STATE OF WISCONSIN)
) SS.
COUNTY OF DUNN)

I, Andrew Mercil, County Clerk in and for the County of Dunn, State of Wisconsin, do hereby certify that the attached copy of Ordinance No. 44, **Creation of Chapter 10 of the Code of Ordinances, Environmental Protection and Management, and Subchapter 1 – Agricultural Performance Standards and Manure Storage and Management** is a true and correct copy of the original ordinance on file in the Dunn County Clerk's office.

Given under my hand and seal in the City of Menomonie this 28th day of July, 2021.

Andrew Mercil,
Dunn County Clerk

DUNN COUNTY, WISCONSIN
ORDINANCE NO. 44

Creation of Chapter 10 of the Code of Ordinances, Environmental Protection and Management, and Subchapter 1 - Agricultural Performance Standards and Manure Storage and Management

The Board of Supervisors of the County of Dunn does hereby ordain as follows:

Section 1. Chapter 10 of the Code of Ordinances, entitled "Environmental Protection and Management" is created.

Section 2. Ordinance 00-33, adopted on April 18, 2000 is repealed.

Section 3. Subchapter I of Chapter 10 is created to read as follows:

See Attachment A, incorporated by reference herein, as if fully set forth.

Section 4. This Ordinance shall become effective upon adoption and publication as required by law. (This section shall not be codified.)

Offered this 16th day of June, 2021, at Menomonie, Wisconsin.

Enacted on: July 28th, 2021

Published on: _____

ATTEST:

Andrew Mercil, County Clerk

Approved as to Form and Execution:

Nicholas P. Lange, Corporation Counsel

OFFERED BY THE LAND CONSERVATION COMMITTEE:

Thomas Quinn, Chair

COUNTERSIGNED:

David Bartlett, Chair
Dunn County Board of Supervisors

Background Information: This is a proposed creation of Chapter 10 of the Code of Ordinances, entitled "Environmental Protection and Management." Chapter 10 will contain ordinances adopted by the County Board of Supervisors that relate generally to management and protection of the environment. The ordinance also repeals an uncodified manure management ordinance adopted by the County Board of Supervisors in April 2000 and creates Subchapter 1 of Chapter 10, which is an Agricultural Performance Standards and Manure Storage and Management ordinance.

Public hearings were held before the Land Conservation Committee on December 22, 2020, and May 11, 2021. Based on the information presented at the public hearings, and the language of the proposed ordinance, the Committee recommends adoption.

Attachment A

CHAPTER 10

ENVIRONMENTAL PROTECTION AND MANAGEMENT

Subchapter I – Agricultural Performance Standards and Manure Storage and Management

Attachment A

SUBCHAPTER I

AGRICULTURAL PERFORMANCE STANDARDS AND MANURE STORAGE AND MANAGEMENT

10.01 AUTHORITY. This subchapter is adopted under authority granted by Wis. Stat. §§ 59.02, 59.03, 59.70, 92.07, 92.15 and 92.16, Wis. Admin. Code Chapters ATCP 50 and NR 151.

10.02 JURISDICTION. This subchapter shall apply to all land located within unincorporated areas of Dunn County.

10.03 FINDINGS. The Dunn County Board of Supervisors makes the following findings:
(1) Dunn County's water resources are vital to the high quality of life enjoyed by all who live here. The purity of Dunn County's ground water is essential to the health and welfare of all County residents and visitors and to the health of the County's livestock and agricultural industry. Our lakes, rivers and streams are important to the County's economy, to the health of aquatic life and other animals and plants and to maintaining the recreational opportunities available to all those who spend their free time enjoying Dunn County's natural water resources.

(2) Polluted surface runoff and leachate from improperly designed, constructed, or maintained manure storage facilities, feed storage facilities, unconfined manure piles, animal lots, milking centers, and excessive tillage and land applications of manure and fertilizers have resulted in the delivery of sediment, manure, other waste materials, and nutrients to surface waters and groundwater within Dunn County.

(3) Proper management and storage of animal and other agricultural waste, and proper agricultural practices contributes to the protection of ground and surface waters; public health; plant, animal, and aquatic life; and the property tax base of Dunn County.

(4) The USDA-NRCS Technical Standards adopted in section 10.09 provide effective, practical, and environmentally safe methods of implementing state performance standards and storing, handling, and applying manure.

10.04 PURPOSE AND INTENT. The purpose of this subchapter is to regulate the location, design, construction, installation, alteration, operation, maintenance, closure, and use of manure storage facilities, to ensure the proper storage, handling, and application of manure, to ensure proper closure of all idle manure storage facilities, to control the location of unconfined manure piles, to reduce the delivery of manure, other waste materials, fertilizers, and sediment to surface waters and groundwater, and to prevent the spread of disease and protect the health, safety and general welfare of the citizens of Dunn County through the use of conservation practices and performance standards and prohibitions for agriculture. This subchapter is also intended to provide for the administration and enforcement, and to provide penalties for violation, of the provisions herein.

