# ADAMS COUNTY ANIMAL WASTE MANAGEMENT ORDINANCE

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Section 1 - Introduction

1.01 Authority

This ordinance is adopted under authority granted by Sections 59.01, 59.02, 59.03, 59.54(6), 66.0113, 92.07, 92.09, 92.11, 92.15 and 92.16 Wisconsin Statutes.

1.02 Title

This ordinance shall be known as, referred to, and may be cited as the “Adams County Animal Waste Management Ordinance” and is hereinafter known as the Ordinance.

1.03 Findings and Declaration of Policy

A. The Adams County Board of Supervisors finds that storage of animal waste in storage facilities not meeting technical design and construction standards may cause pollution of the surface and groundwater of Adams County, and may have the potential to result in harm to County residents and transients; to livestock, aquatic life and other animals and plants; and to the property tax base of Adams County.

B. The Adams County Board of Supervisors finds that improper management of animal waste storage and improper utilization of animal waste to provide nutrients to plants may cause pollution of the ground and surface waters of Adams County.

C. The Adams County Board of Supervisors finds that the technical standards developed by the United States Department of Agriculture (USDA) Natural Resources Conservation Service provide effective, practical, and environmentally safe methods of storing animal waste and utilizing animal waste to provide nutrients for plants.

1.04 Purpose

The purpose of this ordinance is to regulate the location, design, construction, installation, alteration, closure, and use of animal waste storage facilities; regulate the management of animal waste storage and regulate utilization of animal waste to provide nutrients to plants in order to prevent water pollution and thereby protect the health of Adams County residents and transients; prevent the spread of disease; to further the appropriate use and conservation of land and water resources for its communities; promote the prosperity, aesthetics, safety and general welfare of the citizens of Adams County. It is also intended to provide for the administration and enforcement of this ordinance and to provide corrective actions and/or penalties for its violation.
1.05 **Applicability**

This ordinance applies to the entire geographical area of Adams County, except as otherwise provided by law.

1.06 **Interpretation**

In their interpretation, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Adams County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

1.07 **Severability Clause**

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be rendered ineffective.

1.07 **Effective Date**

This ordinance shall be effective upon adoption by the Adams County Board of Supervisors, and publication.

**Section 2 - Definitions**

A. **Agricultural Waste Management Field Handbook (AWMFH).** A manual that provides specific guidance for planning, designing, and managing systems where agricultural wastes are involved as published by the USDA Natural Resources Conservation Service.

B. **Animal Waste.** Livestock manure and urine, livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal livestock manure handling operations.

C. **Animal Waste Storage Facility.** An impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure specifically for temporary storage of animal waste. Note: an area excavated for the purpose of storing the animal waste, no matter how small the accumulation may be or how long the animal waste is to be stored there, shall be considered a storage facility.

D. **Applicant.** Any person who applies for a permit under this ordinance.
E. **Closed Storage Facility.** Animal waste storage facility for which: The Land and Water Conservation Committee (LWCC) does not grant an extension of the "Idle Animal Waste Storage Facility" declaration, or The livestock operation on the property ceases to exist and the owner applies for a closure permit.

F. **County Conservationist.** Director of Land and Water Conservation Department.

G. **Department of Agriculture, Trade and Consumer Protection (DATCP).** Wisconsin state agency responsible for food safety, animal and plant health, protecting water and soil and monitoring fair and safe business practices.

H. **Engineering Field Handbook (EFH).** A manual of engineering technical data published by the USDA Natural Resources Conservation Service.

I. **Agricultural Engineering Practitioner.** Any person who has been certified by DATCP or NRCS to design, review, provide construction supervision, and certify construction for various soil and water conservation practices to be constructed under the terms of this ordinance.

J. **Existing Animal Waste Storage Facility.** An animal waste storage facility which has been installed and placed in use at a livestock operation in Adams County prior to the adoption of this ordinance.

K. **Feedlot.** A lot or building, or combination of contiguous lots and buildings, intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which animal waste may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure.

L. **Field.** A group or single nutrient management unit with similar soils, cropping history, similar nutrient requirements and close proximity.

M. **Field Office Technical Guide (FOTG) Section IV.** The document provided by the USDA Natural Resources Conservation Service which contains technical data and standards to properly and design and install conservation practices.

N. **Idle Animal Waste Storage Facility.** An animal waste storage facility which:
1. The livestock operation on the property ceases to exist, or
2. Is no longer being used for its intended purpose and no longer having any additional animal waste placed into it, or
3. Animal waste has not been added or removed for a period of 24 months, or
4. Will, by all the evidence available, not again be used to store animal waste by an active livestock operation.
O. **Land and Water Conservation Department (LWCD).** The department of Adams County government, which is responsible for enforcing, and providing technical and administrative support for this ordinance and soil and water conservation activities in Adams County.

P. **Land and Water Conservation Committee (LWCC).** A committee made up of members of the Adams County Board of Supervisors and others who, by authority from Chap. 92, Wisconsin Statutes, determine policy and give direction for soil and water conservation activities. The LWCC also provides direction for the LWCD. The LWCC shall be the decision making board for purposes of this ordinance.

Q. **Livestock operation.** A feedlot or other facility or pasture where animals are fed, confined, maintained and stabled.

R. **Malfunctioning Animal Waste Storage Facility.** An animal waste storage facility which is no longer functioning as originally intended, as defined by the FOTG, AWMFH, or the EFH, and poses a potential threat to any person, the groundwater, any stream, lake or river, or any other component of the environment. A malfunctioning storage facility includes, but is not limited to the following:

1. An animal waste storage facility in which the sidewall(s) or sideslope(s) have been damaged or eroded, which may weaken the structure of the storage facility.
2. An animal waste storage facility where damage, erosion, or deformities may contribute to environmental or safety hazards.
3. An animal waste storage facility in which the animal waste is significantly leaking.
4. An animal storage facility in which any other serious deformity or activity that is not consistent with the design and function of a storage facility as determined by the FOTG, AWMFH, or the EFH.

S. **Manure Transfer System.** A mechanism designed to transfer animal waste from a barn or feedlot to the animal waste storage facility and/or the loading location.

T. **Mismanaged Animal Waste Storage Facility.** An animal waste storage facility which is not functioning properly due to neglect or carelessness and poses a potential threat to any person or the environment. A mismanaged storage facility includes, but is not limited to the following:

1. An animal waste storage facility that is overflowing or is being operated improperly and is inconsistent with the recommended operating methods as defined by the FOTG, AWMFH or the EFH.
2. An animal waste storage facility in which the safety devices are absent or are nonfunctional.
3. An animal waste storage facility that fails to comply with the operations and maintenance plan.
U. **Natural Resources Conservation Service (NRCS).** An agency of the United States Department of Agriculture which provides the Adams County LWCC and LWCD, and landowners with technical and financial assistance for the proper and safe installation or closure of an animal waste storage facility and nutrient management.

V. **NRCS Engineering Job Approval.** A complex process of review and certification by qualified NRCS or DATCP engineers to determine the capability and technical competence of subordinate personnel to design, review, provide construction supervision, and certify construction for various soil and water conservation practices to be constructed under the terms of this ordinance and which may be modified from time to time based upon work experience, educational training, employment status, and competence of those subordinates (see USDA-NRCS National Engineering Manual Title 210, Part 500).

W. **Nutrient Management Plan.** A plan developed according to NRCS Technical Standard 590 that balances the nutrient needs of a crop with the nutrients available from legume crops, manure, fertilizer, etc. The nutrient management plan ensures suitable acreage is available for land application and crop uptake of nutrients.

X. **Nutrients.** Plant nutrients derived from soil reserves, legumes, commercial fertilizers, animal waste, sewage sludge, septage, whey, papermill byproducts or other sources.

