

Protecting Your Community From Existing and Proposed Concentrated Animal Feeding Operations (CAFOs)

A Guide to Legal Actions



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Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air and water.

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Introduction

Wisconsin's livestock production is undergoing a transformation. Traditionally, Wisconsin dairy farms managed fewer than 100 cows and relied on pasture to supply summer feed. As the number of traditional farms declines, large-scale dairy operations are providing an ever increasing percentage of Wisconsin's milk supply.¹ These large operations house animals exclusively indoors, provide the animals with stored feed, and collect animal manure for later disposal.² Although these large farms, also known as Concentrated Animal Feeding Operations (CAFOs), may promise increased efficiency and productivity they often do so at tremendous cost to the environment and public health and wellbeing.³

As CAFOs steadily increase in number, so do the environmental and public health concerns associated with them. CAFOs produce a much larger volume of manure and associated wastes than traditional farming, posing a significant storage and disposal issues.⁴ This manure can harm ground and surface water quality even when stored in properly constructed pits. Manure pits designed to hold thousands of gallons of raw manure pose a greater risk of catastrophic release from equipment failure or overflow from heavy rains.⁵ When manure spills or feed leachate reach waterways, the decomposition process consumes dissolved oxygen, killing aquatic life.⁶ Even the most advanced manure pits are susceptible to leaching which can lead to pathogen contamination of groundwater.⁷ CAFOs cause more air pollution than traditional farming because large manure pits result in anaerobic decomposition, which generates methane, carbon dioxide, and other odorous compounds.⁸ The levels of noxious gases, particulate matter and pathogens in farm areas have increased along with CAFOs.⁹ CAFO-related air pollution smells bad and triggers respiratory problems such as asthma and irritation.

Because CAFOs carry elevated pollution and health risks, federal, state and local laws regulate these non-traditional farming operations. By understanding CAFO regulation, pollution and enforcement procedures, the community can assist in protecting our shared resources. This handbook provides a general overview of CAFOs, the environmental concerns they raise, their legal obligations, and the community's legal rights. This handbook provides thorough information on how individuals can monitor water quality and assist enforcement officials and the community in understanding the local effects of CAFOs.

The number of CAFOs in Wisconsin is not large, as compared to neighboring states, but it is rising. In 2007, a majority of the dairy farms in Wisconsin had a herd of 50-100 cows.¹⁰ By 2006, fewer than half of had 100 cows or less.¹¹ During the same time span, the number of farms with over 500 cows captured an increase by more than 10% of the total state production. Currently, Wisconsin has less than 15,000 dairy farms, and this number has been decreasing each year. At the same time, the number of cows in the state has not dropped, indicating that large operations are expanding.¹² There are currently 256 permitted CAFO operations (over 1000

animal units or about 700 dairy cows) in Wisconsin.¹³ This number includes all types of CAFOs: beef, chicken, dairy, ducks, swine, and turkeys.¹⁴ Of these, 225 are dairy CAFOs and they house an average of 946 cows.¹⁵

The increasing predominance of CAFOs is a cause for concern across the state because of the risks these operations pose to the environment and the community.¹⁶ Although Wisconsin's dairy CAFOs do not require some of the more outrageous practices found on other animal operations, the model itself offends many citizens. Swine are held in extremely tight quarters and are heavily dosed with antibiotics to keep disease from spreading. Beef cattle are herded onto cramped feedlots with no fresh pasture and only caked, dried manure or cesspools beneath their hooves. Chicken CAFOs are especially harmful to rural communities as multi-national poultry producers force the bulk of the liability onto the grower, reserving profits for their shareholders. Disruption of these animals' natural social behavior leads to violent interactions. Animals are fed foods their biology is not equipped to digest, leading to sickness. Tight spaces, toxic air, and unnatural behaviors are common in CAFOs.¹⁷ Many individuals are morally opposed to this industrialized animal production, on both health and moral grounds. As a result, communities work together to halt CAFOs and protect their community.

