

Chapter Ag 165

ANIMAL WASTE GRANT PROGRAM

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Ag 165.01 **Definitions.** (1) "Animal feeding operation" means a lot or facility, other than a pasture, where animals have been, are, or will be fed, confined, maintained, or stabled for a total of 45 consecutive days or more in any 12 month period.

(2) "A.r.s. feedlot model" means the analytical model developed by the agricultural research service of the United States department of agriculture and described in the guidebook "An evaluation system to rate feedlot pollution potential" published by the agricultural research service in April, 1982.

Note: The a.r.s. feedlot model is used to rate the water pollution potential of surface runoff from feedlots. Ratings range from 0 to 100. A copy of the April, 1982 guidebook containing the a.r.s. feedlot model may be inspected at the central offices of the department and at the offices of the secretary of state and revisor of statutes. Copies may be obtained, at cost, at the central offices of the department.

(3) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(4) "Earthen manure storage facility" means an excavated or earthen impoundment for temporary storage of animal waste.

(5) "Permanent runoff control structures" means constructions and devices used to control, divert or retard surface runoff water, and includes diversions, dams, dikes, settling basins, filter walls, gutters, downspouts, underground outlets, filter strips, and other similar practices and devices.

(6) "Technical guide" means the technical guide which is published by the soil conservation service of the United States department of agriculture and which is in effect on March 1, 1984.

Note: Copies of referenced sections of the technical guide may be inspected at the central offices of the department and at the offices of the secretary of state and revisor of statutes. Copies may be obtained, at cost, at the central offices of the department.

(7) "Waste storage facility" means a concrete, steel or otherwise fabricated structure, or an excavated or earthen impoundment used for temporary storage of animal waste or other organic agricultural wastes.

(8) "Waste treatment facility" means a lagoon, or an excavated or earthen impoundment, used for, biological treatment of animal waste.

Ag 165.02 County animal waste water-pollution control plans. (1) **GENERAL REQUIREMENT.** To be eligible for the receipt of animal waste grant funds under s. Ag 165.04, a county shall prepare an animal waste water-pollution control plan as provided in this section. Plans shall be submitted to the department for approval under sub. (3). No funds may be granted to a county under s. Ag 165.04 until the county has adopted an approved plan.

(2) **PLAN CONTENTS; PREPARATION.** (a) *Water pollution sources; priority areas.* The county animal waste water-pollution control plan shall delineate priority areas within the county where animal waste water-pollution problems are most likely to occur. In order to identify priority areas, the county shall systematically consider:

1. The distance from animal feeding operations in the area to waters of the state.
2. The number, location and size of animal feeding operations within the area.
3. Soil, bedrock, water table and topographical features.
4. Available water quality data and management plans, including areawide water quality management plans prepared under ch. NR 121.
5. Other factors which are considered relevant by the county, and set forth in the animal waste water-pollution control plan.

(b) *Water pollution sources; nonpriority areas.* The county may include in the animal waste water-pollution control plan animal feeding operations which, based on the criteria set forth in par. (a), are considered by the county to have the potential to cause water-pollution problems.

(c) *Meetings.* Before completing the county animal waste water-pollution control plan, and as part of the plan preparation process, the county shall hold meetings with the owners and operators of animal feeding operations in the county. Meetings shall be held to present and discuss information on the nature, extent and location of animal waste water-pollution problems in the county; the measures which may be used to correct the problems; and the government programs available to assist in correcting these problems. At least one meeting shall be held for each priority area identified under par. (a). Owners and operators of animal feeding operations in priority areas, and those in non-priority areas identified under par. (b), shall be invited to attend, by means of individual written invitations.

(d) *Priority rankings.* If the owner or operator of an animal feeding operation which is located in a priority area identified under par. (a) or which is identified under par. (b) expresses a willingness to participate in the animal waste grant program, the county shall rank the operation, along with other such operations, in priority order on a countywide basis for receipt of cost-sharing grants under this chapter. Priority rankings shall be set forth in the animal waste water-pollution control plan, and shall be reviewed and updated annually. Priority ranking shall be based on the severity of water pollution associated with the animal feeding operation, and other factors set forth in this paragraph. Highest priority shall be given to animal feeding operations in the county which have been identified by the department of natural resources under s. NR 243.21 as having caused the discharge of a significant amount of pollu-

tants to waters of the state. In establishing other priorities, the county shall consider:

1. Numerical ratings calculated by means of the a.r.s. feedlot model.
2. The need for animal waste storage or treatment facilities, considering other factors such as the availability of suitable land for the winter spreading of animal waste.
3. The probable cost-effectiveness of animal waste storage or treatment facilities as a means for preventing water pollution.
4. Soil, bedrock, and water table characteristics.
5. Relevant information contained in areawide water quality management plans prepared under ch. NR 121, other water quality plans prepared by the department of natural resources or areawide water quality planning agencies, and county agricultural preservation plans and exclusive agricultural zoning ordinances prepared under ch. 91, Stats.
6. Other information or criteria which may be considered relevant by the county, if set forth in the animal waste water-pollution control plan.

(e) *Remedial measures.* Based on information developed under pars. (a) through (d), the county animal waste water-pollution control plan shall:

1. Identify and evaluate the general alternative measures which may be used by owners or operators of animal feeding operations to correct or prevent water-pollution problems. The evaluation of alternatives shall include a general comparison of costs and benefits. Upon request of the owner or operator of an animal feeding operation, the county shall recommend specific practices which may be used to correct or prevent water-pollution problems associated with the operation, and the approximate cost of the recommended practices.

2. Identify and evaluate the measures which may be available to the county to correct or prevent water-pollution problems associated with animal feeding operations. Measures may include:

- a. An application for grant funds under this chapter.

- b. The adoption of a county ordinance regulating the design, installation, operation and management of animal waste storage facilities.

- c. Amendments to county shoreland zoning ordinances enacted under s. 59.971, Stats., or county zoning ordinances enacted under s. 59.97, Stats.

- d. Application for watershed project funding under the nonpoint source water-pollution abatement program created under s. 144.25, Stats.

- e. Information and education programs.

- f. Other measures identified by the county.

3. Indicate which of the measures the county intends to implement.

(f) *Description of plan preparation process.* The county animal waste water-pollution control plan shall describe the specific process used by the county to comply with the requirements of this section.

(3) **DEPARTMENTAL APPROVAL OF COUNTY ANIMAL WASTE WATER-POLLUTION CONTROL PLANS.** County animal waste water-pollution control plans shall be submitted to the department for review and approval for compliance with this section. In its review of these plans, the department shall consider typical agricultural practices, and the costs, needs and technologies of agricultural production. Prior to approving or disapproving a county plan, the department shall refer the plan to the land conservation board for its recommendations on approval or disapproval. If the department disapproves a county plan, the department shall provide the county a written explanation of the reasons for disapproval. The county may revise a disapproved plan and resubmit it to the department for review and approval.

(4) **PLAN REVISIONS.** A county may revise its animal waste water-pollution control plan. Plan revisions shall comply with the requirements of this section.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.

Ag 165.03 County ordinances. (1) **GENERAL REQUIREMENT.** Except as provided under s. Ag 165.05, no county may participate in the animal waste grant program under this chapter until the county has adopted an approved ordinance establishing minimum standards for the design and construction of earthen manure storage facilities.

(2) **STANDARDS FOR ORDINANCES.** (a) *Design and construction standards.* County ordinances shall require that all earthen manure storage facilities constructed in the county after the effective date of the ordinance be designed and constructed in compliance with standards and specifications number 425 of the technical guide or other standards approved by the department.

(b) *Administration and enforcement.* County ordinances shall include provisions for administration and enforcement.

(3) **DEPARTMENT APPROVAL OF ORDINANCES.** County ordinances shall be submitted to the department for review and approval for compliance with this section. In its review of county ordinances, the department shall consider typical agricultural practices, and the costs, needs and technologies of agricultural production. Prior to approving or disapproving a county ordinance, the department shall refer the ordinance to the land conservation board for its recommendation. If the department disapproves a county ordinance, the department shall provide the county with a written explanation of the reasons for disapproval. The county may amend a disapproved ordinance and resubmit it to the department for review and approval.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.

Ag 165.04 Allocation of funds to counties. (1) **GENERAL.** The department may allocate animal waste grant funds appropriated under s. 20.866 (2) (zp), Stats., to counties, as provided in s. 92.15, Stats. Funds allocated to the counties under this section shall be used for the purposes provided under s. Ag 165.06. Funds may be allocated only to those counties which have adopted an approved animal waste water-pollution control plan under s. Ag 165.02 and an approved ordinance under s. Ag 165.03. Fund allocations shall be made in compliance with s. Ag 165.06 and this section.