Y. **Pasture.** An area devoted to the production of forage, introduced or native, and harvested by grazing.

Z. **Permit.** The signed, written statement, issued by the County Conservationist under this ordinance authorizing the applicant to construct, install, reconstruct, extend, enlarge, close, or substantially alter an animal waste storage facility, and to use or dispose of waste from the facility.

AA. **Permittee.** Any person to whom a permit is issued under this ordinance.

BB. **Person.** Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, County or State agency within Wisconsin, the federal government or any combination thereof.

CC. **Routine Maintenance.** A non-structural replacement or alteration of a portion of an animal waste storage system which does not change the design or operation of the system.
DD. **Safety Design.** Safety design shall identify and minimize the hazards to animals and people. At a minimum, safety design shall include:

1. Fences, gates, grates, or covers to restrict access of animals or people, and signs where access is possible.
2. Ventilation for covered waste-holding structures to prevent the inhalation of poisonous gases, asphyxiation, or explosion.
3. Safety stops, gates, or both installed at push-off ramps and load-out areas of vertical walled structures to prevent accidental entry of machinery.
4. Ramp slopes designed to be consistent with the equipment intended to be used, with curbs or safety bars installed on access ramps.
5. Other like devices deemed necessary by an agricultural or civil engineer registered in the State of Wisconsin, or DATCP or NRCS or LCD agricultural engineering practitioner, the FOTG, AWMFH or EFH.

EE. **Saturated Soil.** When all pores within soil are filled with water and the soil no longer has the capacity to retain water. For the purpose of this ordinance, soils shall be considered saturated when a handful of soil is squeezed by hand and water flows freely from the soil.

FF. **Stop Work Order.** An order to cease any activity in the operation of, or construction of an activity subject to regulation.

GG. **Substantial Alteration.** Any modification to a storage facility that alters the integrity, capacity, or design requirements of the facility.

HH. **Technical Standard 313.** The current practice standard within the FOTG. This standard defines the proper location, design, construction, installation, alteration, operation, maintenance, and closure of a manure storage facility.

II. **Technical Standard 360.** The current practice standard within the FOTG. This standard defines the proper closure of waste impoundments (treatment lagoons and liquid storage facilities), that are no longer used for their intended purpose, in an environmentally safe manner.

JJ. **Technical Standard 634.** The current practice standard within the FOTG. This standard defines design, material types and quality, and installation of components such as conduits, pumps, valves, and other structures or devices to transfer animal waste from buildings and yards to a storage and/or loading area for final disposal and establishes the minimum acceptable requirements for design, construction, and operation of manure transfer system components. It includes mechanical pumping or elevation differential (gravity head) systems.

KK. **Technical Standard 590.** The current practice standard within the FOTG. This standard defines managing the amount, form, placement and timing of plant nutrients and establishes the minimum acceptable requirements for the application of plant nutrients.
LL. **Water Pollution.** Contaminating or rendering unclean or impure the ground or surface 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.

MM. **Water Quality Management Area.** The area within 1000 feet from the ordinary high water mark of a navigable lake, pond or flowage; the area within 300 feet from the ordinary high water mark of a navigable river or stream; a site susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

NN. **Working Day.** Any day the Adams LWCD office is routinely and customarily open for business, except Saturdays, Sundays and official county holidays.

Section 3 - Activities Subject to Regulation

3.01 **General Requirement.**

Any person and/or persons who are employed by another person that: removes, closes, locates, constructs, installs, moves, reconstructs, extends, enlarges, converts, or substantially alters or changes use of an animal waste storage facility or parts thereof; manages animal waste storage; and utilizes animal waste to provide nutrients to plants.

3.02 **Malfunctioning and Mismanaged Animal Waste Storage Facility.**

Any animal waste storage facility found to be malfunctioning and/or mismanaged shall be repaired immediately to a condition meeting the provisions of this ordinance.

3.03 **Idle Animal Waste Storage Facility.**

Removal of animal waste and restoration of an idle animal waste storage facility to a safe and sanitary condition, as determined by the LWCD, is required within one (1) year of the time the storage facility becomes idle. The LWCC may extend the Idle Animal Waste Storage Facility declaration for good cause and such extensions shall not exceed one (1) year increments. In order for an idle animal waste storage facility to become operational, an inspection and report has to be made on it by an agricultural or civil engineer registered in the State of Wisconsin, or DATCP or NRCS or LWCD agricultural engineering practitioner, reviewed and approved by the LWCC, and all deficiencies corrected to current standards, before the storage facility can be put back into use.
3.04 **Existing Animal Waste Storage Facilities.**

Any changes to an existing animal waste storage facility such as closing, moving, reconstructing, extending, enlarging, converting, or substantially altering the use of the facility must meet the current requirements of Standard 313, 360, and 634 of the FOTG or be brought up to those requirements.

3.05 **Safety Devices.**

Certain safety devices, as defined in Section 2(EE) are required on all storage facilities in Adams County.

3.06 **Utilization of Animal Wastes for Plant Nutrients.**

Activities associated with utilizing animal wastes to provide nutrients for plant production. Gardens and lawns associated with home use shall be excluded.

3.07 **Livestock Operations.**

Any feedlot or other facility or pasture where animals are fed, confined, maintained and stabled.

*Note: Pastures that are part of a grazing system where livestock graze for a period of time and then removed, are exempt from this ordinance.*

3.08 **Compliance with Permit Requirements.**

A person is in compliance with this ordinance if he or she follows the procedures and other requirements of this ordinance, receives a permit from the Adams County Land and Water Conservation Department before beginning animal waste storage activities subject to regulation under this section, complies with the requirements of the permit and receives a final construction inspection certification by the enforcing agency.

*Note: Livestock Operations and Utilization of Animal Wastes for Plant Nutrients do not require a permit, however shall be subject to standards stated in Section 4 of this ordinance.*
Section 4 - Standards

4.01 Standards, Specifications and Policies.

The standards of the Field Office Technical Guide (FOTG) Section IV are adopted and by reference made a part of this article as fully set forth therein. Any future amendment, revision or modification of the FOTG incorporated herein is made a part of this article, unless otherwise acted upon by the Land and Water Conservation Committee.

4.02 Standard for Animal Waste Storage Facilities.

The following components of the FOTG will be used when an animal waste storage facility is to be designed, constructed, installed, moved, reconstructed, extended, enlarged, removed, closed, converted, or substantially altered: 313 - Waste Storage Facility; 360 - Closure of Waste Impoundments; 634 - Manure Transfer; and 590 - Nutrient Management.


A. Upon meeting requirements of NR151.09, NR151.095 and ATCP 50.08, all animal waste applied to soils for the purpose of plant production shall follow 590 - Nutrient Management of the FOTG.

Note: NR151.09 and NR151.095 and ATCP 50.08 are included as Appendix F, G and H respectively. These Administrative Codes identify circumstances under which an owner or operator of cropland and/or livestock operation is required to comply with the State performance standards if a bona fide offer of cost sharing is made.

B. Animal wastes applied to a parcel of land shall not exit the property boundaries of that parcel or enter into states waters due to ponding, surface water runoff or drainage.

Note: Parcel property boundaries shall be defined by documents filed with the Adams County Land Information Department.

C. Animal waste shall not be applied to saturated soils.
4.04 Standard for Livestock Operations.

A. Upon meeting requirements of NR151.09, NR151.095 and ATCP 50.08, all livestock operations shall comply with NR151.08 which states a livestock operations shall have:
   a) no overflow of manure storage facilities;
   b) no unconfined manure piles in a water quality management area;
   c) no direct runoff from a feedlot or stored manure into the waters of the state;
   d) may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover.

B. Animal wastes shall not exit the property boundaries of a livestock operation or enter into states waters due to ponding, surface water runoff or drainage.