Background on CAFOs – Understanding the Risks

Water Quality

CAFOs significantly impact water quality. These facilities produce tens of millions of gallons of liquid manure each year. Mass quantities of fecal matter are often stored in open-air lagoons until they are spread upon nearby cropland as fertilizer.¹⁸ Contaminants from animal wastes can enter ground or surface water through leaking or failing manure lagoons, lagoon flooding after a rain event, or excessive and accidental releases while applying the manure to land.¹⁹ Liquid manure is problematic, as opposed to the solid manure collected on smaller farms, because it can easily run down slope into water supplies.²⁰ Manure can be an effective fertilizer because it contains nitrogen, potassium and phosphorus – nutrients essential for plant growth. But, unless the soil is frequently tested, it's easy to over apply manure to the land. When soils are already saturated with nutrients, the nutrients run off into ground or surface waters.²¹ Even when the correct application rate is known spreader calibration problems lead to over-application, resulting in run-off and groundwater and surface water contamination.²² Livestock operations sited in areas prone to flooding or close to shallow water tables increase water contamination risks.²³

When manure and excess nutrients escape into waterways, they cause numerous problems. The manure decomposes and burn up dissolved oxygen along the way.²⁴ The excess nutrients also spur plant and algae growth which choke waterways. When the plants and algae die, they burn dissolved oxygen as they decompose.²⁵ Without oxygen, fish and aquatic life die. These effects are felt locally through fish kills and nationally, as excess nutrients likely

contribute to the dead zone in the Gulf of Mexico where oxygen levels are too low to support ocean life.²⁶

Air Quality

CAFOs generate a number of harmful gases.²⁷ These gases include ammonia, hydrogen sulfide, methane, and many others.²⁸ The manure pits used by CAFOs generate large quantities of methane, a significant contributor to atmospheric greenhouse gases.²⁹ Other dangerous gases include, but are not limited to, volatile organic compounds (VOCs), methanol (wood alcohol), and particulate matter.³⁰

CAFOs release large amounts of particulates, aiding in dispersion of gases, odors and microbes.³¹ Both ammonia and phosphate can attach to dust particles and become airborne.³² Not only are the species *Staphylococcus* and *Salmonella* found airborne inside and downwind of swine CAFOs, CAFO-associated strains have greater anti-biotic resistance than control samples.³³ Although Wisconsin has only 11 swine CAFOs at present, this number is likely to rise. Air emissions also result from the land application of CAFO-generated manure.

Public Health

The elevated risk of water pollution from CAFOs presents a public health risk in a number of ways. The community surrounding the facility is exposed to toxins and pathogens when water ways are contaminated. Increased phosphorus pollution causes blue-green algae growth, along with and the associated risks of ingesting neurotoxins while recreating in contaminated waters.³⁴ Manure runoff or seepage can infect well water with pathogens, putting the elderly, pregnant women, very young children, and individuals who are immunocompromised at increased risk of E-coli infection.³⁵ Private wells are especially vulnerable to drinking water exposures since there is no chance for a utility to disinfect the water before distributing it to customers.³⁶ Nitrate pollution resulting from heavy land application of manure has been associated with blue baby syndrome, reproductive complications, diabetes, and birth defects.³⁷ CAFO waste spills, which can include harmful substances like hypoxia/anoxia and high ammonia, have caused major fish kills and stimulated blooms of toxic and noxious algae including cyanobacteria or blue green algae.³⁸

CAFO-associated air pollution poses significant public health risks to the local community and to farm workers. CAFOs also release airborne bacteria and endotoxins in hazardous levels at extremely high levels as compared to control sites, where levels were too low to detect.³⁹ Childhood asthma rates appear to increase along with increasing numbers of swine CAFOs in Iowa.⁴⁰ Long term low level exposure to ammonia causes eye, nose and throat irritation, while high concentrations, which are present inside CAFO facilities, can cause death quickly.⁴¹ The results of long-term exposure to hydrogen sulfide are unknown, but its rotten egg odor disrupts the quality of life for surrounding communities.⁴² Furthermore, the quality of life for communities surrounding CAFOs is greatly diminished due to the powerful odors that CAFOs emit.⁴³ Scientific studies have linked swine CAFO odors to physiological signs of stress in neighboring residents.⁴⁴

Second, the farm worker community is exposed to higher public health risks by handling CAFO animals than traditionally-housed farm animals. Farm workers at CAFOs are exposed to many more times the number of animals than the owner or manager of a traditional farm. With many more animals on a CAFO, not only do the animals have a greater chance of spreading infectious disease or pathogens, farm workers care for many more sick and dying animals, increasing their own chances of contracting disease.⁴⁵