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

10.06 SEVERABILITY. If any section, provision, or portion of this ordinance is ruled invalid by a court, the remainder of the ordinance shall not for that reason be rendered invalid. If application of any portion of this subchapter to a particular property, building, use, or structure is ruled invalid by a court, such ruling shall not affect the validity of application to any other property, building, use or structure. If any requirement or limitation contained in a permit given under this subchapter is ruled invalid by a court, it shall be presumed that the permit would not have been granted without such requirement or limitation, and therefore, the permit shall also be invalid.

10.07 DEFINITIONS.

(1) For purposes of this subchapter, certain words and terms shall have the following meanings:

Adequate sod: Maintenance of sufficient vegetation types and densities that provide 70% coverage such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.

Agricultural Facility: A structure associated with an agricultural practice.

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

Applicant: Any person who applies for a permit under this Ordinance.

BARNY: The BARNY runoff prediction model which is the NRCS "Evaluation System to Rate Feedlot Pollution Potential" ARM-NC-17 (April 1982 version with modifications as of August 2005).

Best Management Practices: The structural or nonstructural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.

Committee: See Land Conservation Committee.

Construction Permit: The signed, written statement issued by the Division under this Ordinance authorizing the applicant to construct, install, reconstruct, extend, enlarge, substantially alter, close, or re-use a manure storage facility.

Cropland Practice: The method, activity or management measure used to produce or harvest crops.

Direct Conduits to Groundwater: Wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, cenotes, or depressional groundwater recharge areas over shallow fractured bedrock.

Direct Runoff: means any of the following:

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

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

(c) Runoff because of over-application of manure to cropland or pasture that discharges a significant amount of pollutants to surface waters of the state or a direct conduit to ground water.

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

(e) Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with Wis. Admin. Code § NR 154.04(3).

Division: The Land and Water Conservation Division of the Dunn County Environmental Services Department.

Feedlot: A barnyard, exercise area, or other outdoor area where livestock are concentrated for feeding or other purposes and self-sustaining vegetative cover is not maintained. "Feedlot" does not include a winter grazing area or a bare soil area such as a cattle lane or a supplemental feeding area located within a pasture, provided that the bare soil area is not a significant source of pollution to waters of the state as determined by the BARNY runoff prediction model or an equivalent predictive model for manure runoff.

Foot Print of the Liner: The area measured in square feet located beneath the liner of the manure storage facility, including the waste transfer system.

Idle Manure Storage Facility: means a waste and manure storage facility:
(a) Where the livestock operation on the property ceases to exist; or
(b) That is no longer being used for its intended purpose and no longer having any additional animal waste and manure placed into it; or
(c) That has not had any animal waste and manure added or removed for a period of 24 months; or
(d) That will, by all the evidence available, not again be used to store animal waste and manure by an active livestock operation.

Land Application: A process where manure is placed, spread or applied to cropland or pastureland.

Land Conservation Committee (LCC): is a committee made up of members of the Dunn County Board of Supervisors and others who, by authority from Chap. 92, Wis. Stats., determine policy and give direction for soil and water conservation activities and provides direction for the Land and Water Conservation Division.

Land and Water Conservation Division: is a Division of Dunn County Government which is responsible for soil and water conservation activities in Dunn County and is hereinafter referred to as the Division.

Landowner: Any of the following:
(a) A person who owns a parcel of land.
(b) A person who rents, controls, or uses a parcel of land for agricultural purposes.

Livestock: All domestic animals, including deer, elk, or any fenced-in animals.

Livestock Facility: A structure or system constructed or established on a livestock operation.

Livestock Operation: A feedlot or other facility or a pasture where animals are fed, confined, maintained, or stabled.

Livestock Producer: An owner or operator of a livestock operation.

Manure: Livestock excreta. "Manure" includes the following when intermingled with excreta in normal farming operations: debris including bedding, water, soil, hair, and feathers; processing derivatives including separated sand, separated manure solids, precipitated manure sludges, supernatants, digested liquids, composted biosolids, and process water; and runoff collected from barnyards, animal lots, and feed storage areas.

Manure Storage: Physically transferring manure from the livestock production area, feedlot, or place of origin to another location, manure storage facility, or unconfined manure pile. Manure storage does not include transferring manure for land application.