Note: Property boundaries shall be defined by documents filed with the Adams County Land Information Department.

Section 5 - Application For and Issuance of Permits.

5.01 Fee.

Any person who by this ordinance is required to obtain a permit, shall pay a fee for such permit to help defray the cost of administration, inspection, and processing of permits. The amount of the fee shall be established from time to time by the LWCC.

5.02 Permit Required.

Permits are required for any new storage facilities, existing storage facilities that are closed, substantially altered, malfunctioning or mismanaged and idle storage facilities that desire to be used again. No person may undertake an activity mentioned in the previous sentence without obtaining a permit from the County Conservationist prior to beginning the proposed activity. Requirements of this ordinance shall be in addition to any other rules or provisions regulating animal waste. In case of conflicts, the most stringent provisions shall apply.
5.03 **Exception to Permit Requirement.**

The following constitute exceptions to the requirement under paragraph 5.01 to obtain a permit:

A. Pre-existing storage facility, except where substantially altered, malfunctioning or mismanaged.

B. Routine maintenance on a storage facility.

C. Emergency equipment repairs on a storage facility.

D. Emergency repairs such as repairing a broken pipe, or equipment, leaking dikes, or the removal of stoppages may be performed without an animal waste storage facility permit. If repairs will significantly alter the original design and construction of the facility, a report shall be made to the LWCD within one (1) working day of the emergency for a determination by the LWCD on whether a permit will be required for any additional alteration or repair to the facility. The LWCD's determination shall be rendered within two (2) working days of the reporting. The LWCD may consult with the LWCC prior to making this determination.

E. Livestock Operations and Utilization of Animal Wastes for Plant Nutrients do not require a permit but shall be subject to standards stated in Section 4 of this ordinance.

5.04 **Animal Waste Storage Facility Plan Required.**

Each application for a permit under this ordinance shall include an animal waste storage facility plan. The plan shall be in accordance with the current FOTG Standard 313 and shall be certified as meeting the requirements of this ordinance by an agricultural or civil engineer registered in the State of Wisconsin, or DATCP or NRCS or LWCD agricultural engineering practitioner. The following is the minimum list of plan components:

A. A management assessment is required. As part of this assessment an initial determination will be conducted to demonstrate that suitable land base is available for utilization of waste.

B. The number and kinds of animals for which waste storage is provided, the duration for which storage is to be provided, or daily gallons and/or cubic feet of waste and manure produced.

C. A plan view of the facility and its location in relation to waste transfer inlet, all buildings, roads, wells, lot lines, and other features within three hundred (300) feet of the proposed facility. The plan view shall be drawn to scale, with a scale no smaller than 1 inch = 100 feet.
D. The structural details, including but not limited to dimensions, cross-sections, and concrete thickness, concrete joint design and placement, design loads, design computations, reinforcement schedules, thickness and placement of groundwater protection liners, and all material specifications.

E. The soil test pit locations and soil descriptions to a depth of at least five feet below the planned bottom of the facility.

F. The elevation of seasonally high groundwater or bedrock if encountered in the soil profile and date of any such determination.

G. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater. If a navigable body of water lies within 500' of the facility, the location and distance to the body of water shall be shown. Any flood plains and/or wetlands shall be located also.

H. The scale of the drawing and a north arrow.

I. A time schedule for construction of the facility.

J. A description and construction plan of the method to be used in transferring animal waste into and from the facility.

K. A 590 Nutrient Management Plan: the plan shall specify the utilization of the animal waste, including the amount of land available for application of waste, identification of the areas where the waste will be used, crops, crop rotation, application rates, soil types and any limitation on waste application due to soil limitations, type and proximity of bedrock or water table, slope of land, and proximity of surface water. The plan shall be updated annually and presented to the Adams LWCD annually for the life of the animal waste storage facility.

L. Any other additional information required by FOTG Standard 313 to determine compliance with this ordinance.

5.05 Closure Plan Required.

Each application for a closure permit under this section shall include a closure plan. The plan shall be in accordance with the current FOTG Standard 360, Closure of Waste Impoundments and shall be certified as meeting the requirements of this ordinance by an agricultural or civil engineer registered in the State of Wisconsin, or DATCP or NRCS or LWCD agricultural engineering practitioner. The following is the minimum list of plan components:

A. A description of the type and size of the manure storage facility and an estimate of the amount of manure in the facility.
B. A description of how and where the manure and soil saturated with manure will be land applied in accordance with the current FOTG 590 Nutrient Management Standard.

C. A description of how the liner, if any, will be disposed of.

D. A description of how the manure transfer system will be removed or permanently plugged.

E. A description of how the excavated area will be filled in and where the clean fill will come from.

F. A plan view showing the final grade, the area to be reseeded, and how rain and runoff will be diverted away from the site.

G. Other additional information required by FOTG Standard 360 to comply with this ordinance.

5.06 Review of Application.

The LWCD shall receive and review all permit applications and shall determine if the proposed facility meets required standards set forth in Section 4 of this ordinance. Within 30 working days after receiving the completed application and fee, the LWCD shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the LWCD shall notify the permit applicant. The LWCD has 30 working days from the receipt of the additional information in which to approve or disapprove the application. If the LWCD fails to approve or disapprove the permit application in writing within 30 working days of the receipt of the permit application or additional information, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.

5.07 Permit Conditions.

All permits issued under this ordinance shall be issued subject to the following conditions and requirements:

A. Activities authorized by permit shall be completed within two (2) years from the date of issuance after which such permit shall be void.

B. Animal waste storage facility design, construction, management and utilization activities shall be carried out in accordance with the animal waste facility plan and applicable standards specified in Section 4 of this ordinance.
C. Animal waste storage facility removal or closure shall be carried out in accordance with the animal waste storage facility closure plan and applicable standards specified in Section 4 of this ordinance.

D. The permittee shall give 10 working days written notice to the LWCD before starting any construction activity authorized by the permit.

E. Approval in writing must be obtained from the LWCD prior to any changes or modifications to the approved animal waste facility plan.

F. Prior to use, an agricultural or civil engineer registered in the State of Wisconsin, or DATCP or NRCS or LCD agricultural engineering practitioner and the permittee and if applicable, the contractor, shall certify in writing on forms provided by the LWCD that the storage facility was installed as planned, including as-built dimensions and changes or modifications as authorized per Section 5(E) made during construction.

G. The LWCD shall provide an on-site inspection. Final approval signature for all projects under this ordinance shall be provided by the LWCD.

5.08 Permit Revocation.

The County Conservationist or that person's representative may revoke any permit issued under this ordinance if the holder of the permit has misrepresented any material fact in the permit application, animal waste facility plan or nutrient management plan, or if the holder of the permit violates any of the conditions of the permit.

5.09 Review by Land and Water Conservation Committee.

Any person aggrieved by any action of the LWCD in denying, approving, or revoking a permit under this ordinance may seek review of that action by the LWCC by submitting a written request for such review to the LWCD. If the LWCC takes no action within 30 working days after a request for review has been submitted, the request for review shall be deemed denied. Any decision by the LWCC with respect to a request for review is subject to further appeal as set forth in Section 8.

Section 6 - Administration

6.01 Delegation of Authority.

Adams County hereby designates the LWCD to administer and enforce this ordinance.
6.02 **Administrative Duties.**

In the administration and enforcement of this ordinance, the LWCD shall:

A. Keep an accurate record of all permit applications, animal waste facility plans, nutrient management plans, permits issued, inspections made, and other official actions.

B. Review permit applications and issue permits in accordance with Section 5 of this ordinance.

C. Inspect animal waste facility construction to insure the facility is being constructed according to plan specifications.

