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2 AGRICULTURAL PERFORMANCE STANDARDS AND MANURE MANAGEMENT  
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36 SUBCHAPTER I  
37 GENERAL PROVISIONS  
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39 **49.01 AUTHORITY.** This ordinance is adopted under authority granted by ss. 33.455, 66.0119, 68.08,  
40 92.07(14), and 92.16, Wis. Stat., and s. ATCP 50.56, Wis. Adm. Code.

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42 **49.02 JURISDICTION.** This ordinance applies to the entire geographical area of Dane County.  
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44 **49.03 PURPOSE, FINDINGS AND DECLARATION OF POLICY.** The purpose of this ordinance is to  
45 provide for proper and safe storage, handling, and land application of manure and to reduce the delivery  
46 of manure, other waste materials, fertilizers, and sediment to surface waters and groundwater through  
47 the use of conservation practices and implementation of the state performance standards and  
48 prohibitions for agriculture. The Dane County Board of Supervisors finds that polluted surface runoff and

49 leachate from improperly designed or maintained manure storage facilities, feed storage facilities,  
50 unconfined manure piles, animal lots, milking centers, and agricultural practices causing excessive tillage  
51 and land application of manure and fertilizers results in the delivery of pollutants to surface waters and  
52 groundwater within Dane County. The Board recognizes the importance of protecting our ground and  
53 surface water resources and finds that proper agricultural management practices contribute to the  
54 protection of ground and surface waters; public health; plant, animal, and aquatic life; and the property  
55 tax base of Dane County. The Board finds that adherence to agricultural performance standards in  
56 chapters NR 151 and ATCP 50, Wis. Adm. Code, by the county landowners is necessary to protect these  
57 interests. Compliance with this ordinance requires that persons follow the procedures contained herein,  
58 receive a permit or other approval from the department before beginning activities that require a  
59 permit or other approval, and comply with the requirements of this ordinance and the permit or other  
60 approval.

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62 **49.04 SEVERABILITY.**

- 63 (1) JUDGMENT OF ORDINANCE PROVISIONS. If a court of competent jurisdiction adjudges any  
64 section, provision or portion of this chapter to be invalid, the judgment shall not affect any other  
65 provision of this chapter not specifically included in the judgment.
- 66 (2) JUDGMENT OF ORDINANCE APPLICATION. If a court of competent jurisdiction adjudges invalid  
67 the application of any portion of this chapter to a particular property, building, use, or structure,  
68 the judgment shall not affect the application of the provision to any other property, building,  
69 use, or structure not specifically in the judgment.
- 70 (3) JUDGMENT OF APPROVAL. If a court of competent jurisdiction adjudges as invalid any  
71 requirement or limitation contained in a permit, certificate of use, or other approval issued  
72 under this chapter, it shall be presumed that the approval would not have been granted without  
73 the requirement or limitation, and therefore, the remainder of the approval shall also be invalid.

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75 **49.05 STANDARDS**

- 76 (1) SUBSEQUENT MODIFICATION OF STANDARDS. The standards of the NRCS Technical Guide are  
77 adopted and by reference made a part of this chapter as if fully set forth herein. Any future  
78 amendment, revision, or modification of the standards incorporated herein are made part of  
79 this chapter, unless otherwise acted upon by the department. Copies of the current standards  
80 are available at the department.
- 81 (2) ADDITIONAL STANDARDS. Standards not identified in this chapter may be utilized to meet the  
82 requirements of this ordinance with prior approval from the department. Variances may be  
83 requested in accordance with s. 49.17.

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86 **SUBCHAPTER II**  
87 **DEFINITIONS**  
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89 **49.06 PURPOSE OF SUBCHAPTER.** To define words, terms, and phrases contained in this chapter that  
90 are essential to the understanding, administration, and enforcement of this chapter.

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92 **49.07 WORD USAGE.** For the purposes of this chapter, certain words and terms are used as follows:

- 93 (1) Words used in the present tense include the future.
- 94 (2) Words used in the singular include the plural.
- 95 (3) Words used in the plural include the singular.
- 96 (4) The word “shall” is mandatory and not permissive.

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**49.08 DEFINITIONS.** For the purposes of this chapter, certain words and terms are defined as follows:

- (1) *Adequate sod or self-sustaining vegetative cover* means maintenance of sufficient vegetation types and densities that provide 70% coverage such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.
- (2) *Agricultural lands* means lands in agricultural use as provided under s. 91.01(2), Wis. Stat.
- (3) *Applicant* means any person who applies for a permit or certificate of use under this chapter.
- (4) *Best management practices (BMPs)* means structural or nonstructural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or other pollutants from being carried in runoff to waters of the state.
- (5) *Certificate of use* means an authorization provided by the department to a landowner or operator allowing them to utilize a manure storage facility that is not subject to a current valid permit.
- (6) *Committee* means the Land Conservation Committee as designated by the County Board pursuant to s. 7.20(2), Dane County Code of Ordinances, and s. 92.06, Wis. Stat.
- (7) *Concentrated flow channel* means a natural channel or constructed channel that has been shaped or graded to required dimensions and established in perennial vegetation for the stable conveyance of runoff. This definition may include but is not limited to non-vegetated channels caused by ephemeral erosion including intermittent streams, drainage ditches, and drainage ends identified on the NRCS soil survey.
- (8) *Crop producer* means a person engaged in crop related agricultural practices specified in s. 281.16(1)(b), Wis. Stat.
- (9) *Department* means the Dane County Land & Water Resources Department.
- (10) *Direct conduit to groundwater* means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, cenotes, or depressional groundwater recharge areas over shallow fractured bedrock.
- (11) *Direct runoff* means any of the following:
  - (a) Runoff of stored manure, including manure leachate, that discharges a significant amount of pollutants to surface waters of the state or to a direct conduit to groundwater.
  - (b) Runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or to a direct conduit to groundwater.
  - (c) Discharge of a significant amount of leachate from stored manure or feed to waters of the state.
  - (d) Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with NRCS Standard 313.
- (12) *Effective incorporation* means mixing manure with soil or subsurface placement of nutrients by such means as injection, disc, sweep, plow, or other tillage/infiltration method such that manure or nutrients will not run off the field or drain to subsurface tiles during application.
- (13) *Exceptional resource water* means waters listed in s. NR 102.11, Wis. Adm. Code.
- (14) *Feedlot* means a barnyard, exercise area, or other outdoor area where livestock are concentrated for feeding or other purposes and self-sustaining vegetative cover is not maintained. Feedlot does not include a winter grazing area or a bare soil area such as a cattle lane or supplemental feeding area located within a pasture, provided that the bare soil is not a significant source of pollution to waters of the state as determined by predictive models for manure runoff utilized by the department.

