

CAFO REVIEWABLE FACILITIES or SYSTEMS CHECKLIST

Attachment: FREQUENTLY ASKED QUESTIONS (does not need to be returned to DNR)

Q: What if an existing or proposed CAFO chooses to begin construction of reviewable structures or systems before the plans and specifications are approved?

A: The owner is taking significant risk, because the location or design may not be approvable. As a result, the owner may incur excess costs to correct deficiencies. In addition, the owner may be subject to enforcement, because construction without an approval is a violation of ch. NR 243.15, Wis. Adm. Code, and is also a violation of the CAFO WPDES Permit if the operation is permitted. Keep in mind, a proposed CAFO means an operation that has submitted a WPDES Permit application (complete or incomplete).

Q: What construction can an existing or proposed CAFO begin before the plans and specifications are approved?

A: Prior to approval of plans and specifications, allowable earth moving activities in preparation for reviewable structures or systems are limited to clearing, grubbing and rough grading (see NR 108.03(2), Wis. Adm. Code).

- Examples of grubbing and grading activities include: grading for site erosion control features, removing trees and stumps, stripping topsoil, and constructing access roads. Grubbing and grading does not include any of the following: placement of liner materials, concrete forms, or fill materials for reviewable structures.
- Approval is not needed for borrow excavation to obtain fill needed for non-reviewable structures or systems, even if the excavation occurs in an area where reviewable structures (ex: manure storage lagoon) will later be located.
- If ≥ 1 acre will be disturbed, a WPDES Stormwater Construction Site General Permit (Stormwater Permit) must be obtained prior to beginning soil disturbance activities.

Q: How long does it take to obtain DNR approval of plans and specifications?

A: Once DNR receives a complete submittal, review time of at least 45 days can be expected, and 90 days is the maximum allowed by law. The DNR issues decisions as soon as possible. However, the review process is different if a WPDES Permit application or an Environmental Analysis (EA) is required.

Q: If a new WPDES Permit or EA is required, what is the impact on the plans and specifications review?

A: If a WPDES Permit application or EA is required, they must be complete before the plans and specifications are complete. Also, if an EA is required, DNR cannot issue a decision on the plans and specifications until one of the following occur:

- 1) The EA is final (public comment period is over, public comments have been considered, and the final EA is signed); or
- 2) 90 days have lapsed since DNR received a complete plans and specifications submittal (including information needed to make a WPDES Permit application and EA complete).

Q: What level of Nutrient Management (NMP) planning is needed prior to applying for a WPDES Permit?

A: Revisions to ch. NR 243, Wis. Adm. Code, effective in 2007 increased the information needed for a WPDES Permit application. In particular, owners should be aware that a complete nutrient management plan (not preliminary) must be submitted to make their WPDES Permit and EA information complete.

Q: How will I know if an EA is required and who prepares it?

A: Ch. NR 150, Wis. Adm. Code, describes the level of environmental review required based on project type and size. A significant expansion in animals triggers the need for an EA, and in most cases an EA is required when a farm first applies for a CAFO WPDES Permit. DNR Regional Staff implement EA requirements and can provide further information. Although an EA is prepared by DNR, an applicant must first submit a completed EA questionnaire, which helps DNR determine if an EA is required.

Q: Why are certain requirements listed on the CAFO REVIEWABLE FACILITIES or SYSTEMS CHECKLIST different than NRCS Standards?

A: NRCS Standards have been developed for small farms. For CAFOs, Wisconsin also requires compliance with ch. NR 243, Wis. Adm. Code.

Q: What if a livestock operation intends to become a CAFO, but has not submitted an application for a CAFO WPDES Permit - then can construction proceed without an approval?

A: Depending on the circumstances, it may be legal, but DNR discourages this practice and owners should recognize they are taking significant extra risk. Prior to applying for a WPDES Permit, facilities and systems reviewable under ch. NR 243, Wis. Adm. Code, may be constructed without approval of plans and specifications, because the facilities and systems do not become subject to review under ch. NR 243, Wis. Adm. Code, until a WPDES Permit has been applied for (complete or incomplete). The following related issues should be considered:

- Ch. NR 243, Wis. Adm. Code, requires operations to submit an initial permit application 12 months before the increase in animals is expected.
- Previously constructed facilities and systems (regardless of age) will be subject to engineering evaluation at the owner's expense and review by the DNR.
- The owner may incur excess capital and operational costs to correct deficiencies caused by poor planning, particularly if the location or design doesn't meet ch. NR 243, Wis. Adm. Code, requirements and cannot be easily modified to meet those requirements.