D. Investigate complaints relating to compliance with the ordinance.

E. Perform other duties as specified in this ordinance.

6.03 **Inspection Authority.**

Pursuant to authority granted by Section 92.07(14) Wisconsin Statutes, the LWCD is authorized to enter upon any lands affected by this ordinance to inspect the land prior to or after permit issuance to determine compliance with this ordinance. If permission to enter property cannot be received by the LWCD, then entry shall be according to § 66.0118 Wisconsin Statutes. Refusal to grant permission to enter lands affected by this ordinance for purposes of inspection shall be grounds for permit denial or revocation.

6.04 **Enforcement Authority.**

A. The LWCD is authorized to post an order stopping work upon land which has had a permit revoked or is currently undergoing activity in violation of this ordinance. Notice shall be given by both: posting, upon the land where the violation occurs, one or more copies of a poster stating the violation; and, by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order shall specify the activity shall cease or be brought into compliance within a specified time period.

B. Any permit revocation or order stopping work shall remain in effect unless retracted by the LWCC, the LWCD, by a court of competent jurisdiction; or until the activity is brought into compliance with this ordinance. The LWCD is authorized to refer any violation of this ordinance or of an order stopping work issued pursuant to this ordinance to the Corporation Counsel for commencement of further legal proceedings.
Section 7 - Violations

7.01 Penalties.

Any person, who violates neglects or refuses to comply with, or resists the enforcement of any of the provisions of this ordinance, shall be subject to immediate corrective action as determined by LWCD. If immediate corrective action does not occur then upon conviction, forfeiture of not less than $100.00 nor more than $500.00 plus cost of prosecution for each violation shall occur. An unlawful violation includes failure to comply with any standard of this ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense. Upon receipt of a verified report and request from the LWCD, the Sheriff shall issue a citation to a violator pursuant to law for violations of this ordinance.

7.02 Enforcement through Injunction.

As a substitute for forfeiture actions, the County may seek enforcement of any part of this section by court actions seeking injunctions or restraining orders, costs and reasonable attorney fees per Wisconsin State Statute 92.11(5)(a).

Section 8 - Appeals

8.01 Authority.

Under authority of Chapter 68, Wisconsin Statutes, the LWCC shall develop and maintain an appeal process for those persons alleging there is an error in any order, requirement, decision, or determination by the LWCD in administering this ordinance.
Adams County Addendum A
Application for a Permit to Construct an Animal Waste Storage Facility

Town of ___________________________ Permit No. ___________________________ Date ___________________________

Applicant (Landowner) ___________________________ Phone No. ___________________________

Address ___________________________ State ___________________________ Zip ___________________________ Road Name ___________________________

Description:
Govt. Lot ___________________________ 3, ___________________________ 3, Section ___________________________ T ___________________________ N, R ___________________________ E/W

Type of Construction: ___________________________

Does attached plan include:

1) Number and kinds of animals for which storage is provided? Yes Y No N
2) The duration for which storage is provided, or daily gallons of water and manure produced? Yes Y No N
3) A plan view of the facility and its location in relation to buildings and homes? Yes Y No N
4) Scale of drawing and north arrow? Yes Y No N
5) Structural details (dimensions, cross-sections, material specifications)? Yes Y No N
6) Location of any wells near the facility? Yes Y No N
7) Soil test, pit locations, and soil layer descriptions? Yes Y No N
8) Elevation of high groundwater or bedrock, and date determined? Yes Y No N
9) Location and distance of facility to navigable body of water (if within 1000 feet) and provisions for adequate drainage and control of runoff? Yes Y No N
10) Time schedule for construction of the facility? Yes Y No N
11) Description and construction plan of method of transfer into and from the facility? Yes Y No N
12) A 590 Nutrient Management Plan? Yes Y No N

On site assistance provided? Yes Y No N By ___________________________ Date ___________________________

Attached plans reviewed by: ___________________________ Date ___________________________

Approved: Yes Y No N Name ___________________________ Title ___________________________ Date ___________________________

Property owner's statement:

The undersigned hereby makes application for a permit to construct an animal waste facility on the property herein described. The work to be performed is described in the attached plan. The undersigned agrees that all such work shall comply with all applicable animal waste facility standards as set in the Adams County Animal Waste and Manure Management Ordinance, other applicable County Ordinances and the laws and regulations of the State of Wisconsin.

The undersigned also agrees to certify in writing, upon installation of the facility, that the facility was installed as planned. Deviations from the original plan must be reviewed and approved by the County Conservationist prior to installation.

Applicant's Signature ___________________________ Date ___________________________

(Landowner)

For Office Use: Permit issued ________ Permit denied ________ Reason for denial ___________________________

Construction certification received ___________________________
ADDENDUM B
ADAMS COUNTY
CONSTRUCTION CERTIFICATION FORM

Permit No. __________________________ Permittee ______________________________

The undersigned hereby certify that the animal waste storage facility authorized for
construction under permit number _________________ has been installed according to its
approved plan specification.

__________________________________________  ______________________________
(Engineer's signature)  (Date)

__________________________________________  ______________________________
(Permittee's signature)  (Date)

__________________________________________  ______________________________
(Contractor's signature*)  (Date)

__________________________________________  ______________________________
(LWCD signature)  (Date)

*The Contractor's signature is required only if the person installing the animal waste
facility is someone other than the permittee.
Adams County Addendum C
Application for a Permit to Close an Animal Waste Storage Facility

Town of _____________________________ Permit No. ______________________ Fee __________________

Applicant (Landowner) ____________________________ Date __________________

Address _____________________________________________________________________________

Phone No. __________________

City __________________________ State ______ Zip ______ Road Name ____________________________

Description:

Govt. Lot __________, __________ 3, __________ 3, Section __________, __________, __________ N, __________ R, __________ E/W

Type of Construction: __________________________________________________________________

Does attached plan include:

1) A description of the type and size of the manure storage facility and an estimate of the amount of manure in the facility? __________

2) A description of how and where the manure and soil saturated with manure will be land applied in accordance with Technical Standard 590? __________

3) A description of how the liner, if any, will be disposed of? __________

4) A description of how the manure transfer system will be removed or permanently plugged? __________

5) A description of how the excavated area will be filled in and where the clean fill will come from? __________

6) A plan view showing the final grade, the area to be reseeded, and how rain and runoff will be diverted away from the site? __________

7) Other additional information necessary to comply with this ordinance? __________

On site assistance provided? Yes __________ No __________ By __________________________ Date __________________

Attached plans reviewed by: __________________________________________________________________

Approved: Yes __________ No __________ Name __________________________ Title __________________________ Date __________________

Property owner’s statement:

The undersigned hereby makes application for a permit to close an animal waste facility on the property herein described. The work to be performed is described in the attached plan. The undersigned agrees that all such work shall comply with all applicable animal waste facility standards as set in the Adams County Animal Waste and Manure Management Ordinance, other applicable County Ordinances and the laws and regulations of the State of Wisconsin.

The undersigned also agrees to certify in writing, upon closure of the facility, that the facility was closed as planned. Deviations from the original plan must be reviewed and approved by the County Conservationist prior to installation.

Applicant’s Signature ____________________________ Date __________________

(Landowner)

For Office Use:

Permit issued __________ Permit denied __________ Reason for denial __________________________

Closure certification received __________________________
ADDENDUM D
ADAMS COUNTY
CLOSURE CERTIFICATION FORM

Permit No. __________________________ Permittee __________________________

The undersigned hereby certify that the animal waste storage facility authorized for
Closure under permit number __________________ has been closed according to its
approved plan specification.