- 144 (15) *Impaired water* means a waterbody impaired in whole or in part and listed by the state  
 145 department of natural resources for not meeting a water quality standard, including a water  
 146 quality standard for a specific substance or the waterbody's designated use, as defined in s. NR  
 147 151.002(16m), Wis. Adm. Code.
- 148 (16) *Land application* means the physical transfer of manure from any animal confinement area or  
 149 manure storage facility to fields for the purpose of fertilization or disposal.
- 150 (17) *Landowner* means a person who owns a parcel of land.
- 151 (18) *Livestock* means all domestic animals, including deer, elk, however kept, or any fenced-in  
 152 animals.
- 153 (19) *Livestock operation* means a feedlot, or other facility, or a pasture where animals are fed,  
 154 confined, maintained, or stabled.
- 155 (20) *Livestock producer* means an owner or operator of a livestock operation.
- 156 (21) *Manure* means livestock excreta and includes the following biological materials when  
 157 intermingled with excreta in normal farming operations: debris including bedding, water, soil,  
 158 hair, and feathers; processing derivatives including separated sand, separated manure solids,  
 159 precipitated manure sludges, supernatants, digested liquid, composted biosolids, process  
 160 wastewater; and runoff collected from barnyards, animals lots, and feed storage areas.
- 161 (22) *Manure storage facility* means an impoundment made by constructing an embankment or  
 162 excavating a pit or dugout or by fabricating a structure to contain manure, process wastewater,  
 163 or other animal or agricultural waste.
- 164 (23) *Manure storage facility, existing* means a facility that was constructed prior to October 1, 2002.
- 165 (24) *Manure storage facility, idle* means a manure storage facility, permitted or unpermitted, that  
 166 ceases operation or where manure has not been added or removed for a period of 24 months.
- 167 (25) *Manure storage facility, new* means a manure storage facility constructed after October 1,  
 168 2002.
- 169 (26) *Manure storage facility, permitted* means a manure storage facility constructed with a permit  
 170 issued by the department under this chapter after July 1, 2019 and the permit is not expired.
- 171 (27) *Manure storage facility, substantially altered* means a change initiated by the landowner or  
 172 operator that results in a relocation of a manure storage facility or significant changes to the  
 173 size, depth, or configuration of a manure storage facility including:
- 174 (a) Replacement of a liner, or any interception of the liner as a result of changes in the  
 175 management system of the manure storage facility.
- 176 (b) An increase in the volumetric capacity of area of a manure storage facility by greater  
 177 than 20%.
- 178 (c) A change in a manure storage facility related to a change in livestock management from  
 179 one species of livestock to another, such as cattle to poultry.
- 180 (28) *Manure storage facility, unpermitted* means either a manure storage facility that was  
 181 constructed before July 1, 2019 or the permit has expired.
- 182 (29) *Margin of safety level* means the level in a liquid manure storage facility that is vertically one  
 183 foot below the lowest point of the top of the manure storage facility, also referred to as  
 184 freeboard.
- 185 (30) *Maximum operation level (MOL)* means the level in a liquid manure storage facility, measured  
 186 vertically from the lowest point of the top of the facility, that is the sum of the margin of safety  
 187 level and the level necessary to contain the precipitation and runoff entering the manure  
 188 storage facility as a result of a 25-year, 24-hour storm event.
- 189 (31) *Natural Resources Conservation Service (NRCS)* means an agency of the United States  
 190 Department of Agriculture (USDA) that houses and maintains the technical standards associated  
 191 with implementation of this chapter.

- 192 (32) *Navigable waters and navigable drainage ways* means any body of water that is navigable  
193 under the laws of the state as defined in s. 281.31(2)(d), Wis. Stat.
- 194 (33) *Nutrient management plan* means a plan that meets the current NRCS Technical Guide 590 for  
195 Nutrient Management. A nutrient management plan shall include a winter spreading plan if  
196 manure is going to be spread during frozen or snow-covered conditions.
- 197 (34) *Nutrients* mean plant nutrients derived from commercial fertilizers, manure, organic wastes,  
198 soil reserves, legumes, or other sources.
- 199 (35) *Operator* means a person who rents, controls, or uses a parcel of land for agricultural purposes.
- 200 (36) *Ordinary high-water mark* means the point on the bank or shore up to which the presence and  
201 action of surface water is so continuous as to leave a distinctive mark such as by erosion,  
202 destruction or prevention of terrestrial vegetation, or other easily recognized characteristic.  
203 Where the bank or shore at any particular place is of such character that it is difficult or  
204 impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to  
205 the opposite bank of a stream or to other places on the shore of a lake or flowage to determine  
206 whether a given stage of water is above or below the ordinary high-water mark.
- 207 (37) *Outstanding resource waters* means waters listed in s. NR 102.10, Wis. Adm. Code.
- 208 (38) *Pasture* means land on which livestock graze or otherwise seek feed in a manner that maintains  
209 the vegetative cover over the grazing area. Pasture may include limited areas of bare soil such as  
210 cattle lanes and supplemental feeding areas provided the bare soil areas are not significant  
211 sources of pollution to waters of the state.
- 212 (39) *Permit* means the signed, written statement issued by the department under this chapter  
213 authorizing the applicant to construct, install, substantially alter, or close a manure storage  
214 facility.
- 215 (40) *Permittee* means any person to whom a permit is issued under this chapter.
- 216 (41) *Person* means any individual, agent, owner, operator, corporation, limited liability company,  
217 sole proprietorship, partnership, association, municipality, interstate agency, state agency, or  
218 federal agency.
- 219 (42) *Phosphorus index or "PI"* means that state's agricultural land management planning tool for  
220 assessing the potential of a cropped or grazed field to contribute phosphorus to surface waters.
- 221 (43) *Pollutant* means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse,  
222 oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance,  
223 heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and  
224 agricultural waste discharged into water.
- 225 (44) *Pollution* means contaminating or rendering unclean or impure the waters of the state, or  
226 making the same injurious to public health, harmful for commercial or recreational use, or  
227 deleterious to fish, bird, animal, or plant life.
- 228 (45) *Process wastewater* means wastewater from the production area directly or indirectly used in  
229 the operation of an animal feeding operation that results from any or all of the following:
- 230 (a) Spillage of overflow from animal or poultry watering systems.
- 231 (b) Washing, cleaning, or flushing pens, barns, manure storage facilities, or other animal  
232 feeding operations.
- 233 (c) Direct contact swimming, washing, or spray cooling of animals or dust control.
- 234 (d) Water that comes into contact with any raw materials or animal byproducts including  
235 manure, feed, milk, eggs, or bedding.
- 236 (46) *Production area* means that part of an animal feeding operation that includes the animal  
237 confinement area, the manure storage area, the raw materials storage area, and the waste  
238 containment areas. The animal confinement area includes but is not limited to open lots,  
239 housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking

- 240 centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The  
 241 manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds,  
 242 stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.  
 243 The raw materials storage area includes but is not limited to feed silos, silage bunkers, and  
 244 bedding materials. The waste containment area includes but is not limited to settling basins, and  
 245 areas within berms and diversions that separate uncontaminated storm water. Included in the  
 246 definition of production area is any egg washing or egg processing facility, and any area used in  
 247 the storage, handling, treatment, or disposal of mortalities.
- 248 **(47)** *Runoff* means storm water or precipitation including rain, snow, ice melt, or similar water that  
 249 flows across the land surface via sheet or channelized flow.
- 250 **(48)** *Safety devices* means constructed measures designed to protect humans and livestock from  
 251 hazards associated with a manure storage facility.
- 252 **(49)** *Site that is susceptible to groundwater contamination* means any one of the following:
- 253 (a) An area within 250 feet of a private well.  
 254 (b) An area within 1,000 feet of a municipal well.  
 255 (c) An area within 300 feet upslope or 100 feet downslope of a direct conduit to  
 256 groundwater.  
 257 (d) A channel that flows to a direct conduit to groundwater.  
 258 (e) An area where the soil depth to groundwater or bedrock is less than two (2) feet.  
 259 (f) An area where the soil does not exhibit one of the following soil characteristics:
- 260 1. At least a two-foot soil layer with 40% fines or greater above groundwater and  
 261 bedrock.  
 262 2. At least a three-foot soil layer with 20% fines or greater above groundwater and  
 263 bedrock.  
 264 3. At least a five-foot soil layer with 10% fines or greater above groundwater and  
 265 bedrock.
- 266 **(50)** *Surface waters* means all natural and artificial named and unnamed lakes and all naturally  
 267 flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds,  
 268 and facilities constructed for the treatment of wastewaters.
- 269 **(51)** *Technical guide* means the United States Department of Agriculture (USDA) Natural Resources  
 270 Conservation Service (NRCS) Technical Guide as adopted by the agency, including subsequent  
 271 updates, amendments, or additions.
- 272 **(52)** *Tolerable soil loss or "T"* means the maximum rate of erosion, in tons per acre per year,  
 273 allowable for particular soils and site conditions that will maintain soil productivity.
- 274 **(53)** *Top of the channel* means an edge, or point on the landscape landward from the ordinary high-  
 275 water mark of a surface water of the state, where the slope of the land begins to be less than  
 276 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the  
 277 initial 50 feet landward from the ordinary high-water mark, the top of the channel is the  
 278 ordinary high-water mark.
- 279 **(54)** *Unconfined manure pile* means a quantity of manure that is at least 175 cubic feet in volume  
 280 and which covers the ground surface to a depth of at least two (2) inches and is not confined  
 281 within a manure storage facility, livestock housing facility, or barnyard runoff control facility or  
 282 covered or contained in a manner that prevents storm water access and direct runoff to surface  
 283 water or leaching of pollutants to groundwater.
- 284 **(55)** *Waste transfer system* means all components including tanks, pipes, pumps, conduits, valves,  
 285 gutters, flow channels, and any other component constructed to convey manure, contaminated  
 286 runoff, milking center wastes, or waste byproducts from an agricultural source to a manure  
 287 storage facility, treatment facility, or land application site.

- 288 (56) *Water quality management area (WQMA)* means land that includes any of the following:  
 289 (a) An area within 1,000 feet up-gradient of the ordinary high-water mark of a navigable  
 290 lake, pond, or flowage.  
 291 (b) An area within 300 feet up-gradient of the ordinary high-water mark of a navigable river  
 292 or stream.  
 293 (c) An area that is susceptible to groundwater contamination or has the potential to be a  
 294 direct conduit for pollutants to reach groundwater.  
 295 (57) *Waters of the state* mean those portions of Lake Michigan and Lake Superior within the  
 296 boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding  
 297 reservoirs, marshes, water courses, drainage systems, and other surface or groundwater,  
 298 natural or artificial, public or private, within that state or under its jurisdiction, except those  
 299 waters which are entirely confined and retained completely upon the property of a person.  
 300 (58) *Winter grazing area* means cropland or pasture where livestock feed on dormant vegetation or  
 301 crop residue, with or without supplementary feed, during the period of October 1 to April 30.  
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### 303 SUBCHAPTER III

### 304 AGRICULTURAL PERFORMANCE STANDARDS AND PROHIBITIONS

#### 305 49.09 CROPLAND PERFORMANCE STANDARDS

##### 306 (1) SHEET, RILL, AND WIND EROSION.

- 307 (a) All pastures and land where crops or feed are grown shall be managed to achieve a soil  
 308 erosion rate equal to or less than the tolerable soil loss (T) rate established for that soil.  
 309 (b) The standards for evaluating sheet, rill, and wind erosion shall be the Revised Universal  
 310 Soil Loss Equation 2 (RUSLE2) or the current version of SNAP Plus. An equivalent  
 311 methodology may be used as approved by the department.  
 312

##### 313 (2) TILLAGE SETBACK. To prevent tillage operations from destroying stream banks and depositing 314 soil directly in surface waters, crop producers shall not conduct a tillage operation that 315 negatively impacts stream bank integrity or deposits soil directly in surface waters. This standard 316 does not apply to grassed waterways installed as conservation practices. To achieve this 317 standard, the following practices are required:

- 318 (a) No tillage operations may be conducted within five (5) feet of the top of the channel of  
 319 surface waters. Tillage setbacks greater than five (5) feet but no more than 20 feet may  
 320 be required to meet this standard. Determinations for tillage setbacks are established in  
 321 s. ATCP 50.04(4)(b)2., Wis. Adm. Code.  
 322 (b) Crop producers shall maintain the area within the tillage setback required under sub. (a)  
 323 in adequate sod or self-sustaining vegetative cover that provides a minimum of 70%  
 324 coverage.  
 325 (c) The standards for implementing the tillage setback include the NRCS Technical Guides  
 326 including but not limited to 342 Critical Area Planting, 410 Grade Stabilization Structure,  
 327 and 580 Streambank and Shoreline Protection may be installed to stabilize the bank and  
 328 protect its integrity. Enrollment in federal set aside programs such as CREP can also be  
 329 used to achieve compliance.

##### 330 (3) PHOSPHORUS INDEX.

- 331 (a) All cropland, pastures, and winter grazing areas shall meet the Wisconsin phosphorus  
 332 index (PI) established in s. NR 151.04, Wis. Adm. Code, including where the PI applies,  
 333 the methods for calculating the PI, and acceptable PI runoff levels.  
 334 (b) The standard for meeting the PI on croplands, pastures, or winter grazing areas shall be  
 335 based on the calculations utilized by the current version of the SNAP Plus nutrient

336 management planning model. An equivalent methodology may be used as approved by  
337 the department.

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

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

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

345 **(c)** Nutrient management plan standards include:

346 1. Manure, commercial fertilizer, and other nutrients shall be applied in  
347 conformance with a nutrient management plan.

348 2. The plan shall be designed to limit or reduce the discharge of nutrients to  
349 waters of the state for the purpose of complying with state water quality  
350 standards and groundwater standards.

351 3. Plans for croplands in watersheds that contain impaired surface waters or in  
352 watersheds that contain outstanding or exceptional resources waters shall meet  
353 the following criteria: unless otherwise provided in this subsection, the plan  
354 shall be designed to manage soil nutrient concentrations so as to maintain or  
355 reduce delivery of sediment and nutrients contributing to the impairment of  
356 impaired waters and to outstanding or exceptional resource waters.

357 4. No person may apply manure on frozen, snow-covered, or ice-covered ground  
358 without a nutrient management plan on file with the department. Updates to  
359 the winter spreading plan must be submitted prior to manure applications to  
360 frozen, snow-covered, or ice-covered ground.

361 5. The plan may allow for an increase in soil nutrient concentrations at a site  
362 consistent with s. ATCP 50.04(3)(f), Wis. Adm. Code, if necessary to meet crop  
363 demands.

364 6. Maps identifying manure stacking sites utilized to implement the nutrient  
365 management requirements per s. 49.10 (3)(d) shall be included in the nutrient  
366 management plan.

367 7. An updated plan shall be submitted to the department annually by April 15 to  
368 ensure the plan meets requirements of this section.

369 **(d)** The standards for management of manure and nutrients applied to cropland and  
370 pastures shall be the current standards in the NRCS Technical Guide, including but not  
371 limited to 590 Nutrient Management.