Manure Storage Facility: An impoundment made by constructing an embankment, excavating a pit or dugout, or fabricating or using an existing structure, specifically for the purpose of storing or holding manure and related wastes, including, but not limited to any storage facility previously designed and installed meeting the NRCS Technical Standards current at the time of installation, any commercial-prefabricated storage facility, concrete slabs, earthen dugouts, dikes or any other waste impoundments. A manure storage facility includes all stationary equipment and piping used to load or unload a manure storage facility if the equipment is specifically designed for that purpose and is an integral part of the facility and specifically includes components to transfer waste from milking centers, runoff from barnyards, and leachate and contaminated runoff from feed storage, but does not include equipment used to apply manure to the land. For the purpose of this subchapter, a feedlot or enclosure used for holding livestock is not considered a manure storage facility, except where there is a storage facility constructed below the livestock enclosure.

Natural Resources Conservation Service (NRCS): An agency of the United States Department of Agriculture which, for purposes of this Ordinance, develops and maintains a Technical Guide with conservation practice standards and specifications, engineering manuals and handbooks, and other technical documentation related to manure storage facilities, nutrient management plans, and other technical matters covered by this subchapter.

Navigable Waters: Any body of water that is navigable under the laws of the state as defined in Wis. Stat. § 30.01(4m).

Nutrient Management Plan: A written plan and map developed in accordance with the current NRCS 590 Nutrient Management Standard. The plan balances the needs of a crop with the nutrients available from legumes, manure, and fertilizer. The nutrient management plan is required to ensure that suitable acreage is available for land application of animal waste for crop uptake. The nutrient management plan shall be updated annually and the Nutrient Management Plan Checklist shall be submitted to the Division by April 1 of each year.

Nutrients: Plant nutrients derived from commercial fertilizers, manure, organic wastes, soil reserves, legumes, or other sources.

Ordinary High Water Mark: The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, or other easily recognized characteristics. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

Operation Permit: A written document issued by the Division identifying the performance standard or standards contained in Section 10.09 that have been addressed, whether cost share was offered, and the conditions that are required to maintain compliance with the identified performance standard or standards.

Overflow: has the meaning given in Wis. Admin. Code § NR 151.015(15e).

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

Permit Application: A form supplied by the Division outlining the required items and information that must be included in a plan package that will allow the Division to determine if the standards are being met before a permit is issued.

Permitted Manure Storage Facility: A facility for which a permit has been obtained under this subchapter or under previous county ordinance after October 1, 2002.

Permittee: means any person to whom a permit is issued under this subdivision.

Person: Any individual, owner, operator, corporation, limited liability company, partnership, joint venture, agency, unincorporated association, and municipality, county or state agency within Wisconsin, the federal government, or any combination thereof.

Phosphorous Index or PI: The State's agricultural land management planning tool for assessing the potential of a cropped or grazed field to contribute phosphorus to surface waters.

Pollutant: Any dredged, spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water as defined in Wis. Stat. § 283.01(13).

Pollution: Includes contaminating or rendering unclean or impure the 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.

Post Construction Documentation Report: A report signed by the project engineer and the permittee, and, if applicable, the contractor, certifying that all new or altered manure storage facilities or systems were constructed or installed as planned, including approved modifications, and according the current NRCS Technical Standards. The report shall include as-built drawings, test results, construction notes, and shall identify all changes or modifications made during construction.

Process Wastewater: Wastewater from the production area directly or indirectly used in the operation of animal feeding operation that results from any or all of the following:

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

Project Engineer: An agricultural or civil engineer registered in the State of Wisconsin, or a DATCP or NRCS engineering practitioner.

Recoverable Benchmark: A readily identifiable, relatively permanent benchmark that is intended to maintain its elevation without change over a long period of time and will not be influenced by disturbing activities.

Runoff: Storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

Safety Devices: Constructed measures which are designed to protect humans and livestock from the hazards associated with a storage facility.

Self-sustaining vegetative cover: See "Adequate Sod."

Site that is susceptible to groundwater contamination: Has the meaning under Wis. Stat. § 281.16(1)(g) and Wis. Admin. Code § NR 151.015(18).

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

Stored Manure: Manure that is kept in a manure storage facility or an unconfined manure pile.

Substantially Altered or Significantly Altered: has the meaning in s. NR 151.015(20), Wis. Admin. Code.

Surface Waters: All natural and artificial named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters.

Technical Standards: The written standards and specifications contained in the United States Department of Agriculture (USDA) - Natural Resources Conservation Service (NRCS) Field Office Technical Guide (Technical Guide), Engineering Field Handbook (EFH) and Agriculture Waste Management Field Handbook (AWMFH), including subsequent amendments or additions.

Tolerable Soil Loss or "T": The maximum average annual rate of soil erosion, in tons per year, allowable for particular soils and site conditions that will maintain soil productivity.

Top of Channel: An edge or point on the landscape landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

Unconfined Manure Pile: A quantity of manure at least 175 cubic feet in volume that covers the ground surface to a depth of at least 2 inches and is not confined within a manure storage facility, livestock housing facility or barnyard runoff control facility, or covered or contained in a manner that prevents storm water access, direct runoff to surface water or leaching of pollutants to groundwater.