__________________________________________  __________________________
(Engineer's signature**)  (Date)

__________________________________________  __________________________
(Permittee's signature)  (Date)

__________________________________________  __________________________
(Contractor's signature*)  (Date)

__________________________________________  __________________________
(LCD signature)  (Date)

*The Contractor's signature is required only if the person closing the animal waste
facility is someone other than the permittee.
## ADDENDUM E

PERMIT FLOW CHART

ADAMS COUNTY

ANIMAL WASTE MANAGEMENT ORDINANCE

<table>
<thead>
<tr>
<th>COUNTRY WIDE STORAGE FACILITY</th>
<th>PERMIT</th>
<th>WHEN</th>
<th>FEE**</th>
<th>STANDARDS</th>
<th>ENFORCEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>New</td>
<td>Yes</td>
<td>Yes</td>
<td>*Prior</td>
<td>Yes</td>
<td>Construction</td>
</tr>
<tr>
<td>Preexisting</td>
<td>Yes</td>
<td></td>
<td>* Substantially altered Mismanaged Malfunctioning Idle (after 2 years) Closed</td>
<td>Yes</td>
<td>Construction</td>
</tr>
<tr>
<td>No Functional</td>
<td>No</td>
<td></td>
<td></td>
<td>No</td>
<td>None</td>
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</tbody>
</table>

*Permit needed prior to construction or closure.

**Contact Adams County Land and Water Conservation Department for fee amount.
Addendum F

NR 151.09 Implementation and enforcement procedures for cropland performance standards. (1) PURPOSE.
The purpose of this section is to identify the procedures the department will follow in implementing and enforcing the cropland performance standards pursuant to ss. 281.16 (3) and 281.98, Stats.
This section will also identify circumstances under which an owner or operator of cropland is required to comply with the cropland performance standards. In this section, "cropland performance standards" means performance standards in ss. NR 151.005, 151.02, 151.03, 151.04, and 151.07.
(2) ROLE OF MUNICIPALITIES. The department may rely on municipalities to implement the procedures and make determinations established in this section.
Note: In most cases, the department will rely on municipalities to fully implement the cropland performance standards. The department intends to utilize the procedures in this section in cases where a municipality has requested assistance in implementing and enforcing the cropland performance standards or in cases where a municipality has failed to address an incident of noncompliance with the performance standards in a timely manner. The department recognizes that coordination between local municipalities, the Department of Agriculture, Trade and Consumer Protection and other state agencies is needed to achieve statewide compliance with the performance standards. Accordingly, the department plans on working with counties, the Department of Agriculture, Trade and Consumer Protection and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards that recognizes the procedures in these rules, state basin plans and the priorities established in land and water conservation plans.
Note: The department implementation and enforcement procedures for livestock performance standards relating to manure management are included in s. NR 151.095 and ch. NR 243.
(3) LANDOWNER AND OPERATOR REQUIREMENTS. (a) Introduction.
This section identifies compliance requirements for landowners and operators based on whether the cropland is existing or new and whether cost sharing is required and made available to the landowner or operator.
(b) General requirements. If any cropland is meeting a cropland performance standard on or after the effective date of the standard, the cropland performance standard shall continue to be met by the existing landowner or operator, heirs or subsequent owners or operators of the cropland. If a landowner or operator alters or changes the management of the cropland in a manner that results in noncompliance with the performance standard, the landowner or operator shall bring the cropland back into compliance, regardless of whether cost-sharing is made available. This paragraph does not apply to croplands completing enrollment determined to be existing under sub. (4) (b) 2.
Note: The department or a municipality may use conservation plans, cost share agreements, deed restrictions, personal observations, landowner records, or other information to determine whether a change has occurred.
(c) Existing cropland requirements. 1. A landowner or operator of an existing cropland, defined under sub. (4) (b), shall comply with a cropland performance standard if all of the following have been done by the department:
a. Except as provided in subs. 2. and 3., a determination is made that cost sharing has been made available in accordance with sub. (4) (d) on or after the effective date of the cropland performance standard.
b. The landowner or operator has been notified in accordance with sub. (5) or (6).
2. A landowner or operator of existing cropland, defined under sub. (4) (b), shall comply with a cropland performance standard, regardless of whether cost sharing is available, in situations where the best management practices and other corrective measures are available.
needed to meet the performance standards do not involve eligible costs.

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

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

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

Note: Under s. 281.16 (3) (c), Stats., a landowner or operator may not be required by the state or a municipality through an ordinance to bring existing croplands into compliance with the cropland performance standards, technical standards or conservation practices unless cost–sharing is available in accordance with this section.

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

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

1. An existing cropland is one that meets all of the following criteria:
   a. The cropland was being cropped as of the effective date of the standard.
   b. The cropland is not in compliance with a cropland performance standard in this subchapter as of the effective date of the standard. The reason for non–compliance of the cropland may not be failure of the landowner or operator to maintain an installed best management practice in accordance with a cost–share agreement or contract.

2. An existing cropland also includes land enrolled on October 1, 2002, in the conservation reserve or conservation reserve enhancement program administered by the U.S. department of Agriculture. This subdivision does not apply to croplands re–enrolled after October 1, 2002.

3. A new cropland is one that does not meet the definition under subd. 1. or 2., including:
   a. Land without a previous history of cropping that is converted to cropland after the effective date of the standard. “Without a previous history of cropping” means land where crops have not been grown and have been free of agricultural purposes in the last 10 years prior to the conversion to cropland.
   b. Cropland that is in existence and in compliance with a performance standard on or after the effective date of the standard and that undergoes a change in a cropland practice that results in noncompliance with the performance standards.

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

4. Change in ownership may not be used as the sole basis for determining whether a cropland is existing or new for purposes of administering this subsection.

(c) Eligible costs. 1. If cost sharing is required to be made available under sub. (3) (c), the department shall determine the
total cost of best management practices and corrective measures needed to bring a cropland into compliance with performance standards and shall determine which of those costs are eligible for cost–sharing for the purposes of administering this section and s. 281.16 (3) (e), Stats.

2. The cost–share eligibility provisions identified in chs. NR 153 and 154 shall be used in identifying eligible costs for installation of best management practices and corrective measures.

3. Eligible technical assistance costs include best management practice planning, design, installation supervision, and installation certification.

4. If cost sharing is provided by DATCP or the department, the corrective measures shall be implemented in accordance with the BMPs and technical standards specified in ch. NR 154 or subch. VIII of ch. ATCP 50.

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

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

2. Cost sharing under s. 281.65, Stats., shall be considered available when all of the following have been met:
   a. Cost share dollars are offered in accordance with either of the following: the department has entered into a runoff management grant agreement under ch. NR 153 or a nonpoint source grant agreement under ch. NR 120, and a notice under sub. (5), including any required offer of cost sharing, has been issued by the department or a municipality; or the department directly offers cost share assistance and issues a notice under sub. (5).
   b. The grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., provide at least 70% of the eligible costs to implement the best management practices or other corrective measures for croplands needed to meet a cropland performance standard.
   c. In cases of economic hardship determined in accordance with s. NR 154.03 (3), the grants in subd. 2. a., alone or in combination with other funding determined to be available under subd. 3., provide cost sharing consistent with the hardship determination.

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

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

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

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

3. The following information shall be included in the notice:
   a. A description of the cropland performance standard being violated.
b. The cropland status determination made in accordance with sub. (4) (b).

c. The determination made in accordance with sub. (4) (c) as to which best management practices or other corrective measures that are needed to comply with cropland performance standards are eligible for cost sharing. Note: Some best management practices required to comply with cropland performance standards involve no eligible cost to the landowner or operator and are not eligible for cost sharing.

d. The determination made in accordance with sub. (4) (d) that cost sharing is available for eligible costs to achieve compliance with cropland performance standards, including a written offer of cost sharing.

e. An offer to provide or coordinate the provision of technical assistance.

f. A compliance period for meeting the cropland performance standard.

g. An explanation of the possible consequences if the landowner or operator fails to comply with provisions of the notice, including enforcement or loss of cost sharing, or both.

