels of materials in liquid storage and containment structures, including exceedances of the maximum operating and margin of safety levels.
6. Other information requested by the department in writing or in the permit.

(c) *Annual reporting requirements.* The permittee shall submit written annual reports to the department by the date specified in the WPDES permit for all manure and other process wastewater that is generated. These annual reports shall cover the previous calendar year or cropping year, as specified in the WPDES permit, and shall include the following:

1. The quarterly reports required under par. (b).
2. The number and type of mature and immature animals at the operation and whether the animals are in open confinement or housed under roof.

3. The total amount of material in large CAFO storage or containment facilities, including manure and process wastewater generated by the large CAFO in the previous 12 months, precipitation and runoff diverted to storage or containment structures.

4. Lab analyses of manure and process wastewater land applied in the previous 12 months, and the most recent soil test analysis completed for fields receiving manure or process wastewater in the previous 12 months.

5. An annual spreading report summarizing manure and other process wastewater land application activities using form 3200-123 or a department-approved equivalent, indicating the following for each field receiving manure or process wastewater:

a. Date of application.

b. Information on the fields where manure or process wastewater is applied including field identification, slope and soil test phosphorus levels.

c. Acres applied.

d. Source and nutrient content of applied manure.

e. Current and previous field crops.

f. Nutrient balance indicating crop nutrient need in comparison to nutrients applied and credited from all sources.

g. Whether the soil was dry, wet, saturated, frozen or snow covered.

h. Method and rate of application in tons or gallons per acre.

i. Whether fields meet T.

j. Whether soil tests have been taken within the last 4 years.

k. Number of years of crop phosphorus need applied based on crop rotation.

l. For surface applications on frozen or snow-covered ground, whether any applied manure or process wastewater ran off the application site.

6. Dates on which storage facilities were emptied to the 180-day level indicator.
7. Total amount of manure and process wastewater distributed to another person by the permittee in accordance with s. NR 243.142 in the previous 12 months.
8. Total number of acres for land application covered by the nutrient management plan developed in accordance with s. NR 243.14.
9. Total number of acres actually used by the permittee for land application of manure and process wastewater in the previous 12 months.
10. A statement indicating whether the current version of the permittee's nutrient management plan was developed or approved by a certified nutrient management planner.
11. Results of land application equipment inspections and calibration.
12. Other information requested by the department in writing or in the permit.

Note: Forms 3200-123 and 3200-123A can be obtained at regional offices of the department or the department's Bureau of Watershed Management, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707.

#### **NR 243.26 WPDES permits for medium and small CAFOs**

(1) OPERATIONS DEFINED AS A MEDIUM CAFO. Any owner or operator of an animal feeding operation with 300 to 999 animal units shall submit a complete application for a WPDES permit to the department before a category I discharge to navigable waters occurs. An owner or operator of an animal feeding operation that has 300 to 999 animal units may not have a Category I discharge to navigable waters under s. NR 243.24 (1) (a) unless the discharge is covered by and in compliance with a WPDES permit. In the event an owner or operator of an animal feeding operation has a Category I discharge to navigable waters and that operation is not covered by a WPDES permit at the time of the discharge, the owner or operator shall immediately contact the department and shall immediately apply for a WPDES permit.

(2) OPERATIONS DESIGNATED AS MEDIUM OR SMALL CAFOS.

(a) Subject to par. (c), for animal feeding operations not already defined as a CAFO under sub. (1), the department may designate an animal feeding operation with 999 animal units or less as a CAFO if all of the following occur:



1. The department conducts an onsite investigation of the operation.
2. The department determines one of the following:
  - a. The operation is a significant contributor of pollutants to navigable waters and the department considers the factors in par. (b) when making this determination; or
  - b. The operation has caused the fecal contamination of water in a well constructed in accordance with ch. NR 811 or 812.
3. For discharges of pollutants from land applied manure or process wastewater to navigable waters by an animal feeding operation with 300 to 999 animal units, the department determines the discharge was not an agricultural storm water discharge.
4. The department provides written notification to the owner or operator of the designation.

Note: Consistent with past regulatory practices, the department intends to continue to work cooperatively with animal feeding operations to address discharges to waters of the state to the maximum extent practicable in order to make designation of an operation as a CAFO unnecessary. This approach includes using voluntary programs or the issuance of an NOD, which typically provides an opportunity to obtain cost-share and technical assistance, to aid an operation to implement corrective measures.

Note: Written notification by the department may be included as part of a Category I, II or III NOD or a separate written notice may be sent to the owner or operator.

Note: For animal feeding operations with less than 300 animal units, a significant discharge of pollutants to navigable waters from land application activities is not a basis for designating an operation as a CAFO and requiring a WPDES permit-see par. (c). For animal feeding operations with 300-999 animal units, a significant discharge of pollutants to navigable waters from either the production area or land application areas is a basis for CAFO designation and WPDES permit coverage.