#### 372 **49.10 LIVESTOCK PERFORMANCE STANDARDS AND PROHIBITIONS**

373 **(1) CLEAN WATER DIVERSION.** All livestock producers within a water quality management area shall  
374 comply with this section.

375 **(a)** Runoff shall be diverted away from feedlots, manure storage facilities, and barnyard  
376 areas within water quality management areas except that a diversion to protect a  
377 private well under s. NR 151.015(18)(a), Wis. Adm. Code, is required only when the  
378 feedlot, manure storage facility, or barnyard area is located upslope from the private  
379 well.  
380

381 **(b)** The standards for clean water diversions shall be the current standards in the NRCS  
382 Technical Guide, including but not limited to 362 Diversion, 367 Roofs & Covers, 558  
383 Roof Runoff Structure, 620 Underground Outlet, 554 Drainage Water Management, 606

384 Subsurface Drain, 412 Grassed Waterway, 468 Lined Waterway, 582 Open Channel, or  
 385 533 Pumping Plant.

386 **(2) PROCESS WASTEWATER HANDLING.** All livestock producers shall comply with this section.

387 **(a)** No significant discharge of process wastewater to waters of the state.

388 **(b)** The department shall consider the following factors when determining whether a  
 389 discharge of process wastewater is a significant discharge to waters of the state:

390 1. Volume and frequency of the discharge.

391 2. Location of the source relative to receiving waters.

392 3. Means of process wastewater conveyance to waters of the state.

393 4. Slope, vegetation, rainfall, and other factors affecting the likelihood of process  
 394 wastewater discharge to waters of the state.

395 5. Available evidence of discharge to a surface water of the state or to a direct  
 396 conduit to groundwater.

397 6. Whether the process wastewater was discharged to a site that is defined as a  
 398 site that is susceptible to groundwater contamination.

399 7. Other factors relevant to the impact of the discharge on water quality  
 400 standards of the receiving water or the groundwater standards.

401 **(c)** The standards for process wastewater handling shall be the current standards in the  
 402 NRCS Technical Guide, including but not limited to 627 Wastewater Treatment –  
 403 Milkhouse, 313 Waste Storage Facility, 632 Waste Separation, 634 Waste Transfer, 635  
 404 Vegetated Treatment Area, 533 Pumping Plant, 521 Pond Sealing or Lining –  
 405 Geomembrane or Geosynthetic Clay Liner, 520 Pond Sealing or Lining – Compacted Soil  
 406 Treatment, 522 Pond Sealing or Lining – Concrete.

407 **(d)** The standards for evaluating significant discharge shall be the Barnyard Runoff  
 408 Evaluation Tool (BERT), BARNY, Vegetated Treatment Area spreadsheet, feedstock  
 409 storage rating, milking center waste rating, or equivalent predictive model for manure,  
 410 feed leachate, milkhouse waste, or other process wastewater runoff. An equivalent  
 411 methodology may be used as approved by the department.

412 **(3) MANURE STORAGE FACILITIES.** All livestock producers building new manure storage facilities,  
 413 substantially altering manure storage facilities, maintaining existing manure storage facilities, or  
 414 closing manure storage facilities shall comply with this section.

415 **(a)** New construction or substantial alterations.

416 1. New or substantially altered manure storage facilities shall be designed,  
 417 constructed, and maintained to minimize the risk of structural failure of the  
 418 facility and to minimize leakage of the facility in order to comply with  
 419 groundwater standards.

420 2. The levels of manure in the manure storage facility may not exceed the margin  
 421 of safety level.

422 3. Manure storage facilities that are constructed or significantly altered on or after  
 423 January 1, 2011 shall be designed and operated in accordance with the  
 424 maximum operating level (MOL).

425 4. The standards for new or substantially altered manure storage facilities shall be  
 426 the current standards in NRCS Technical Guide, including but not limited to 313  
 427 Waste Storage Facility, 632 Waste Separation, 634 – Waste Transfer, 533  
 428 Pumping Plant, 521 Pond Sealing or Lining – Geomembrane or Geosynthetic  
 429 Clay Liner, 520 Pond Sealing or Lining – Compacted Soul Treatment, 522 Pond  
 430 Sealing or Lining – Concrete.

- 431 5. Obtain a permit in accordance with s. 49.12 and meet all applicable operating  
432 requirements.
- 433 (b) Existing.
- 434 1. Existing manure storage facilities that pose an imminent threat to public health,  
435 fish and aquatic life, or groundwater shall be upgraded, replaced, or closed in  
436 accordance with this chapter.
- 437 2. Levels of materials in manure storage facilities may not exceed the margin of  
438 safety level.
- 439 3. Obtain a certificate of use in accordance with s. 49.15 and meet all applicable  
440 operating requirements.
- 441 (c) Closure or retention.
- 442 1. *Conditions for closure.* Idle manure storage facilities shall be closed in a manner  
443 that will prevent future contamination of groundwater and surface water.
- 444 a. The standards for closure of an idle manure storage facility shall be the  
445 current standards in NRCS Technical Guide, including but not limited to  
446 360 Waste Storage Closure.
- 447 b. Obtain a permit in accordance with s. 49.12 and meet all applicable  
448 operating requirements.
- 449 2. *Conditions for retention.* A landowner or operator may retain an idle manure  
450 storage facility for a longer period of time by making a written request to the  
451 department to retain the facility once every two years until the manure storage  
452 facility is brought into use or properly closed and by demonstrating to the  
453 department the following conditions are met:
- 454 a. The manure storage facility is designed, constructed, and maintained in  
455 accordance with this chapter.
- 456 b. The manure storage facility is designed to store manure for a period of  
457 time longer than 24 months.
- 458 c. Retention of the manure storage facility is warranted based on  
459 anticipated future use.
- 460 d. Obtain a certificate of use in accordance with s. 49.15 and meet all  
461 applicable operating requirements if the facility does not have a valid  
462 manure storage permit or current certificate of use.
- 463 (d) Stacking of manure.
- 464 1. *Conditions for stacking.* In order to implement a nutrient management plan and  
465 prevent the land application of manure during restrictive conditions, manure  
466 stacking may be utilized.
- 467 a. The standards for manure stacking shall be the current standards in the  
468 NRCS Technical Guide, including but not limited to 318 Short Term  
469 Storage of Animal Waste and By-Products or 313 Waste Storage Facility.
- 470 (4) MANURE MANAGEMENT PROHIBITIONS. All livestock operations shall comply with this section  
471 as follows:
- 472 (a) No overflow of manure storage facilities.
- 473 (b) No unconfined manure piles within a water quality management area.
- 474 (c) No direct runoff from a feedlot or stored manure to waters of the state.
- 475 1. The standards for evaluating direct runoff shall be the Barnyard Runoff  
476 Evaluation Tool (BERT), BARNY, APLE Lots, VTA spreadsheet, or equivalent  
477 predictive model for manure, feed leachate, milkhouse waste, or other process

478 wastewater runoff. An equivalent methodology may be used as approved by the  
 479 department.

480 (d) No unlimited access by livestock to waters of the state in a location where high  
 481 concentrations of animals prevent the maintenance of adequate sod or self-sustaining  
 482 vegetative cover.

- 483 1. This prohibition does not apply to properly designed, installed, and maintained  
 484 livestock or farm equipment crossings.
- 485 2. The standards for evaluating adequate sod or self-sustaining vegetative cover  
 486 shall be the standards outlined in the NRCS Technical Guide 528 Prescribed  
 487 Grazing or by vegetative measurements using grid samples showing at least 70%  
 488 living plant material cover. An equivalent methodology may be used as  
 489 approved by the department.