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(2) **METHOD OF ALLOCATION.** Animal waste grant funds shall be allocated to counties on an annual, or other periodic basis. Before making a periodic allocation of funds, the department shall solicit funding applications from all counties qualified under sub. (1). Funding applications shall be submitted on forms provided by the department, on or before the deadline date established by the department. Each funding application shall identify, by reference to the county animal waste water-pollution control plan, the projects proposed for funding within the county, and the relative priority of the proposed projects.

(b) For each periodic allocation of funds, the department shall prepare an allocation plan based on a review of funding applications submitted by the counties. Before allocating any funds under the plan, the department shall submit the proposed plan for review and recommendations by the land conservation board. The allocation plan shall identify:

1. The total amount of funds to be allocated to counties under the plan.
2. Each county to which funds are to be allocated.
3. The amount to be allocated to each county. A copy of the proposed funding contract with each county shall be included with the allocation plan.
4. The basis for the proposed allocation of funds among counties, based on the allocation criteria under sub. (3).

(3) **ALLOCATION OF FUNDS AMONG COUNTIES; CRITERIA.** In its allocation of funds among counties, the department shall consider:

(a) The number of animal feeding operations within each county which are in need of measures to correct or prevent animal waste water-pollution problems.

(b) The relative severity of animal waste water-pollution problems caused by the animal feeding operations.

(c) Other criteria set forth under s. Ag 165.02 (2) (d).

(4) **FUNDING CONTRACTS.** No funds may be allocated or released to a county under this section except under a written contract between the department and the county. The contract shall set forth:

(a) A description of each project within the county for which funds are allocated, including an estimate of total project costs.

(b) The maximum amount or cost-share percentage to be paid to the owner or operator for each project, as determined by the county under s. Ag 165.06.

(c) The respective responsibilities of the department and the county for implementing the contract. The county agency which is responsible for implementing the project on behalf of the county shall be identified.

(d) Deadlines for implementing the contract.

(e) Other terms and conditions under which the funds are allocated to the county.

Ag 165.05 Direct grants by department. (1) Pursuant to s. 92.15 (3m), Stats., the department may make cost-share grants directly to owners or operators of animal feeding operations who have received a notice of discharge or who are required to apply for a Wisconsin pollutant discharge elimination system permit under ch. 147, Stats. The department may make direct cost-share grants under this section whether or not the county in which the animal feeding operation is located has an approved animal waste water-pollution control plan under s. Ag 165.02 or an approved ordinance under s. Ag 165.03. Direct grants under this section are subject to the provisions of ss. Ag 165.06, 165.07, 165.08 (3) (c) and 165.09. For purposes of a direct grant under this section, the department shall assume the responsibilities of a county under ss. Ag 165.06, 165.07, 165.08 (1) (d) and (f), 165.08 (3) (c), and 165.09.

(2) The department may enter into an agreement with a county under which the county assumes certain responsibilities of the department under this section. Responsibilities assumed by a county on behalf of the department may include:

(a) Preparation of agreements with owners and operators of animal feeding operations, as provided under s. Ag 165.07.

(b) Certification, under s. Ag 165.08 (1) (f) and (3) (c) 4, that waste storage and treatment facilities and runoff control structures meet the requirements of this chapter.

(c) Establishment and maintenance of an accounting and record keeping system, as provided under ss. Ag 165.08 (3) (c) and 165.09.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84; correction in (2) (b) made pursuant to s. 13.93 (2m) (b) 7, Stats., Register, January, 1985, No. 349.

Ag 165.06 Purposes for which funds may be allocated; conditions and limitations. (1) **GENERAL.** Funds allocated by the department to counties under s. Ag 165.04 shall be used by the counties to finance cost-share grants to individual owners and operators of animal feeding operations. Individual cost-share grants shall be used for the construction or repair of animal waste treatment or storage facilities or permanent runoff control structures needed to meet water quality objectives. Cost-share grants may be applied to engineering design costs or construction costs, or both, to the extent permitted under this section. Individual cost-share grants shall be made under an agreement with the owner or operator, as provided in s. Ag 165.07. Payments may be made only upon certification, by a qualified technician, that the facility or structure has been completed in compliance with the agreement and this chapter.