Waste Transfer System: Components such as pumps, pipes, conduits, valves, and other mechanisms installed to convey manure, leachate and contaminated runoff, and milking center wastes from livestock structures to a storage structure, loading area, or treatment area. Waste transfer system may include permanently installed conveyance systems necessary to transfer material from the source to a storage facility, treatment facility or system, loading area, or cropland, and does not include vehicles, temporary surface pipes or hoses.

Waste Utilization: The land application of manure at an environmentally acceptable rate and in such a manner as to make use of the constituent nutrients for maintenance or improvement of the soil and plant resources.

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.

Water Quality Management Area: Land that includes any of the following; an area within 1000 feet of the ordinary high water mark of a navigable lake, pond, or flowage; an area within 300 feet of the ordinary high water mark of a navigable river or stream; an area that is susceptible to groundwater contamination; or has the potential to be a direct conduit for contamination to reach groundwater.

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

Winter Grazing Area: A cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period of October 1 to April 30.

(2) The definitions contained in Chs. ATCP 50 and NR 151, Wis. Admin. Code, are incorporated by reference and made a part of this subchapter to the extent not fully referenced herein.

10.08 ACTIVITIES AND FACILITIES SUBJECT TO REGULATION.

(1) Manure Storage Facilities and Waste Transfer Systems. Construction, installation, substantial alteration or replacement, change of use of, or closure of any manure storage facility or waste transfer system.

(2) Unconfined Manure Piles. The temporary stacking of manure on the ground surface does not require a permit. The location of unconfined manure piles in water quality management areas is prohibited. Piles shall be field spread and incorporated during the next field season following placement and under no circumstances shall an unconfined manure pile, including composted manure, remain longer than 12 months. Stacks of any size in violation of this subsection shall be removed upon order of the Division, which shall include cleanup or other remediation as determined by the Division.

(3) Feedlots.

(4) Idle Manure Storage Structures.

(5) Nutrient Management and Application. With the exception of the closure of manure storage facilities, those facilities constructed after October 1, 2002, shall be required to comply with nutrient management requirements regardless of cost sharing.

(6) Reuse of an idle facility for which the Committee has approved retention under section 10.09(9)(c)2.

(7) Performance Standards and Prohibitions. Any person who stores manure, or owns or operates a cropland practice or livestock operation in Dunn County is subject to the performance standards and prohibitions in section 10.09, regardless of whether they have received a permit under this ordinance.

10.09 PERFORMANCE STANDARDS AND PROHIBITIONS

(1) The Wisconsin NRCS Technical Guide Standards are hereby adopted and made part of this ordinance.

(2) Sheet, Rill, and Wind Erosion. All land where crops and feed are grown, including pastures, shall be managed to achieve a soil erosion rate equal to or less than the "tolerable" (T) rate established for that soil by the USDA-NRCS.

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

(4) Phosphorus Index. All cropland, pastures, and winter grazing areas must meet the Wisconsin Phosphorus Index (PI) established in Wis. Admin. Code § NR151.04 including where the PI applies, the methods for calculating the PI, and acceptable PI runoff levels. A nutrient management plan meeting the standard in Wis. Admin. Code § ATCP 50.04 (3) may be used to demonstrate compliance with Wis. Admin. Code § NR 151.04.

(5) Nutrient Management.

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

(b) This performance standard does not apply to industrial waste and byproducts regulated under Ch. NR 214, Wis. Admin. Code, municipal sludge regulated under Ch. NR 204, Wis. Admin. Code, or septage regulated under Ch. 113, Wis. Admin. Code.

(c) Nutrient management plans are required on pastures unless exempt as established in Wis. Admin. Code § ATCP 50.04(3)(b).

(d) Manure, commercial fertilizer, and other nutrients shall be applied in conformance with a nutrient management plan as established in Wis. Admin. Code § ATCP 50.04(3).

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

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

1. Unless otherwise provided in this subsection, the plan shall be designed to manage soil nutrient concentrations so as to maintain or reduce delivery of nutrients contributing to the impairment of impaired surface waters and to outstanding or exceptional resource waters.
2. The plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.
3. For lands in watersheds containing exceptional or outstanding resource waters, the plan may allow an increase in soil nutrient concentrations if the plan documents that any potential nutrient delivery to the exceptional or outstanding resource waters will not alter the background water quality to the exceptional or outstanding resource waters. For lands in watersheds containing impaired waters, the plan may allow an increase in soil nutrient concentrations if a low risk of delivery of nutrients from the land to the impaired water can be demonstrated.

(g) In this subchapter, impaired surface waters are waters identified as impaired pursuant to 33 U.S.C. § 1313(d)(1)(A) and 40 C.F.R. § 130.7. Outstanding and Exceptional Resource Waters are defined in Wis. Admin. Code Ch. NR 102.