(b) Compliance schedule. 1. A landowner or operator that receives the notice under par. (a) shall install or implement best management practices and corrective measures to meet the performance standards in the time period specified in the notice, if cost sharing is available in accordance with sub. (4) (d) 2.

2. The compliance period identified in the notice in par. (a) shall be determined by the department as follows:

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

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

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

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

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

(6) Notification requirements and compliance periods for existing croplands in situations when no eligible costs are involved. (a) Landowner notification. 1. The department shall notify a non-complying landowner or operator of existing croplands of the determinations made under sub. (4).

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

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

a. A description of the cropland performance standard that is being violated and the determination that corrective measures do not involve eligible costs under sub. (4) (c).

b. The cropland status determination made in accordance with sub. (4) (b).

c. A compliance period for achieving the cropland performance standard. The compliance period may not exceed the time limits in par. (b).

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

(b) **Compliance period.** 1. The compliance period for existing croplands where best management practices and other corrective measures do not involve eligible costs shall be in accordance with the following:
   a. The compliance period shall begin on the postmark date of the notice or the date of personal delivery.
   b. The length of the compliance period shall be not less than 60 days nor more than 3 years unless otherwise provided for in this subsection.
   c. The length of the compliance period may be less than 60 days if the site is an imminent threat to public health, fish and aquatic life.

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

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

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

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

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

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

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

(a) Contacting a landowner or operator to investigate compliance with cropland performance standards.

(b) Issuing a notice under sub. (5) or (6) to a landowner or operator.

(c) Taking enforcement action under s. 281.98, Stats., against a landowner or operator for failing to comply with cropland performance standards in this subchapter.

(d) Notification is not required if the site is an imminent threat to public health or fish and aquatic life.

History: CR 00-027: cr. Register September 2002 No. 56, eff. 10-1-02; CR 09-112: am. (1), (4) (b) 2., (e) 3. (6) 2. a., c., (5) (b) 2. b., 6. (6) b. 1. b., (7) (b), r. (5) (a) 3. h., (6) (a) 3. e. Register December 2010 No. 660, eff. 1-1-11.
NR 151.095 Implementation and enforcement procedures for livestock performance standards and prohibitions.

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

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

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

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

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

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

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

(b) If the department has determined that the issuance of a NOD to the owner or operator of the livestock operation is warranted.

Circumstances in which a NOD may be warranted include:

1. The department has determined that a livestock facility has a point source discharge under s. NR 243.24.

2. The department has determined that a discharge to waters of the state is occurring and the discharge is not related to noncompliance with the performance standards or prohibitions.

3. The department has determined that a municipality is not addressing a facility's noncompliance with the performance standards and prohibitions in a manner consistent with the procedures and timelines established in this section.

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

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

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

(c) Existing livestock facility requirements. 1. An owner or operator of an existing livestock facility, defined under sub. (5) (b), shall comply with a livestock performance standard or prohibition if all of the following have been done by the department:
   a. Except as provided in subd. 2., a determination is made that cost sharing has been made available in accordance with sub. (5) (d) on or after the effective date of the livestock performance standard or prohibition.
   b. The owner or operator of the livestock facility has been notified in accordance with sub. (6) or (7).

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

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

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

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

(b) Livestock facility status. The department shall classify a non-complying livestock facility on an operation to be either new or existing for purposes of administering this section and s. 281.16 (3) (e), Stats. In making the determination, the department shall base the decision on the following:
   1. An existing livestock facility is one that meets all of the following criteria:
      a. The facility is in existence as of the effective date of the livestock performance standard or prohibition.
      b. The facility is not in compliance with a livestock performance standard or prohibition in this subchapter as of the effective date of the livestock performance standard or prohibition. The reason for noncompliance of the livestock facility may not be failure of the owner or operator to maintain an installed best management practice in accordance with a cost-share agreement or contract.
   2. A new livestock operation or facility is one that does not meet the definition under subd. 1., including:
      a. A livestock operation or facility that is established or installed after the effective date of the livestock performance standard or prohibition, including the placement of livestock structures on a site that did not previously have structures, or placement of animals on lands that did not have animals as of the effective
date of the livestock performance standard or prohibition, unless the land is part of an existing rotational grazing or pasturing operation.
b. For a livestock operation that is in existence as of the effective date of the livestock performance standard or prohibition that establishes or constructs or substantially alters a facility after the effective date of the livestock performance standard or prohibition, the facilities constructed, established or substantially altered after the effective date of the livestock performance standard or prohibition are considered new, except as specified in subd. 3.
c. A livestock facility that is in existence and in compliance with a livestock performance standard or prohibition on or after the effective date of the livestock performance standard or prohibition and that undergoes a change in the livestock facility that results in noncompliance with the livestock performance standard or prohibition. This includes manure storage facilities that fail to meet the requirements of s. NR 151.05(3) and were either: constructed on or after October 1, 2002; or were constructed prior to October 1, 2002, and subject through October 1, 2002, to the operation and maintenance provisions of a cost share agreement.
3. Pursuant to the implementation procedures in this section, if the department or a municipality directs an owner or operator of an existing livestock facility to construct a facility as a corrective measure to comply with a performance standard or prohibition on or after the effective date of the livestock performance standard or prohibition, or directs the owner or operator to reconstruct the existing facility as a corrective measure or on or after the effective date of the livestock performance standard or prohibition, the constructed facilities are not considered new for purposes of installing or implementing the corrective measure.
4. A livestock facility that meets the criteria in subd. 1. and has subsequently been abandoned shall retain its status as an existing livestock facility if livestock of similar species and number of animal units are reintroduced within 5 years of abandonment.
5. Change in ownership may not be used as the basis for determining whether a livestock facility is existing or new for purposes of administering this subsection.
(c) Eligible costs. 1. If cost sharing is required to be made available under sub. (4) (c), the department shall determine the total cost of best management practices and corrective measures needed to bring a livestock facility into compliance with a livestock performance standard or prohibition and shall determine which of those costs are eligible for cost sharing for the purposes of administering this section and s. 281.16 (3) (e), Stats.
2. The cost-share eligibility provisions identified in chs. NR 153 and 154 shall be used in identifying eligible costs for installation of best management practices and corrective measures.
3. Eligible technical assistance costs include best management practice planning, design, installation supervision, and installation certification.
4. If cost sharing is provided by DATCP or the department, the corrective measures shall be implemented in accordance with the best management practices and technical standards specified in ch. NR 154 or subch. VIII of ch. ATCP 50.
Note: Under chs. NR 153 and 154, eligible costs typically include capital costs and significant other expenses, including design costs, incurred by the owner or operator of the livestock operation. Eligible costs do not include the value or amount of time spent by an owner or operator in making management changes.
(d) Determination of cost-share availability. 1. For purposes of administering this section and s. 281.16 (3) (e), Stats., if cost sharing is required to be made available under sub. (4) (c), the department shall make a determination as to whether cost sharing has been made available on or after the effective date of the livestock performance standard or prohibition to cover eligible costs.
for an owner or operator to comply with a livestock performance standard or prohibition.

2. Cost sharing under s. 281.65, Stats., shall be considered available when all of the following have been met:
   a. Cost share dollars are offered in accordance with either of the following: the department has entered into a runoff management grant agreement under ch. NR 153 or a nonpoint source grant agreement under ch. NR 120, and a notice under sub. (6) or under s. NR 243.24 (4), including any required offer of cost sharing, has been issued by the department or a municipality, or the departmen

DEPARTMENT OF NATURAL RESOURCES NR 151.095

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

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ment directly offers cost sharing and issues a notice under sub. (6) or s. NR 243.24 (4).