(2) **COST-SHARE GRANTS; GENERAL REQUIREMENTS AND LIMITATIONS.**

(a) *Cost-effectiveness; availability of alternatives.* Cost-share grant amounts to individual owners and operators of animal feeding operations shall be based on the cost of projects which will have predictable water quality benefits, and which are cost-effective for that purpose in comparison to other measures available to the owner or operator. A determination as to the cost-effectiveness of a proposed project shall be made by the county. In determining the cost-effectiveness of a proposed project, the county shall consider the predicted water quality benefits of the project, the cost of the project amortized over its expected useful life, and the practical effects of the project on the animal feeding operation. Cost-share grants may not be used to finance the design or construction of animal waste treatment or storage facilities if, in the absence of the

facilities, the waste from the animal feeding operation can feasibly be applied to land, in compliance with standards and specifications number 633 of the technical guide, without causing or aggravating a water quality problem.

(b) *Grant amounts; cost-sharing rates.* The amount paid to an owner or operator of an animal feeding operation under a cost-share grant shall be based on the cost of the proposed project, as determined by the county. The county shall establish standard cost-sharing rates applicable to animal waste storage facilities, animal waste treatment facilities, and permanent runoff control structures. The rate for cost-share grants provided under this chapter may not exceed 70% of the total cost for the design and construction of a project. If a cost-share grant is made for a project under this chapter, additional cost-share grants from the county may not exceed 10% of the total cost incurred for the design and construction of the project. The maximum combined grant from all governmental sources may not exceed \$10,000.

(c) *Engineering design costs; grant limitations.* A portion of a cost-share grant may be used to finance engineering design services needed for the construction or repair of animal waste storage or treatment facilities, or permanent runoff control structures, if these design services are provided by a qualified consulting engineer. Cost-share grants may not be used to finance engineering design services provided by the county, the United States soil conservation service or other governmental agencies. Payments for engineering design services shall be determined by the county, based on the reasonable cost of the services, but may not exceed 20% of the total cost-share grant. The county shall inform the owner or operator of the animal feeding operation that, if a private consulting engineer is used to provide engineering design services, the farmer shall be informed that he or she is responsible for the portion of the design cost not funded by the cost-share grant. No payment for engineering design services may be made by a county until the county has determined that the structure or facility has been completed in compliance with applicable standards and specifications set forth in the technical guide.

(3) ANIMAL WASTE STORAGE OR TREATMENT FACILITIES; COST-SHARE GRANTS. (a) *Costs which may be included.* Cost-share grants for animal waste storage or treatment facilities may include payments for design or construction of the facility, including repair or reconstruction of existing facilities; for permanent fencing needed to protect the facility; and for materials and equipment needed to transport animal waste to the facility as part of an animal waste management plan. Payments may not be made for:

1. Portable pumps and other portable equipment.
2. Buildings or modifications to buildings, unless modifications to buildings are essential for installation of an animal waste storage facility.
3. Equipment for spreading or incorporating animal waste onto, or into land.
4. Any portion of an animal waste storage or treatment facility which is installed under a building, and which forms a part of a building or its foundation.

(b) *Standards of design, construction and maintenance.* Animal waste storage and treatment facilities shall be:

1. Of sufficient capacity to store the normal accumulation of animal waste which may be produced by the animal feeding operation over a period of at least 30 days.

2. Designed and constructed in compliance with:

a. Standards and specifications numbers 312, 313, 358, 359, 382 and 425 of the technical guide.

b. Chapter NR 112.

3. Maintained for at least 10 years, or until the animal feeding operation is discontinued.

(4) PERMANENT RUNOFF CONTROL STRUCTURES; COST-SHARE GRANTS.

(a) *Costs which may be included.* Cost-share grants for permanent runoff control structures may include payments for:

1. Diversions, gutters, downspouts, collection basins, filter strips, waterways, outlet structures, conduits, and land shaping needed to manage runoff from the animal feeding operation.

2. Permanent fencing needed to protect the structures.

3. Measures needed to establish perennial grasses, including fertilizer, mineral and mulch materials.

(b) *Standards of design, construction and maintenance.* Permanent runoff control structures shall be designed and constructed in compliance with applicable standards and specifications of the technical guide. The structures shall be maintained for at least 10 years, or until the animal feeding operation is discontinued.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.

Ag 165.07 Agreements with owners and operators of animal feeding operations. The county shall enter into an agreement with every owner or operator of an animal feeding operation who receives cost-sharing funds under this chapter. The agreement shall include:

(1) The name and address of the owner or operator applying for cost-sharing funds. If the applicant is an operator other than the owner, the agreement shall include the name of the owner and be signed by the owner.