(h) Each year prior to April 1 an updated nutrient management plan and checklist shall be submitted to the Division by all producers, covering all cropland and pasture land receiving nutrients.

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

(7) Manure Management Prohibitions. All livestock producers shall comply with this section as follows:

(a) A livestock operation shall have no overflow of manure storage structures.

(b) A livestock operation shall have no unconfined manure piles within a water quality management area.

(c) A livestock operation shall have no direct runoff from a feedlot or stored manure to waters of the state. Stored manure not contained within a manure storage facility shall meet the standards for stacking or piling manure.

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

(8) Process Wastewater Handling. All livestock producers shall comply with this section.

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

(b) The Land and Water Conservation Division shall consider all of the following factors when determining whether a discharge of process wastewater is a significant discharge to waters of the state:

1. Volume and frequency of the discharge.
2. Location of the source relative to receiving waters.
3. Means of process wastewater conveyance to waters of the state.
4. Slope, vegetation, rainfall, and other factors affecting the likelihood of process wastewater discharge to waters of the state.
5. Available evidence of discharge to a surface water of the state or to a direct conduit to groundwater.
6. Whether the process wastewater is discharged to a site that is defined as a site that is susceptible to groundwater contamination.
7. Other factors relevant to the impact of the discharge on water quality standards of the receiving water or to groundwater standards.

(9) Manure Storage Facilities.

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

(b) New construction and alterations.

1. New or substantially altered manure storage facilities shall be designed, constructed, and maintained to minimize the risk of structural failure of the facility and to minimize leakage of the facility in order to comply with groundwater standards. The levels of materials in the storage facility shall not exceed the margin of safety level. Storage facilities that are constructed or significantly altered on or after January 1, 2011, shall be designed and operated to contain the additional volume of runoff and direct precipitation entering the facility as a result of a 25-year, 24-hour storm.
2. A new manure storage facility means a facility constructed after October 1, 2002.
3. A substantially altered manure storage facility is a manure storage facility that is substantially altered after October 1, 2002.

(c) Closure.

1. Closure of a manure storage facility shall occur when an operation where the facility is located ceases operations or manure has not been added or removed from that facility for a period of 24 months. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters.
2. The owner or operator may retain the facility for up to an additional 24 month period by demonstrating to the Committee that all of the following conditions are met:
   a. The facility has been designed, constructed and maintained in accordance with section 10.09(9)(b).
   b. Retention of the facility is warranted based on anticipated future use.

(d) Existing Facilities. Manure storage facilities in existence as of October 1, 2002, that pose an imminent threat to public health or fish and aquatic life, or are causing a violation of groundwater standards, shall be upgraded, replaced, or abandoned in accordance with this section. Levels of materials in manure storage facilities shall not exceed the margin of safety level.

(10) Human Household Wastewater and Human Waste. Human household wastewater and human waste shall not be discharged into manure storage facilities.

(11) Industrial waste and byproducts shall not be discharged into an existing manure storage facility, except in accordance with Ch. NR 214, Wis. Admin. Code.

10.10 INTERPRETATION OF STANDARDS

(1) Standards for Evaluating Sheet, Rill, and Wind Erosion. The standards for evaluating sheet, rill, and wind erosion shall be the Revised Universal Soil Loss Equation II (RUSLE2) equation or the Wind Erosion Prediction System (WEPS) models published by NRCS. Copies of RUSLE2 and the WEPS models are on file with the Land and Water Conservation Division.

(2) Standards for Design and Construction of Manure Storage Facilities. The standards for design and construction of manure storage facilities shall be the current standards in the NRCS Technical Guide, including but not limited to 313 Waste Storage Facility; 367 Roofs and Covers; 520 Pond Sealing or Lining, Compacted Soil Treatment; 521 Pond Sealing or Lining, Geomembrane or Geosynthetic Clay Liner; 522 Pond Sealing or Lining, Concrete; 558 Roof Runoff Structure; 634 Waste Transfer; and, 629 Waste Treatment and any amendments to these standards.

(3) Standards for Nutrient Management. The standards for management of manure and nutrients applied to cropland and pastures shall be the current standards in the NRCS Technical Guide, including 590 Nutrient Management and any amendments.

(4) Standards for Closure of Manure Storage Facility. The standards for closure of an unused manure storage facility shall be the current standards in the NRCS Technical Guide, including 360 Closure of Waste Impoundments and any amendments.

(5) Standards for Stacking or Piling Manure. The standards for stacking or piling manure shall be the current standards in the NRCS Technical Guide, including 318 Short Term Storage of Animal Waste and By-Products and 313 Waste Storage Facility and any amendments.