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

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

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

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

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

Note: Under s. 281.16 (3) (e), Stats., DATCP is responsible for promulgating rules that specify criteria for determining whether cost sharing is available from sources other than s. 281.65, Stats., including s. 92.14, Stats. Pursuant to s. 281.16 (3) (e), Stats., a municipality is required to follow the department’s definition of cost share availability if funds are utilized under s. 281.65, Stats. If funds are utilized from any other source, a municipality shall defer to DATCP’s definition of cost share availability.
being violated.
b. The livestock facility status determination made in accordance with sub. (5) (b).
c. The determination made in accordance with sub. (5) (c) as to which best management practices or other corrective measures needed to comply with a livestock performance standard or prohibition are eligible for cost sharing.
Note: Some best management practices required to comply with a livestock performance standard or prohibition involve no eligible costs to the owner or operator.
d. The determination made in accordance with sub. (5) (d) that cost sharing is available for eligible costs to achieve compliance with a livestock performance standard or prohibition, including a written offer of cost sharing.
e. An offer to provide or coordinate the provision of technical assistance.
f. A compliance period for meeting the livestock performance standard or prohibition.
g. An explanation of the possible consequences if the owner or operator fails to comply with provisions of the notice, including enforcement or loss of cost sharing, or both.

(b) Compliance period. 1. An owner or operator that receives the notice under par. (a) shall install or implement best management practices and corrective measures to meet a performance standard or prohibition in the time period specified in the notice, if cost sharing is available in accordance with sub. (5) (d) 2.
2. The compliance period identified in the notice in par. (a) shall be determined by the department as follows:
a. The compliance period shall begin on the post-mark date of the notice or the date of personal delivery.
b. The length of the compliance period shall be not less than 60 days nor more than 3 years unless otherwise provided for in this subdivision.
c. The length of the compliance period may be less than 60 days if the site is an imminent threat to public health or fish and aquatic life.
d. The department may authorize an extension up to 4 years on a case-by-case basis provided that the reasons for the extension are beyond the control of the owner or operator of the livestock facility. A compliance period may not be extended to exceed 4 years in total.
3. Once an owner or operator achieves compliance with a livestock performance standard or prohibition, compliance with the standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators, regardless of cost sharing.

(7) Notification requirements and compliance periods for existing livestock facilities in situations when no eligible costs are involved. (a) Owner or operator notification. 1. The department shall notify a non-complying owner or operator of an existing livestock facility of the determinations made under sub. (5).
2. The notice shall be sent certified mail, return receipt requested or personal delivery.
3. The following information shall be included in the notice:
a. A description of the livestock performance standard or prohibition that is being violated and the determination that corrective measures do not involve eligible costs under sub. (5) (c).
b. The livestock operation status determination made in accordance with sub. (5) (b).
c. A compliance period for meeting the livestock performance standard or prohibition. The compliance period may not exceed the time limits in par. (b).
d. An explanation of the consequences if the owner or operator
fails to comply with provisions of the notice.

(b) Compliance period. 1. The compliance period for existing livestock facilities where best management practices and other corrective measures do not involve eligible costs shall be in accordance with the following:
   a. The compliance period shall begin on the postmark date of the notice or the date of personal delivery.
   b. The length of the compliance period shall be not less than 60 days nor more than 3 years unless otherwise provided for in this subsection.
   c. The length of the compliance period may be less than 60 days if the site is an imminent threat to public health, or fish and aquatic life.
   2. Once compliance with a livestock performance standard or prohibition is attained, compliance with the performance standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators.

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

(8) ENFORCEMENT. (a) Authority to initiate enforcement. The department may take action pursuant s. 281.98, Stats., or other appropriate actions, against the owner or operator of a livestock operation for failing to comply with the livestock performance standards and prohibitions in this subchapter or approved variances to the livestock performance standards provided by the department under s. NR 151.097.
(b) Enforcement following notice and direct enforcement. The department shall provide notice to the owner or operator of an existing livestock facility in accordance with sub. (6) or (7) prior to the department initiating enforcement action under s. 281.98, Stats., except in cases of repeated mismanagement, such as allowing repeated manure storage overflows, where the department may pursue direct enforcement under s. 281.98, Stats., for the second and subsequent offenses.

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

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

(9) NOTIFICATION TO MUNICIPALITIES. The department shall notify the appropriate municipality, including a county land conservation committee, prior to taking any of the following actions under this subsection:
(a) Contacting an owner or operator to investigate compliance with livestock performance standards and prohibitions.
(b) Issuing a notice under sub. (6) or (7) to an owner or operator.
(c) Taking enforcement action under s. 281.98, Stats., against an owner or operator for failing to comply with a livestock performance standard or prohibition in this subchapter.
(d) Notification is not required if the site is an imminent threat to public health or fish and aquatic life.

History: CR 08-027: cr. Register September 2002 No. 561, eff. 10-1-02, CR 06-112: am. (1) (intro.), (5) (b) 2. c. 5. (c) 3. (d) 2. a. c. (6) (b) 2. h. (7) (b) 1. b. (8) (b), r. (6) (a) 3. h. (7) (d) 3. c. Register December 2010 No. 660, eff. 1-1-11.
ATCP 50.08 Cost–sharing required. (1) General. A landowner is not required to do any of the following, under s. ATCP 50.04, unless the landowner receives a bona fide offer of cost–sharing:

(a) Discontinue or modify cropping practices on existing cropland. In this paragraph, “existing cropland” has the meaning given in s. NR 151.09 (4) (b).

Note: Under DNR rules, a landowner is normally entitled to cost–sharing if the landowner is required to discontinue or modify cropping practices on “existing cropland” in order to comply with a DNR performance standard. Other cropland must comply with relevant DNR performance standards, regardless of the availability of cost–sharing. Under DNR rules:

1. Land qualifies as “existing cropland” if it was being cropped on the effective date of the relevant DNR performance standard, and has never complied with that performance standard since that date.

2. If cropland complies with a DNR performance standard after that standard takes effect, it no longer qualifies as “existing cropland” for cost–share purposes under that performance standard. If the cropland later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost–sharing.

3. Land not cropped on the effective date of a DNR performance standard, but returned to cropping at a later date, may qualify as “existing cropland” if it is returned to cropping within 10 years after cropping was halted.

4. Cropland enrolled in a federal conservation program on October 1, 2002 qualifies as “existing cropland” when it comes out of the federal program. A landowner may be eligible for cost–sharing, even if the landowner is not entitled to cost–sharing under par. (a).

A county has considerable discretion in its use of DATCP cost–share funds; subject to this chapter. See sub. 5 of this chapter.

(b) Discontinue or modify an existing livestock facility or operation. In this paragraph, “existing livestock facility or operation” has the meaning given in s. NR 151.095 (5) (b).

Note: Under DNR rules, a landowner is normally entitled to cost–sharing if the landowner is required to discontinue or modify an “existing” livestock facility or operation in order to comply with a DNR performance standard. Other livestock facilities and operations must comply with DNR performance standards, regardless of the availability of cost–sharing. Under DNR rules:

1. A livestock facility or operation qualifies as an “existing” facility or operation if it existed on the effective date of the DNR performance standard, and has never complied with that performance standard since that date.

2. If a livestock facility or operation complies with a DNR performance standard after that standard takes effect, it no longer qualifies as an “existing” facility or operation for cost–share purposes under that performance standard. If the facility or operation later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost–sharing.

3. A livestock facility that existed but held no livestock on the effective date of a DNR performance standard may qualify as an “existing” facility if it is reestablished within 5 years after livestock were last present.

4. If a landowner voluntarily expands or alters a livestock facility after the effective date of a DNR performance standard, the newly constructed portion of the facility will not qualify as an “existing” facility for cost–share purposes under that performance standard. (There are limited exceptions.)