(2) The specific structures or facilities to be constructed or repaired.

(3) The total estimated costs of design and construction.

(4) The percentage of the total cost to be paid by the state under this chapter.

(5) The percentage of the total cost to be paid from other governmental sources.

(6) Time deadlines for constructing the structures and facilities.

(7) A plan for the operation and maintenance of the structures and facilities.

(8) A procedure by which the agreement may be amended.

(9) A provision by which the owner or operator of the animal feeding operation agrees to comply with the requirements of this chapter, and operate the funded facilities and structures in such a manner as to avoid water quality problems. Animal waste storage and treatment facilities shall be operated so as to prevent spills or leakage from the facility.

(10) A provision whereby the owner or operator agrees to repay the cost-sharing funds if the structures or facilities are not properly maintained or are not operated in a manner so as to avoid water quality problems. Repayment of grant funds shall not be required if a structure or facility is rendered ineffective during the required maintenance period under s. Ag 165.06 due to circumstances beyond the control of the grant recipient.

(11) A provision whereby the owner or operator agrees to repay the cost-sharing funds in the event of a change in ownership during the required maintenance period under s. Ag 165.06. The recipient of cost-sharing funds shall not be required to repay the funds if the new owner agrees in writing to maintain and operate the structures or facilities in substantial compliance with the cost-sharing agreement and this chapter.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.

Ag 165.08 Responsibilities of the county. (1) The county is responsible for local administration of the animal waste grant program. County responsibilities include:

(a) Preparation of county animal waste water-pollution control plans under s. Ag 165.02.

(b) Adoption and enforcement of ordinances required under s. Ag 165.03.

(c) Designation of a county agency or agencies responsible for program administration, including designation of a lead agency if more than one agency is made responsible for program administration. The department recommends designation of the land conservation committee as the lead agency.

(d) Approval of projects and expenditures under the program, subject to any required approval by the department under this chapter.

(e) Coordination of the program with local, state and federal cost-sharing programs.

(f) Technical assistance, including:

1. Preparation of agreements with owners and operators of animal feeding operations, as provided under s. Ag 165.07.

2. Certification that waste storage and treatment facilities and runoff control structures meet the requirements of this chapter and the technical standards of the county.

(2) In the exercise of its authority under this chapter, the county shall consider typical agricultural practices, and the costs, needs and technologies of agricultural production. The county agency designated under par. (1) (c) shall refer, for review, all county animal waste water-pollution control plans and ordinances prepared under this chapter to the

county committee on agriculture and extension education created under s. 59.87 (2), Stats.

(3) The county shall establish and maintain a complete accounting and record keeping system which shall include:

(a) Separate accounts of all funds allocated to the county by the department under s. Ag 165.04, including a record of all receipts and expenditures, and the current account balance.

(b) Complete accounting records showing all animal waste grant funds received or administered by the county, from whatever source; all expenditures made or committed by the county; and all account balances.

(c) A complete file prepared for each agreement under which funds are paid or committed to an owner or operator of an animal feeding operation. The file shall include:

1. The application by the owner or operator of an animal feeding operation for cost-sharing funds or technical assistance.

2. A record of approval, if the agreement is approved by the county. A record of approval shall be filed before the agreement is signed.

3. The original copy of the agreement, signed by the parties.

4. A record of technical referral, and certification by a qualified technician that the facility or structure has been completed according to the agreement. Certification shall be filed prior to payment.

5. Authorization by the county for the release of cost-sharing payments. A record of the authorization shall be filed prior to payment.

(4) The county shall submit an annual accounting of expenditures to the department by July 31 of each year.

(5) The county may contract for the performance of specified administrative and accounting tasks, subject to oversight by the county.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.

Ag 165.09 Records and audits. (1) The county shall maintain records and documents for the duration of the maintenance period required for the structure or facility under s. Ag 165.06.

(2) The department may conduct such fiscal and program audits as it deems necessary, including interim and final audits on funded projects. Audits may include a physical inspection of structures and facilities financed with state funds, as necessary to determine consistency with program goals and standards.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.

Ag 165.10 Interdepartmental coordination. The department shall enter into an agreement with the Wisconsin department of natural resources to coordinate the animal waste grant program with related programs and rules of the department of natural resources.

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Ag 165.11 Authority. This chapter is adopted under authority of s. 92.15 Stats.

History: Cr. Register, September, 1984, No. 345, eff. 10-1-84.