(6) Standards for Determination of Significant Discharge and Direct Runoff. The standards for determination of direct runoff shall be the "BARNY runoff prediction model" which is the NRCS "Evaluations System to Rate Feedlot Pollution Potential," ARM-NC-17 (April, 1982, version with modifications as of August, 2005, or an equivalent predictive model for manure runoff as approved by the Land and Water Conservation Division. An electronic spreadsheet version of the BARNY model is available at https://datcp.wi.gov/Documents/BARNYSpreadsheet.xls.

(7) Standards for the Determination of Adequate Sod or Self-Sustaining Vegetative Cover. Standards for determination of adequate sod or self-sustaining vegetative cover shall be the standards outlined in the NRCS Technical Guide 528 Prescribed Grazing, and any amendments, or vegetative measurement by grid sample shall show at least 70 percent living plant material cover.

(8) Subsequent Modification of Standards. The standards of the NRCS Technical Guide are adopted and by reference made a part of this section as if fully set forth herein. Any future amendment, revision or modification of the standards incorporated herein are made a part of this section. Copies of the current standards are available at the Land and Water Conservation Division Office.

10.11 COST SHARE REQUIREMENT. An owner or operator of an agricultural facility or practice that is in existence before October 1, 2002, may not be required to comply with the performance standards, prohibitions, conservation practices or technical standards under this subchapter unless cost-sharing is available from any source, to the owner or operator. A determination that cost-sharing is available to meet the performance standards, prohibitions, conservation practices or technical standards under this subsection will be determined in accordance with Wis. Admin. Code §§ NR 151.09(4)(d) or NR 151.095(5)(d) when funding is provided under Wis. Stat. § 281.65, and will be determined in accordance with Wis. Admin. Code Ch. ATCP 50 when funds are from any other source. Cost sharing under this section is only required for the minimum practice necessary to meet the performance standards and prohibitions.

10.12 APPLICATION FOR AND ISSUANCE OF PERMITS.

(1) Permit Required. Except as otherwise provided in this subchapter, no person may undertake any activity subject to this subchapter without first obtaining a Manure Storage Facility Permit from the Division. Applications for a permit under this subchapter shall be on a form approved by the Committee.

(2) Compliance. A person is in compliance with this subchapter if the procedures specified herein have been followed and a Manure Storage Facility Permit from the Division has been issued prior to commencing activities subject to regulation.

(3) Exceptions to Permit Requirement.

(a) Emergency repairs such as repairing broken pipes or equipment, leaking dikes, or the removal of obstructions may be performed without a permit. If such repairs alter the original design and construction of the facility, the person who initiates such repairs shall make a report to the Division within 10 days of the emergency for a determination on whether a permit will be required for any additional alteration or repair.

(b) Activities not related to manure storage facilities.

(4) Plan Requirements. Each application for a permit under this ordinance shall include a plan package signed and stamped by the project engineer completed in accordance with the Permit Application.

(a) Manure Storage Construction Plan Requirements. A complete permit application for a new or altered storage facility shall meet or exceed the minimum established limits and specific criteria within NRCS Technical Standard 313 Waste Storage Facility, and additional Technical Standards, including, but not limited to; 367 Roofs and Covers; 520 Pond Sealing or Lining, Compacted Soil Treatment; 521 Pond Sealing or Lining, Geomembrane or Geosynthetic Clay Liner; 522 Pond Sealing or Lining, Concrete; 558 Roof Runoff Structure; 634 Waste Transfer; and 629 Waste Treatment where they apply. The plan shall include all the following:

1. The number, type, and size of animals for which storage is provided and the duration for which storage is to be provided.
2. The type and amount of bedding to be used in the operation and all aspects of handling and recovery of this bedding material.
3. The type and quantity of flush water, milk house waste, or other additives which will be added to the manure storage facility.
4. A general location map drawing of the site which shall include the location of structures in relation to buildings, homes, property lines, roads, wells, karst features, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, floodplains, or wetlands within one thousand (1,000) feet of the proposed facility or system. The map will include the scale of the drawing, a north arrow, and the date the general location map was prepared.
5. The soil test pit locations, elevations, and soil descriptions to a depth as required for the planned structure according to the NRCS Technical Standard 313 Waste Storage Facility. Soil test pits must be verified by land conservation division staff at the time of investigation.
6. The elevation of groundwater, bedrock or seasonally saturated conditions if encountered in the soil profile and the date of any such determinations.
7. Engineering design drawings of the manure storage facility or waste transfer system which shall include:
   a. Specific design components that shall comply with NRCS Technical Standard 313 Waste Storage Facility, and additional applicable NRCS Technical Standards such as 634 Waste Transfer.
   b. A recoverable benchmark(s) including elevation(s) expressed in feet and hundredths.
   c. The scale of the drawings and the north arrow. The engineering design drawing shall be drawn to a scale no smaller than one (1) inch equals one hundred (100) feet.
   d. The date the engineering design drawings were prepared.
8. The structural details, including but not limited to dimensions, cross-sections, concrete thickness, concrete joint design and placement, design loads, design computations, reinforcement schedules, thickness and placement of groundwater protection liners, and all material specifications.

9. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater.
10. Estimated start of construction and construction schedule.
11. A construction quality assurance plan as defined in Technical Standard 313.
12. A safety plan that identifies hazards to animals and people in the production area, and design features to minimize those hazards.
13. An operation and maintenance plan for installed practices.
14. An emergency response plan identifying the names and phone numbers of individuals or others to be notified in the event of any leaks, spills or other system failures that could discharge manure.
15. A certification by a professional engineer registered in the State of Wisconsin, or an engineering practitioner certified by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or the NRCS that the plans meet technical and ordinance standards.
16. A nutrient management plan that complies with Wis. Admin. Code § ATCP 50.04. The nutrient management plan must be prepared by a nutrient management planner qualified under Wis. Admin. Code § ATCP 50.04(3)(c) and submitted prior to issuance of the Construction Permit. If the nutrient management plan indicates manure will be applied to land not owned by the applicant, the applicant shall provide a copy of a lease, manure spreading agreement, or written proof of land availability to the Division upon request. The nutrient management plan must be based on current soil analyses that comply with Wis. Admin. Code § ATCP 50.04. If current soil analyses are not available due to frozen soils or other conditions beyond the control of the applicant, the land conservation division may accept, at its discretion, an incomplete nutrient management plan at permit submission. A complete nutrient management plan that complies with Wis. Admin. Code § ATCP 50.04(3)(d) must be submitted and an Operation Permit must be issued prior to use of the manure storage facility.
17. Any other additional information required by the Division to protect water quality and determine compliance with this section.

(b) Manure Storage Facility Closure Application Requirements. A complete permit application for waste storage facility closure shall meet all standards as outlined in NRCS Technical Standard 360 Waste Facility Closure and shall specify:

1. Provisions to remove and properly dispose of all accumulated wastes in the manure storage facility.
2. Provisions to remove any concrete or synthetic liner, or properly use pieces of the concrete or synthetic liner as clean fill at the site.
3. Provisions to remove and properly dispose of any soil saturated with waste from the manure storage facility.
4. Provisions to remove any soils to the depth of significant manure saturation. When contaminated soils are found, they must be removed to the extent necessary with a minimum depth of 6 inches.
5. Provision to remove or permanently plug the waste transfer system serving the manure storage facility.
6. Covering all disturbed area with topsoil, seeding the areas with a grass mixture, and mulching the seeded area. This section does not apply if an alternative use of the site is authorized under a closure plan approved by the county as part of the permit.

7. Any other additional information required by the land conservation division to protect water quality and determine compliance with this section.

(5) Review of Application. The Division shall receive and review all permit applications to determine if the proposed facility and nutrient management plan meet the required standards as set forth in section 10.09.

(a) If additional information is required, the Division shall notify the applicant.

(b) The Division shall receive and review all permit applications and within 30 days of receiving a permit application and fee the Division shall notify the applicant whether the application is complete. If the application is not complete, the notice shall describe the additional information needed. Within 14 days after the applicant provides all of the required information, staff shall notify the applicant that the application is complete. The Division has 60 days from receipt of the additional information in which to approve or disapprove the application. If the applicant receives no response within 60 days of a complete application determination, the application will be considered approved and the applicant may proceed as if a permit had been issued.

(c) Approval of such plans may be conditional based on site specific requirements determined by the Division.

(6) Permit Conditions. All permits issued under this subchapter shall be issued subject to the following conditions and requirements:

(a) All new or altered manure storage facilities will be located, designed, and constructed in accordance with the standards specified in section 10.09.

(b) All idle manure storage facilities will be closed in accordance with the standards specified in section 10.09.

(c) Any modification to an approved facility plan must be approved in writing by the Division.

(d) All activities authorized by permit must be completed within 2 years from the date of issuance after which time such permit shall be void. Permits may be extended upon written request of the applicant, subject to the corresponding fee, with approval from the Division.

(e) The permittee shall give 3 working days' notice to the Division before starting any construction or closure activity authorized by the permit.

(f) Within 60 (sixty) days after construction is complete, the project engineer shall provide a Post Construction Documentation Report to the Division.

(g) After receiving and reviewing a complete Post Construction Documentation Report, the Division will issue an Operation Permit.

(h) No permitted manure storage facilities may receive manure until the Division provides approval. No manure may be emptied from a manure storage facility until the Division approves the nutrient management plan submitted by the applicant.

10.13 FEES.

(1) Fees required by this subchapter shall be established and modified by the Land Conservation Committee and incorporated into a fee schedule maintained by the Division.

(2) No fee will be assessed for permits to close idle manure storage facilities or if the applicant is subject to a Dunn County Livestock Siting Permit.