The DNR advises owners to refrain from constructing facilities intended for expansion to become a CAFO until they have submitted a complete WPDES Permit application, including plans and specifications for new facilities and system, and have obtained written approval from DNR

Q: What types of projects at a CAFO require submittal of plans and specifications, and DNR review and approval?

A: Plans and specifications must be submitted for structures and systems regulated under ch. NR 243, Wis. Adm. Code, Subchapter II. "Reviewable facility or system" is defined in s. NR 243.03(56), Wis. Adm. Code. Reviewable proposed structures and systems (and modifications to them) are covered under s. NR 243.15, Wis. Adm. Code, and reviewable proposed operational changes are covered under s. NR 243.17, Wis. Adm. Code. Evaluations of existing structures are covered under s. NR 243.16, Wis. Adm. Code. The table, "Reviewable Project Type", on p. 1 of the CAFO REVIEWABLE FACILITIES or SYSTEMS CHECKLIST, includes the most common types of reviewable projects.

NEW Q: When is an assessment of the need for leak detection, monitoring and secondary containment required?

A: The assessment is required to be included with plans and specifications for any storage facility, in accordance with s. NR 243.15(3) & (3)(c), Wis. Adm. Code. Greatest assessment effort is warranted for sites with high risk of impact to surface water or groundwater, in the event the storage facility suffers catastrophic failure or significant leakage. DNR may require leak detection, monitoring or secondary containment based on considerations in s. NR 243.15(3)(c)2, Wis. Adm. Code, the most common of which are 2.a. (minimal separation to groundwater or bedrock) and 2.b. (waste storage facility size or depth). Plans and specifications that do not address the assessment requirement, or do so inadequately, may be rejected or deemed incomplete.

NEW Q: What setback is required from groundwater supply wells, and can a waiver be obtained?

A: Unless a waiver is obtained, reviewable facilities or systems at a CAFO may not be located within 250 ft of a private well or non-community well system (defined in ch. NR 812) or 1000 feet of a community well (defined in ch. NR 811) in accordance with s. NR 243.15(2), Wis. Adm. Code. Waivers to allow less than 250 ft distance can be considered under s. NR 243.15(1)(c) Alternative Practices or Designs. (A variance from the DNR Drinking and Groundwater Program is not needed unless the setback is less than allowed by ch. NR 812, Wis. Adm. Code.) A well setback waiver is only issued in conjunction with review of plans and specifications for a proposed project, or evaluation of an existing facility or system, under ss. NR 243.15 or 243.16, Wis. Adm. Code. The setback is not only for well head protection (surface flow is not the only concern). Waiver support information may include: the facility or system design exceeds minimum criteria; the groundwater flow direction is away from the well; the site has significant thickness of low permeability soil; the well has extra casing depth; the well is not high capacity.

Q: Where can I find more information?

A: DNR Runoff Management webpages include the following (and more):

- WPDES CAFO Permits, <http://dnr.wi.gov/runoff/ag/permits.htm>. This includes a link to the Plan & Specifications Checklist, http://dnr.wi.gov/runoff/pdf/ag/cafo/plans_specs.pdf.
- Administrative Rules, <http://dnr.wi.gov/runoff/admrules.htm>, chs. NR 108 and 243, Wis. Adm. Code, have specific requirements for plans and specifications.
- Technical Standards, <http://dnr.wi.gov/runoff/ag/techstds.htm>.
- Additional CAFO FAQs, http://dnr.wi.gov/runoff/ag/faq_cafo.htm
- Questions may be directed to Gretchen Wheat at (608) 264-6273 or gretchen.wheat@wisconsin.gov, or Tom Bauman at (608) 266-9993 or thomas.bauman@wisconsin.gov.