A landowner may be eligible for cost–sharing, even if the landowner is not entitled to cost–sharing under par. (b). A county has considerable discretion in its use of DATCP cost–share funds; subject to this chapter. See sub. 6 of this chapter.

(2) Cost–share amount. A cost–share offer under sub. (1) shall cover at least 70% of the landowner’s cost to install and maintain each required conservation practice, or 90% of the landowner’s cost if there is an economic hardship under s. ATCP 50.42 (4).

Note: See ss. 92.07 (2), 92.15 (4) and 281.16 (3) (e), Stats. Subsection (1) requires a bona fide offer of cost–sharing, not necessarily an acceptance. A county may impose a reasonable deadline by which a landowner must accept or reject the county’s bona fide cost–share offer under sub. (1). See s. ATCP 50.54 (2) related to cost–sharing for conservation practices required under a county or local ordinance. The minimum cost–share requirement under sub. (1) and (2) does not apply if a landowner voluntarily installs a cost–share practice. In a voluntary transaction, the county is free to negotiate a grant amount with a landowner (up to the maximum amounts provided in s. ATCP 50.42). But if a county requires a landowner to install a conservation practice, the county must comply with applicable cost–share requirements under sub. (1) and (2). The cost–share grant may come from one or more sources, as provided under sub. (7).
(3) Landowner’s Cost. A landowner’s cost to install and maintain a conservation practice includes all of the following that apply:

(a) The landowner’s reasonable and necessary expenditures to install and maintain the conservation practice. This includes eligible installation costs identified in subch. VIII, and costs for engineering services under s. ATCP 50.40 (7).

(b) The reasonable value of necessary labor, equipment and supplies provided by the landowner in the installation and maintenance of the conservation practice. This does not include normal operating routines such as clean-outs of barnyards, storage facilities and gutters.

(c) The reasonable value of mowing provided by the landowner, up to a maximum of 2 mowings per year and $10 per mowing, if that mowing is necessary to maintain the conservation practice.

(d) The landowner’s cost to take or keep land out of agricultural production, if the landowner must take or keep more than 1 acre out of agricultural production in order to install or maintain the conservation practice. The landowner’s cost, determined on the date of the cost-share contract, equals the sum of the annual costs that the landowner will incur over the maintenance period specified in the cost-share contract. The landowner’s annual cost, for each year of the maintenance period, equals the number of affected acres multiplied by the per-acre weighted average soil rental rate in the county on the date of the cost-share contract.

This paragraph does not apply to land directly occupied by a facility or structure, such as a manure storage facility, that a landowner installs as part of the conservation practice.

Note: If a county requires a landowner to install a conservation practice that changes an “existing” agricultural operation, the county must offer cost-sharing. If the cost-share practice is a capital improvement, the landowner must agree to maintain it for at least 10 years. The cost-share contract must pay the required minimum share of the landowner’s cost under sub. (3). If the landowner must take more than 1 acre out of production, the landowner’s cost includes the cost of taking that land out of production.

After the contract maintenance period has expired, the landowner may resume production in the affected area unless the parties enter into a new cost-share contract to keep the land out of production (see sub. (5) (a)). The parties may negotiate the term of each contract, as long as each contract specifies a maintenance term of at least 10 years. If the landowner wishes to take advantage of the CREP-equivalent payment for riparian land under sub. (4), the landowner must agree to keep the land out of production for at least 15 years, or in perpetuity.

The United States department of agriculture, farm service agency, has determined the weighted average soil rental rate for each county, on form CRP-2. See s. ATCP 50.01 (19).

Land is not taken “out of agricultural production,” for purposes of sub. (3), if the landowner is free to use it for pasture, hay production and crop rotation subject to residue management (see s. ATCP 50.01 (14)).

(4) Riparian Land Taken Out of Production; CREP-Equivalent Payment. (a) If a landowner must take or keep more than 1 acre of riparian land out of agricultural production in order to install or maintain a conservation practice, the cost-share offer under sub. (1) for that conservation practice shall be at least equal to the amount that would be offered under the CREP program if the affected lands were enrolled in that program, regardless of whether the lands are actually eligible for the CREP program.

(b) Paragraph (a) does not apply unless the landowner agrees to keep the land out of agricultural production for 15 years, or in perpetuity, under contract terms equivalent to those that apply under the CREP program.

(c) Paragraph (a) does not apply to a cost-share offer made after the CREP program expires.

Note: The CREP program is the combined state—federal conservation reserve enhancement program administered by the department and the United States department of agriculture (see ATCP 50.01 (7)). Under the CREP program, lands are enrolled for 15 years or in perpetuity. Lands enrolled in perpetuity are subject to a permanent conservation easement.

Land is not taken “out of agricultural production,” for purposes of sub. (4) if the
landowner is free to use it for pasture, hay production and cropping subject to residue management (see s. ATCP 50.01(14)).

(d) Paragraph (a) does not apply to land directly occupied by a facility or structure, such as a manure storage facility, that a landowner installs as part of the conservation practice.

(5) EXEMPTIONS. The cost–sharing requirement under sub. (1) does not apply to any of the following:

(a) A conservation practice that has already been cost–shared for at least 10 years. This exemption does not apply to costs under sub. (3) (d).

Note: For example, if a county has already paid a landowner to install and maintain a manure storage system for at least 10 years (see s. ATCP 50.62 (3) (f)), the county may require the landowner to maintain the facility in subsequent years without further cost–sharing.

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cost–sharing. The county has the burden of proving that it has already paid the landowner.

The rule is different if the county requires a landowner to take more than _ acre of land out of agricultural production in order to install or maintain a conservation practice. Even if a county has already paid a landowner to install and maintain that conservation practice for at least 10 years, the county must continue to cost–share lost production if the county requires the landowner to keep the land out of production in subsequent years. Land is not taken “out of agricultural production,” for cost–sharing purposes, if the landowner is free to use it for pasture, hay production and cropping subject to residue management (see s. ATCP 50.01 (14)).

(b) The following conservation practices if those practices have already been cost–shared for at least 4 years:
1. Contour farming as defined in s. ATCP 50.67 (1).
2. Crop land cover as defined in s. ATCP 50.68 (1).
3. Nutrient management as defined in s. ATCP 50.78 (1).
4. Pesticide management as defined in s. ATCP 50.79 (1).
5. Residue management as defined in s. ATCP 50.82 (1).
6. Strip cropping as defined in s. ATCP 50.89 (1).

Note: For example, if a county has already paid a landowner to implement nutrient management for at least 4 years, the county may require the landowner to comply with state nutrient management standards in subsequent years without further cost–sharing. The same holds true for other “soft” practices under par. (b) if those practices are needed to meet the conservation standards under s. ATCP 50.04. The county has the burden of proving that it has already paid the landowner to maintain the conservation practice for at least 4 years.

(c) Conservation practices or costs for which cost–sharing is prohibited under s. ATCP 50.40 (3) (b) or subch. VIII.

(d) Conservation practices or costs to correct a landowner’s criminal or grossly negligent discharge of pollutants to waters of the state.

(e) Conservation practices required by a WPDES permit issued under ch. NR 243.

(6) COMPLIANCE ACTIONS NOT AFFECTED. Subsection (1) does not limit any of the following:

(a) An emergency or interim response to a pollution discharge, to prevent or mitigate imminent harm to waters of the state.

(b) County action under s. ATCP 50.16 (6) to suspend a landowner’s eligibility for farmland preservation tax credits, if the landowner fails to comply with conservation standards under s. ATCP 50.16 (1).

(c) Enforcement of an existing cost–share contract.

(7) COST–SHARE GRANT SOURCES. A grant from any public or private source, or combination of sources, may be counted as part of a cost–share grant under sub. (1). A loan is not a grant.