- (b) The department shall consider all of the following factors when determining whether an operation is a significant contributor of pollutants to navigable waters under par. (a):

1. The size of the animal feeding operation and the amount of manure or process wastewater reaching navigable waters.
2. The location of the operation's production and land application areas relative to the navigable waters.
3. The means of conveyance of the manure or process wastewater into navigable waters.
4. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharges of manure or process wastewater into navigable waters.
5. Other factors relevant to water quality impacts.

(c) If the animal feeding operation has less than 300 animal units, the department may not designate the operation as a CAFO based on the discharge criteria in par. (a) 2. a. unless the operation had a Category I discharge to navigable waters under s. NR 243.24 (1) (a) that the department determines contributed a significant amount of pollutants to navigable waters.

(d) If an animal feeding operation is designated as a CAFO under par. (a), the owner or operator of the operation shall take one of the following actions within 90 days of written notification by the department of the designation:

1. In accordance with sub. (3), submit a completed WPDES permit application for an individual permit or for general permit coverage to the department. If a general permit is not available from the department, the permittee shall apply for an individual permit.
2. Demonstrate to the complete satisfaction of the department that the owner or operator has taken actions to permanently eliminate or significantly reduce the discharge that was the basis of the designation.

(e) If the owner or operator fails to take the actions required in par. (d) within 90 days of notification, the department may take enforcement action.

(3) APPLICATIONS. Applications shall, at a minimum, be submitted on forms 3400-25 and 3400-25A. The department may require additional information as part of the permit application consistent with the requirements of subch. II.

Note: Applications can be obtained at regional offices of the department or the department's Bureau of Watershed Management, 101 S. Webster St., P.O. Box 7921, Madison, Wisconsin 53707.

(4) WPDES TERMS AND CONDITIONS.

(a) WPDES permits issued under this subchapter shall contain requirements designed to implement corrective measures to address unacceptable practices, to protect groundwater and surface waters, and to prevent impairments to wetland functional values. At a minimum, permits shall contain requirements that a permittee do all of the following:

1. Comply with livestock performance standards and prohibitions, regardless of the availability of cost sharing.
2. Address manure, process wastewater and contaminated runoff from the production area in a manner that is consistent with accepted management practices and that treats or contains all manure, process wastewater and contaminated runoff for storm events up to and including a 25-year, 24-hour storm event.

Note: In determining accepted management practices for small and medium CAFOs, the department shall consider the factors contained in 40 CFR 125.3 (d).

3. Control all discharges from the production area in a manner that does not cause exceedances of groundwater or surface water quality standards or impair wetland functional values.
4. Develop and implement a nutrient management plan in accordance with s. NR 243.14 for the land application of manure and process wastewater.
5. Comply with the requirements in ss. NR 243.13 (5) (b) and (6) to (8) and 243.142 (5).
6. Conduct periodic inspections of the production area and land application equipment at a frequency specified in the WPDES permit.
7. Conduct manure, process wastewater and soil sampling in accordance with WPDES permit conditions.
8. Maintains and submit reports to the department in accordance with WPDES permit conditions.

Note: The WPDES permit requirements outlined in this subsection for small and medium CAFOs, including the requirement to develop and implement a nutrient management plan in accordance with s. NR 243.14, are only mandatory for those small and medium operations that have been issued a WPDES permit. For small and medium CAFOs that have not been issued a WPDES permit,

nutrient management requirements contained in ch. ATCP 50 apply.

(b) All submitted plans and specifications or evaluations of facilities or structures required under a WPDES permit shall be done in accordance with ss. NR 243.15 and 243.16 unless the department includes alternative requirements in the WPDES permit.

Note: Under par. (b), all permitted medium and small CAFOs are required to install 180 days of storage for liquid manure.

(c) The permittee shall comply with the operation and maintenance requirements in s. NR 243.17, unless the department includes alternative requirements in the WPDES permit.

Note: Pursuant to s. 283.31, Stats., and federal regulations, a point source discharge by a medium size CAFO is prohibited unless the discharge is covered by, and in compliance with, a WPDES permit.

Note: Pursuant to ch. NR 153, operations covered by a WPDES permit are no longer eligible for cost sharing under s. 281.65, Stats.

(5) GENERAL PERMITS. The department may issue a general permit to cover a category of medium or small CAFOs.

(6) REISSUANCE OR TERMINATION OF WPDES COVERAGE. If a medium or small CAFO is covered by an individual or general WPDES permit, the owner or operator shall maintain permit coverage and shall reapply for continued coverage at least 180 days prior to the expiration of the WPDES permit unless:

(a) The permittee has ceased operation or is no longer a CAFO.

(b) The permittee has demonstrated to the satisfaction of the department that there is no remaining potential for a discharge to navigable waters of manure and process wastewater that was generated while the operation was a CAFO, or there is no remaining potential to cause well contaminations.