491 **49.11 COST SHARE REQUIRED.** Cost-share may be required for a landowner or operator to comply  
 492 with a cropland performance standard or livestock performance standard or manure management  
 493 prohibition in accordance with s. NR 151.09, Wis. Adm. Code for cropland performance standards and s.  
 494 NR 151.095, Wis. Adm. Code, for livestock performance standards and manure management  
 495 prohibitions.

496  
 497 **SUBCHAPTER IV**  
 498 **MANURE STORAGE FACILITY PERMITS, USE CERTIFICATES, AND SPECIFICATIONS**  
 499

500 **49.12 PERMIT REQUIREMENTS, MODIFICATIONS, AND TERMS.**

501 (1) PERMIT REQUIRED. Except as otherwise provided in this chapter, work done without a proper  
 502 permit shall constitute noncompliance with this chapter. No person may do any of the following  
 503 without obtaining a permit in accordance with this subchapter:

- 504 (a) Construct a manure storage facility or substantially alter a manure storage facility,  
 505 including the construction or substantial alteration of waste transfer systems  
 506 connected to a manure storage facility.
- 507 (b) Upgrade, repair, or replace a manure storage facility that has been identified as  
 508 posing an imminent threat to public health, fish and aquatic life, or groundwater.
- 509 (c) Close a manure storage facility in accordance with s. 49.10(3)(c), including  
 510 conversion of its use, regardless of whether the manure storage facility is required  
 511 to be closed.

512 (2) EXCEPTIONS TO PERMIT REQUIREMENT.

513 (a) Emergency Repairs. Repairs necessary to respond to an existing emergency such as  
 514 repairing a broken pipe or equipment, leaking dikes, or the removal of stoppages  
 515 may be performed without a permit. Any repairs performed as a result of the  
 516 manure storage facility failing, or overtopping, or repairs intercepting the liner or  
 517 substantially altering the original design of construction of a manure storage facility,  
 518 shall be reported, in writing, within one day of the emergency to the department.

- 519 1. The department will make a determination whether the repairs made were  
 520 reasonably necessary to respond to an existing emergency. The department  
 521 is authorized to enter upon lands where a repair has been made to a  
 522 manure storage facility to make this determination.
- 523 2. A permit shall be required for any work deemed to constitute a substantial  
 524 alteration to the manure storage facility in excess of that reasonably  
 525 necessary to respond to an emergency. The department’s determination

526 shall be rendered within five (5) business days of the reporting under sub.  
527 (a).

528 (b) Manure storage facilities and waste transfer systems that have a capacity of 1,000  
529 gallons or less in total volume may be constructed without a permit. This  
530 exemption applies only if the manure storage facility is not connected to another  
531 manure storage facility(ies) or waste transfer system(s) that results in a cumulative  
532 volume capacity of more than 1,000 gallons.

533 (c) Manure storage facilities and waste transfer systems that receive only process  
534 wastewater, such as milkhouse wastewater, parlor wash water, or feed leachate,  
535 and have a capacity of 10,000 gallons or less may be constructed without a permit if  
536 they are constructed in accordance with ss. NR 213.08 and NR 213.15, Wis. Adm.  
537 Code. This exemption applies only if the manure storage facility is not connected to  
538 another manure storage facility. A certificate of use shall be applied for and issued  
539 for the manure storage facility.

540 (3) PERMIT DURATION. Permits for manure storage facilities and waste transfer systems shall be  
541 valid for 20 years.

542 (4) PERMIT EXPIRATION. Within six (6) months prior to permit expiration, the landowner shall  
543 either obtain a certificate of use in accordance with s. 49.15 or obtain a permit to close the  
544 manure storage facility in accordance with s. 49.11(1)(c).

545 (5) REVIEW OF APPLICATION. The department shall approve or deny permits, in writing, based on  
546 the standards set forth in s. 49.13 within 45 working days after receiving the completed  
547 application and fee. If disapproved, the department shall inform the applicant, in writing, of the  
548 reasons for disapproval. If additional information is required, the department shall notify the  
549 applicant what is required and shall approve or deny the permit application, in writing, within 45  
550 working days after receipt of the requested additional information. If the department fails to  
551 approve or deny the permit application within the schedule set in this section, the application  
552 shall be deemed approved and the applicant may proceed as if a permit had been issued. In any  
553 event, the manure storage facility for which the permit was sought shall comply with the  
554 applicable performance standards and prohibitions of this ordinance. In this section, "working  
555 days" means week days and excludes holidays.

556 (6) PERMIT MODIFICATION. Changes to a manure storage facility that fall under activities identified  
557 in s. 49.12(1) during the 20-year permit duration may require a new permit or may be  
558 performed under a permit modification. Prior to making any changes, the landowner or  
559 operator shall submit an application to the department following the requirements in s. 49.12.  
560 The department shall make a determination whether the activities proposed in the application  
561 shall require a new permit or shall be performed under a permit modification. A permit  
562 modification does not alter the expiration date of the original permit.

563 (7) PERMIT REVOCATION. The department may revoke the permit issued under this subchapter if  
564 the holder of the permit has misrepresented any material fact in the permit application or  
565 manure storage facility plan, or if the holder of the permit violates any of the conditions of the  
566 permit.

567

568 **49.13 PERMIT APPLICATION REQUIREMENTS.** Manure storage facility permit applications shall meet  
569 the requirements in this section.

570 (1) MANURE STORAGE FACILITY CONSTRUCTION PLAN REQUIREMENTS. A complete permit  
571 application for a new or substantially altered manure storage facility or waste transfer system  
572 shall include a construction plan that meets or exceeds the minimum established limits and  
573 specific criteria within NRCS Technical Standard 313 Waste Storage and additional NRCS

574 Technical Standards, including but not limited to 342 Critical Area Planting, 382 Fence, 558 Roof  
 575 Runoff Structure, 590 Nutrient Management, and 634 Waste Transfer as applicable. The manure  
 576 storage facility construction plan shall also include all of the following:

- 577 (a) Number, type, and size of animals for which storage is provided and the duration for  
 578 which storage is to be provided.
- 579 (b) Type of bedding to be used in the operation and all aspects of handling and recovery of  
 580 the bedding material.
- 581 (c) The specific locations of all of the following that are or may be located within 500 feet of  
 582 the proposed manure storage facility:
- 583 1. Residential buildings.
  - 584 2. Property lines.
  - 585 3. Wells.
  - 586 4. All utilities.
  - 587 5. All roadways including each state and federal highway, county and town roads,  
 588 and public streets.
  - 589 6. Navigable water and drainage ways.
  - 590 7. Floodplains and waterways not covered by sub. 6 above.
- 591 (d) North arrow, scale of the drawing, legal description of the parcel and location,  
 592 description, and elevation of a temporary benchmark.
- 593 (e) Structural details, including but not limited to, dimensions, cross-sections, concrete  
 594 thickness, reinforcing steel location, and design loading details when other than NRCS  
 595 pre-qualified designs and drawings are used.
- 596 (f) Construction material specifications including, but not limited to, applicable  
 597 specifications for earth fill, excavation, concrete, reinforcing steel, timber, and pipes.
- 598 (g) Soil test pit locations, elevations, and soil descriptions to a depth as required for the  
 599 planned manure storage facility.
- 600 (h) Elevation of groundwater, bedrock, or seasonally saturated conditions if encountered in  
 601 the soil profile and the date of any such determinations.
- 602 (i) Provisions for adequate drainage and control of runoff to prevent pollution of surface  
 603 water and groundwater.
- 604 (j) Time schedule for construction of the manure storage facility.
- 605 (k) Details and plans for the method and structures used in transferring manure into and  
 606 from the manure storage facility.
- 607 (l) Plan to control erosion during construction or modification of the manure storage  
 608 facility.
- 609 (m) Plans that address the safety devices and requirements of the manure storage facility.
- 610 (n) Emergency response plan identifying the names and phone numbers of individuals or  
 611 others to be notified in the event of any leaks, spills, or other system failures that could  
 612 discharge manure.
- 613 (o) Certification by a professional engineer registered in the State of Wisconsin, an  
 614 engineering practitioner certified by the Wisconsin Department of Agriculture Trade and  
 615 Consumer Protection (DATCP), or the NRCS that the manure storage facility construction  
 616 plans meet technical and ordinance requirements.
- 617 (p) Operation and maintenance plan for the manure storage facility signed by the  
 618 landowner or operator that identifies the basic requirements for safe operation of the  
 619 facility, the manure removal interval, the proper procedures for operation of all  
 620 components, suggested preventative maintenance, and when repairs are required to

621 damaged components such as pumps, pipes, berms, and roads that are a necessary part  
622 of the manure storage facility function.

623 (q) Nutrient management plan. The nutrient management plan must be prepared by a  
624 nutrient management planner qualified under s. ATCP 50.48, Wis Adm. Code, and  
625 submitted and approved prior to the issuance of the permit.

626 (r) Manure storage facility setbacks identified in s. 49.13(2).

627 (s) Any other additional information required by the department to protect water quality  
628 and determine compliance with this chapter.

629 **(2) MANURE STORAGE FACILITY SETBACK REQUIREMENTS.**

630 (a) Setback from property lines and road right-of-way. Manure storage facilities and any  
631 additions to such manure storage facilities shall maintain the following setback:

632 1. In addition to the setbacks required under the standards referenced in this  
633 ordinance, manure storage facilities shall be setback 350 feet from any property  
634 line or road right-of-way; however, the setback from the property line or road  
635 right-of-way may be reduced if the new manure storage facility is located no  
636 closer than an existing manure storage facility that is in use.

637 2. For purposes of measuring this setback, property line is defined as the  
638 outermost boundary of a property under common ownership as described on a  
639 deed recorded with the Dane County Register of Deeds. The manure storage  
640 facility measurements shall be from the inside top of the liner of the manure  
641 storage facility.

642 (b) Setbacks do not apply to manure transfer systems.

643 (c) Expansion. Subject to the permitting requirements in s. 49.12, manure storage facilities  
644 located within a setback area may be expanded provided the area to be expanded  
645 meets required setbacks.

646 **(3) MANURE STORAGE FACILITY CLOSURE APPLICATION REQUIREMENTS.** A complete permit  
647 application for a manure storage facility closure shall meet all standards as outlines in NRCS  
648 Technical Guide 360 Waste Storage Closure and shall specify:

649 (a) Provisions to remove and properly dispose of all accumulated wastes in the manure  
650 storage facility.

651 (b) Provisions to remove any concrete or synthetic liner, or properly use pieces of the  
652 concrete or synthetic liner as clean fill at the site.

653 (c) Provisions to remove and properly dispose of any soil contaminated with waste from  
654 the manure storage facility.

655 (d) Provisions to remove soils, to the depth of significant manure contamination or two (2)  
656 feet, whichever is less, from the bottom and sides of a manure storage facility without a  
657 constructed liner.

658 (e) Provisions to remove or permanently plug the waste transfer system serving the manure  
659 storage facility.

660 (f) Provisions to cover all disturbed areas with topsoil, seed the areas with grass or native  
661 plant mixture, and mulch the seeded area. This section does not apply if an alternative  
662 use of the site is authorized under a manure storage facility closure plan approved by  
663 the department as part of the permit.

664 (g) Any other additional information requirement by the department to protect water  
665 quality and determine compliance with this section.

666

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

- 669 (1) Manure storage facility design, construction, operations, management, utilization, and closure  
670 activities shall be carried out in accordance with the approved manure storage facility  
671 construction plan, including approved modifications, and applicable standards in this ordinance.
- 672 (2) The permittee shall give five (5) calendar days' notice to the department before starting any  
673 construction or closure activity authorized by permit.
- 674 (3) Before initiating construction, the permittee, engineer, contractor, and department shall  
675 participate in a pre-construction conference to outline the requirements and responsibilities of  
676 all of the involved parties.
- 677 (4) Written approval from the department must be obtained for all substantial modifications to the  
678 permitted plans prior to implementation of any proposed modifications.
- 679 (5) The permittee and engineer shall certify, in writing, that the manure storage facility was  
680 constructed in accordance with the standards listed in the approved design. This certification  
681 shall include records and drawing signed and stamped by the engineer documenting the  
682 construction of the facility and depicting any changes to the approved construction plan.
- 683 (6) The department shall provide onsite inspection and final verification of compliance with the  
684 permit terms for all construction projects conducted under a permit issued under this chapter.  
685 To receive final verification, a manure storage facility must be fully constructed, certified by the  
686 permittee and engineer, and approved by the department.
- 687 (7) No permitted manure storage facility may receive manure until the department provides final  
688 verification of compliance or issues a temporary authorization to use the facility. The permittee  
689 may submit a request for a temporary authorization. This request shall include information  
690 about the type of waste to be placed in the facility and when certification of the constructed  
691 facility will be submitted to the department. A temporary authorization may be issued by the  
692 department based on the information provided in the request and may be revoked at any time  
693 for any reason.
- 694 (8) Construction activities authorized by permit must be completed and verified by the department  
695 within two (2) years from the date of issuance, after which any additional construction or  
696 closure activities will require a new manure storage permit application to be submitted and  
697 approved.

698  
699 **49.15 CERTIFICATE OF USE.**

- 700 (1) CERTIFICATE REQUIREMENT. No person may operate or use a manure storage facility, or any  
701 portion of a manure storage facility that was constructed without a permit issued by the  
702 department or has an expired permit unless the person has a valid certificate of use for the  
703 manure storage facility or that portion of the manure storage facility that is being operated or  
704 used.
- 705 (2) APPLICATION FOR CERTIFICATE OF USE.
  - 706 (a) Unpermitted facility. The landowner or operator of an unpermitted manure storage  
707 facility shall apply for a certificate of use by submitting a complete application and fee  
708 to the department for review and approval.
  - 709 (b) Facility with expiring permit. The landowner or operator of a permitted manure storage  
710 facility shall apply for a certificate of use within six (6) months of permit expiration and  
711 submit a complete application and fee to the department for review and approval. A  
712 complete application must comply with sub. (c) and is subject to the following:
    - 713 1. To obtain a certificate of use, the manure storage facility shall be evaluated by a  
714 professional engineer in the last year of the permit to assess the manure  
715 storage facility's structural condition and compliance with the standards listed  
716 in this chapter.