(3) If any activity requiring a permit is commenced prior to obtaining the permit, the Division shall charge a fee equal to four (4) times the required fee in order to partially recover the cost of obtaining compliance. Such fee shall not release the responsible party from full compliance with this subchapter, nor from prosecution for violation of this subchapter.

(4) Fees are non-refundable.

(5) All fees are payable upon submission of a permit application or request for an appeal.

10.14 PERMIT REVOCATION. The Division may revoke any permit issued under this subchapter if the person issued the permit has misrepresented any information in the permit application or manure storage facility plan, or if the person violates any of the conditions of the permit.

10.15 ADMINISTRATION.

(1) Administrative Authority. The Division shall administer this ordinance based upon technical review and assistance from the NRCS and Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP), engineering staff.

(2) Administrative Duties. In the administration and enforcement of this ordinance, the Division shall have the following powers and duties:

(a) Review permit applications, issue permits, and inspect properties for compliance with this subchapter and related Wisconsin Statutes and Wisconsin Administrative Code provisions.

(b) Advise applicants concerning the provisions of this subchapter and provide technical assistance and oversight to applicants in preparing permit applications.

(c) Keep records of all permit applications, animal waste storage facility plans, nutrient management plans, permits issued, inspections made, and other official actions.

(d) Inspect animal waste storage facility construction to ensure a facility is being constructed according to plan specifications.

(e) Investigate violations and complaints, and enforce this subchapter.

(f) For purposes of inspection, obtain and execute special inspection warrants under Wis. Stat. § 66.0119.

(g) Upon determination of noncompliance with a permit, this subchapter, or applicable Wisconsin law, revoke or suspend any permit and issue cease and desist orders requiring the cessation of any construction, alteration, use or operation of an manure storage facility until compliance is obtained.

(h) Perform other duties as specified in this ordinance.

(3) Entry and Inspection Authority. The Division shall be authorized to enter upon any lands affected by this subdivision to inspect a site to determine compliance with this subdivision, pursuant to the authority granted under Wis. Stat. § 92.07(14).

(a) Before engaging in any inspection, staff shall seek permission from the owner, operator, or authorized agent thereof, to inspect.

(b) Submitting an application for a Construction Permit or Operation Permit shall constitute the owner/operator's consent for Division staff to enter and inspect the premises for purposes of the application process. In this situation, no applicant may refuse entry to an existing or proposed manure facility or operation, subject to (c) below.

(c) Staff shall present to the owner, operator, or authorized agent, appropriate credentials identifying them as a representative of Dunn County.

(4) Except as provided in section 10.09(9)(c)2., no variance from the provisions of this subchapter shall be granted.

10.16 ENFORCEMENT. The Division is authorized to enforce this subdivision by any of the following:

(1) Issue a notice of violation and request that specified corrective action be taken within a specified time.

(2) Post a stop work order on land that has had a permit revoked or is currently undergoing activity that is violating this subdivision. Notice shall be given to a violator of this subdivision by both posting one or more copies of a legal notice on the site stating the violation and by mailing the landowner a copy of the order. The order shall specify that the activity shall cease immediately. Any permit revocation or order stopping work shall remain in effect until retracted by the Committee, the Division, or by a court of competent jurisdiction.

(3) Issue a citation to a violator of any provision of this ordinance or a stop work order, or upon failure to timely correct a violation listed within a written notice of violation.

(4) Request the Corporation Counsel Office to commence legal proceedings seeking appropriate relief, including, but not limited to, forfeitures, injunctive relief, or repair, remediation, or removal of facilities.

(5) Violations. A violation includes any failure to comply with any standard of this subdivision or with any condition or qualification attached to any permit or any failure to comply with notice of a permit revocation or stop work order. Each day that a violation exists or continues constitutes a separate offense.

(6) 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 a forfeiture of not less than $10 per violation nor more than $500 per violation and or be subject to injunctive relief.

10.17 APPEALS FROM ADMINISTRATIVE DECISIONS.

(1) Appeal Authority. The Dunn County Land Conservation Committee shall hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination by the Division in administering this subchapter.

(2) Who May Appeal. Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision, or determination for which review is sought.

(3) Procedure. An appeal shall be made by written request mailed or delivered to the Dunn County Land Conservation Committee, c/o Dunn County Land & Water Conservation Division. The request shall identify the appellant, specify the decision sought to be reviewed, and state the factual and legal grounds upon which it is contended that the decision should be modified or reversed. A filing fee for the appeal shall be submitted with the request. The fee must be paid and appeal request filed within 20 calendar days from the issuance of the decision or appeal is barred. The burden of proof is with the appellant. The Committee shall review the determination under appeal within 45 days of the fee being paid and the appeal request being filed. Any party to an appeal may seek judicial relief from the decision pursuant to and in accordance with Wis. Stat. § 68.13.