- 717                   a. If the department determines, based on the engineering evaluation,  
718                   that the manure storage facility meets the standards listed in this  
719                   chapter, a certificate of use will be issued in accordance with sub. (4).  
720                   b. If the department determines, based on the engineering evaluation,  
721                   that repairs are required, a certificate of use will not be issued until the  
722                   required repairs are made to the manure storage facility or a schedule  
723                   of repairs is agreed upon by the landowner or operator and the  
724                   department through a conditional approval.
- 725                   2. If, in accordance with sub. 1, no evaluation is performed or the landowner or  
726                   operator does not want to implement the repairs to bring the manure storage  
727                   facility into compliance with this chapter, the manure storage facility shall be  
728                   closed in compliance with s. 49.12(3) prior to the expiration date of the permit.
- 729                   (c) A complete application includes the following:
- 730                   1. A department approved application.
- 731                   2. A copy of the current nutrient management plan associated with the manure  
732                   storage facilities.
- 733                   3. Copies of any engineering documentation for the manure storage facility  
734                   including, but not limited to, original construction designs and engineering  
735                   evaluations.
- 736                   (3) REVIEW OF APPLICATION. Upon receipt of a complete application and fee, the department shall  
737                   conduct a file review and an on-site inspection of the manure storage facility and issue one of  
738                   the following:
- 739                   (a) Approval. The department issues a certificate of use that is valid for up to ten (10) years  
740                   in accordance with the provisions listed in s. 49.15(4).
- 741                   (b) Conditional approval. The department issues a certificate of use with conditions for a  
742                   period of time less than ten (10) years to allow the landowner or operator to follow a  
743                   schedule of compliance to come into compliance with the requirements listed in s.  
744                   49.15(4).
- 745                   (c) Denial. The department issues a denial of certificate of use if the manure storage facility  
746                   is unable to meet the operating requirements listed in s. 49.15(4). The manure storage  
747                   facility shall be closed in accordance with s. 49.12(1)(c).
- 748                   (4) CERTIFICATE OF USE CONDITIONS. Certificates of use issued under this subchapter shall be  
749                   issued subject to the following conditions and requirements:
- 750                   (a) Updates and follows an annual nutrient management plan that complies with the  
751                   requirements of this chapter and covers all manure land applied from the manure  
752                   storage facility covered by the certificate of use.
- 753                   (b) Provides a copy of a nutrient management plan annually to the department by April 15  
754                   that documents compliance with this chapter.
- 755                   (c) Operates the manure storage facility in accordance with performance standards and  
756                   prohibitions in s. 49.10(3) and (4).
- 757                   (d) Maintains the manure storage facility free from visible and serious damage, erosion, or  
758                   deformities that would impair the manure storage facility's safety or function.
- 759                   (e) Maintains all safety devices for a manure storage facility including:
- 760                   1. For unpermitted manure storage facilities, a substantial fence shall be in place  
761                   and maintained around the perimeter to prevent accidental entry into the  
762                   manure storage facility. All fence openings shall have gates that can be shut and  
763                   securely fastened.

- 764 2. For expired permitted manure storage facilities, a fence around the manure
- 765 storage facility is required unless the manure storage facility has vertical walls
- 766 five (5) feet above the ground surface or the manure storage facility has a cover
- 767 that will support foot traffic. Fences shall meet NRCS Technical Guide standards
- 768 for 313 Waste Storage Facility at the time of permit issuance.
- 769 3. A grate or cover is required for any opening in the waste transfer system that is
- 770 larger than six (6) inches in diameter. Grates and covers must be designed to
- 771 withstand all load requirements. A fence around a waste transfer system may
- 772 be used in lieu of a grate or cover in accordance with sub. 1 or 2 above.
- 773 4. Safety stops, gates, or both shall be installed at push-off ramps and load out
- 774 areas of manure storage facilities to prevent accidental entry of tractors or
- 775 other equipment.
- 776 5. Manure storage facilities and their components shall have signs at all access
- 777 points to warn of the danger of entry.
- 778 (f) Provides the department proof of compliance with the requirements in subs (c) and (d)
- 779 upon request and submits to periodic inspections of the manure storage facility with
- 780 advance notice from the department.
- 781 (g) Submits a permit application in accordance with s. 49.12(1)(c) within two (2) years of
- 782 when the landowner or operator ceases use of the manure storage facility or when
- 783 closure is required based on conditions specified in this chapter.
- 784 (5) RENEWAL. Applicants shall submit an application for a renewal of a certificate of use within six
- 785 (6) months before the expiration date of the original certificate of use. The landowner or
- 786 operator may be required to provide documentation that the operation requirements listed in s.
- 787 49.15(4) are still being maintained. A renewal of a certificate of use may be for a period of up to
- 788 ten (10) years.
- 789 (6) CERTIFICATE REVOCATION. The department may revoke a certificate of use if there is a
- 790 misrepresentation of any material fact in the application, manure storage facility plan, or the
- 791 nutrient management plan, a failure to comply with the nutrient management plan
- 792 requirements, a failure to provide the department with a copy of the nutrient management
- 793 plan, or for multiple or repeat violations of this chapter. Upon verification of the violation, the
- 794 department will immediately provide written notice of the revocation and the reason for the
- 795 revocation.

**SUBCHAPTER V  
PROCEDURES AND ADMINISTRATION**

**49.16 ADMINISTRATION**

- 802 (1) DELEGATION OF AUTHORITY. The County of Dane hereby designates its Land and Water
- 803 Resources Department to administer and enforce this chapter.
- 804 (2) ADMINISTRATIVE DUTIES. In the administration and enforcement of this chapter, the
- 805 department shall:
  - 806 (a) Inventory and ensure landowner compliance with agricultural performance standards
  - 807 and prohibitions in this chapter.
  - 808 (b) Review manure storage facility and certificate of use applications and plans, and issue
  - 809 permits and certificates of use, in accordance with this chapter.

- 810 (c) Keep an accurate record of all permit applications, manure storage facility construction
- 811 plans, permits issued, certificates of use issued, inspections made, and other official
- 812 actions.
- 813 (d) Review the nutrient management plan prepared for the manure storage facility for
- 814 compliance with this chapter.
- 815 (e) Review designs of best management practices and conduct inspections during
- 816 construction and implementation to ensure that the best management practices are
- 817 constructed and maintained according to the requirements of this chapter.
- 818 (f) Investigate complaints relating to compliance with the ordinance.
- 819 (g) Perform other duties as specified in this ordinance.
- 820 (3) INSPECTION AUTHORITY. The department is authorized to enter upon any lands affected by this
- 821 chapter to inspect the land and facilities, and request records to determine compliance with this
- 822 chapter including inspection of sites prior to and after the issuance of a permit or certificate of
- 823 use, and sites with unpermitted manure storage facilities. If permission for entry cannot be
- 824 received from the landowner, applicant or permittee, the department shall request a special
- 825 inspection warrant pursuant to s. 66.0119, Wis. Stat. Failure to grant permission to enter lands
- 826 subject to a permit under this ordinance shall be grounds for denial of or revocation of the
- 827 permit or certificate.
- 828 (4) ENFORCEMENT. The department shall enforce this chapter as set forth in s. 49.18.
- 829

830 **49.17 VARIANCES**

831 (1) VARIANCE FROM PERMIT.

832 (a) A permit applicant may request a variance from the requirements under s. 49.13 or if

833 the applicant demonstrates and the county conservationist agrees that all of the

834 following conditions are present:

- 835 1. Enforcement of the standards set forth in this ordinance will result in
- 836 unnecessary hardship to the landowner.
- 837 2. The hardship is due to exceptional physical conditions unique to the property.
- 838 3. Granting the variance will not adversely affect the public health, safety, or
- 839 welfare, nor be contrary to the spirit, purpose, and intent of this ordinance.
- 840 4. The potential impacts that will be caused by the requested variance and the
- 841 measures that will be implemented mitigate those impacts.

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

843 the minimum extent necessary to afford relief from the unnecessary hardship, with

844 primary consideration given to water quality and impact to downstream conditions.

845 (2) VARIANCE FROM PERFORMANCE STANDARD OR PROHIBITION. No variance from the

846 performance standards or prohibitions in ss. 49.09 or 49.10 may be granted unless the

847 landowner or operator complies with the requirements for variances specified in s. NR 151.097,

848 Wis. Adm. Code, and receives approval from the Wisconsin Department of Natural Resources

849 (DNR) and the department.

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

851 (b) The department shall forward the variance request to the DNR within ten (10) days of

852 receiving the request.

853 (c) The request for variance from the standards in ss. 49.09 or 49.10 shall include

854 documentation of all the following:

- 855 1. Compliance with the performance standard or technical standard is not feasible
- 856 due to site conditions.

857                   2. The landowner or operator will implement best management practices or other  
858                   corrective measures that ensure a level of pollution control that will achieve a  
859                   level of water quality protection comparable to that afforded by the  
860                   performance standards in ch. NR 151, Wis. Adm. Code.

861                   3. The landowner or operator or their agents or assigns did not create the  
862                   conditions identified in sub. (1).

863       **(3) VARIANCE FROM NRCS STANDARD.** In addition to other applicable requirements in this section,  
864       no variance from the NRCS Technical Guide standards required by this chapter may be granted  
865       by the department unless the applicant or department receives written justification from the  
866       NRCS or other qualified engineering authority.

867       **(4) A person aggrieved by a variance determination may appeal that decision to the committee**  
868       pursuant to s. 49.19.

869

#### 870 **49.18 ENFORCEMENT**

871       **(1) PROCEDURES.** The department may do the following:

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

873           **(b)** Follow the procedures in s. NR 151.09, Wis. Adm. Code, to implement and enforce the  
874           cropland performance standards and the procedures in s. NR 151.095, Wis. Adm. Code,  
875           to implement and enforce the livestock performance standards and prohibitions.

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

877       **(2) INVESTIGATION AND NOTICE OF VIOLATION.** Department staff are responsible for conducting  
878       the necessary inspection and investigation to ensure compliance with this chapter and  
879       documenting the presence of violations by completing and sending a Notice of Noncompliance  
880       (NON) or Notice of Violation (NOV) to the landowner.

881       **(3) UNLAWFUL CONDITIONS.**

882           **(a)** Violations of this chapter or an approval issued under this chapter, including without  
883           limitation, a permit, certificate of use, compliance determination, condition or plan,  
884           shall be deemed a violation of this chapter and shall constitute grounds for revocation  
885           of such approval as well as fines, forfeitures, and any other available remedies. An  
886           approval may be revoked only by action of the body that initially granted it following  
887           procedures either required by this chapter or comparable to those applied for its initial  
888           issuance, to the extent practical. The decision of the appropriate body shall be furnished  
889           to the holder of the approval in writing, stating the reasons for thereof.

890           **(b)** An approval, including without limitation, a permit, certificate of use, compliance  
891           determination, condition, or plan issued in violation of this chapter, other ordinances of  
892           the Dane County Code of Ordinances, the Wisconsin Administrative Code, or Wisconsin  
893           Statutes, gives the holder of such approval no vested right to continue the activity  
894           authorized by the approval and is considered voidable.

895       **(4) STOP WORK ORDER.**

896           **(a)** Whenever the department finds any noncompliance with the provisions of this  
897           ordinance, the department shall attempt to communicate with the landowner,  
898           operators, or other person performing the work to obtain immediate and voluntary  
899           compliance if such person is readily available. If the landowner, operator, or other  
900           person performing the work is not readily available, that person refuses to voluntarily  
901           comply immediately, or the noncompliance presents an immediate danger or will cause  
902           or threatens to cause bodily injury or damage to off-site property including, but not  
903           limited to, off-site runoff, the department shall post in a conspicuous place on the

904 premises, a stop work order which shall cause all activity not necessary to correct the  
 905 noncompliance to cease until noncompliance is corrected.

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

- 907 1. Date of issuance;
- 908 2. Town and section number or equivalent information within the municipality;
- 909 3. Reason for posting; and
- 910 4. Signature of inspector posting the order.

911 (c) Unauthorized removal of a stop work order from the premises shall be a violation of this  
 912 ordinance.

913 (5) FORFEITURES. Any person who violates, disobeys, omits, neglects, or refuses to comply or who  
 914 resists the enforcement of any of the provisions of this chapter, shall be subject to a fine in  
 915 accordance with Chapter 2, DCCO. Any person found guilty of violating this chapter who has  
 916 previously been convicted of a violation of the same ordinance provision(s), shall be subject to a  
 917 fine of not less than twice the established forfeiture for each such offense, together with the  
 918 costs of action. Each day a violation exists or continues constitutes a separate offense.

919 (6) INJUNCTIVE RELIEF. The Dane County Corporation Counsel may bring an action to enforce this  
 920 chapter and seek all available remedies, legal, or equitable, including temporary and permanent  
 921 injunctive relief as well as forfeitures and other penalties. It shall not be necessary to prosecute  
 922 for forfeiture before seeking injunctive relief.

923  
 924 **49.19 APPEALS**

925 (1) AUTHORITY. The committee shall hear and decide appeals where it is alleged that there is error  
 926 in any order, requirements, decisions, or determination by department staff in administering  
 927 this ordinance.

928 (2) PROCEDURE.

929 (a) Any person aggrieved by any decision of the department pursuant to this ordinance may  
 930 appeal to the committee. Such appeal shall be submitted to the committee in writing  
 931 within thirty (30) days after receiving the written decision of the department. A Notice  
 932 of Appeal setting forth the specific grounds for the appeal shall be filed with the  
 933 department. The department shall forthwith transmit to the committee the Notice of  
 934 Appeal.

935 (b) Stays. An appeal shall stay all proceedings in furtherance of the action appealed from,  
 936 unless the officer from whom the appeal is taken shall certify to the committee, after  
 937 the notice of appeal shall have been filed, that by reason of facts stated in the  
 938 certificate, a stay would cause imminent hazard or a condition that will cause or  
 939 threatens to cause personal injury or damage to off-site property. In such case,  
 940 proceedings shall not be stayed otherwise than by injunctive relief granted by a court.

941 (c) The committee shall fix a reasonable time for the hearing of the appeal and publish a  
 942 class 1 notice under ch. 985, Wis. Stat., as well as give due notice to the parties in  
 943 interest and decide the same within a reasonable time. At the hearing, any party may  
 944 appear in person or by agent or attorney.

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

950

951 **49.20 FEES.** All fees under this ordinance are established pursuant to a fee schedule adopted by the  
952 committee. Copies of the current fee schedule are kept on file at the department. Any permit, certificate  
953 of use, or other application fee is payable upon submissions of the application.  
954

955 [NON-CODE PROVISION: The effective dates of this ordinance shall be July 1, 2019 with subsequent  
956 revisions in [date].]