The expansion of Wisconsin CAFOs poses a significant risk, particularly if swine or chicken CAFOs increase. These animal operations are much more likely to use antibiotics as a proactive measure to keep animals healthy in close quarters. These synthetic chemicals can end up in water sources and negatively affect human health.⁴⁶ These pharmaceuticals are not easily removed. In fact, pharmaceuticals can persist in manure and leachates throughout prolonged storage periods in the form of parent compounds or degraded elements.⁴⁷ Antibiotics are commonly found in human and animal waste due to the fact that they are designed to quickly excrete from organisms.⁴⁸ When natural microbial activity interacts with livestock fecal matter, antibiotic resistance becomes an issue.⁴⁹

Socioeconomic Impacts

CAFOs have adverse impacts upon the socioeconomic wellbeing of a community.⁵⁰ Socioeconomic well-being refers to standard measures of economic performance as well as a broader range of quality of life indicators such as shared identity, trust and democratic participation.⁵¹ CAFOs appear to do little to resolve persistent rural poverty, and food stamp usage actually rises in regions with concentrated CAFOs. Increased poverty increases demand for government services and strains rural service providers.⁵²

As the number of CAFOs increase, so does stress within the social fabric due to the fact that community decision-making will likely be subject to corporate farm interests.⁵³ When moderately sized family farms depart from a community, public incentives are geared more towards industrialized farms which results in a decrease of middle class producers which creates rifts in the social fabric, possibly even population decline.⁵⁴ Usually, rural counties are targeted by large operating companies leaving local governments in a weak position to bargain with outside corporations.⁵⁵ Rural communities also experience difficulties regulating their operations once they are in place as well as protecting social life and the overall community.⁵⁶

The smell of a CAFO dramatically disrupts rural life and drives residents indoors. Being deprived of their outdoor lifestyle, rural residents suffer feelings of violation, isolation and infringement. As normal routines and identity-creating events such as family gatherings, visits and barbeques decline, so does the value of rural life.⁵⁷ In addition, the controversy generated by CAFO production pits neighbor against neighbor, further degrading the sense of friendliness and safety that many seek in a rural community.⁵⁸

Wisconsin CAFOs- The Legal Landscape:

Nuisance/Right to Farm Law

Historically, if a large CAFO produced excessive odors or noises, a neighbor could bring a personal injury claim against the CAFO to stop the problem. Nuisance is a tort claim (a tort is a civil rather than criminal wrongdoing) which alleges that another's practices unreasonably interfere with the public or private rights.

Wisconsin law, like most states, recognizes two types of nuisance: 1) public nuisance is defined as **“an unreasonable interference with a right common to the general public;”**⁵⁹ and 2) private nuisance is defined as “the invasion of another's interest in the private use and enjoyment of land.”⁶⁰ Generally, the state employs the public nuisance doctrine while citizens file private nuisance claims. Examples of private nuisances are foul odors, noise, vibration, or excessive light. An individual can sue a neighboring property owner for any one of these things that interferes with the individual's use and enjoyment of their property. A public nuisance is something that affects the well-being of the community. The State may bring a public nuisance claim against things like prostitution houses, illegal gaming facilities, or stream polluters.

Wisconsin law makes it very difficult to prove a nuisance against an agricultural producer unless you can establish that the alleged nuisance presents a substantial threat to public health or safety. It virtually eliminates citizens' right to bring nuisance claims against CAFOs even if the nuisance came to them. For example, if a neighboring small family farm that grows crops and has a couple of cows becomes a large concentrated animal feeding operation with thousands of cows, it is still considered a preexisting agricultural practice shielded by Wisconsin's Right to Farm law.⁶¹

Moreover, if an agricultural use or practice is found to be a nuisance, there are restrictions on what the court can do to fix the problem. The solution may not “substantially restrict or regulate” the agricultural use or practice.⁶² In addition, the court may not order anyone to “take any action that substantially and adversely affects the economic viability of the agricultural use.”⁶³ This means that if it costs the farmer a lot of money to address the nuisance, he might not have to fix the problem since it would make his operation less economically viable. However, if the agricultural use or practice is a substantial threat to the public health or safety, the court is allowed to take action that may adversely affect the defendant's agricultural business.⁶⁴

The statute also provides for litigation expenses. The statute states that if no nuisance is found, the plaintiff must pay all the defendant's litigation expenses.⁶⁵ Those litigation expenses include the “sum of the costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees necessary to prepare” for a nuisance action.⁶⁶ As a result, neighbors may be reluctant to bring actions against farmers because if no nuisance is found, they will have to pay all of the farmer's legal fees.

Wisconsin's Livestock Siting Law

What prompted the passing of ATCP 51?

Wisconsin's Livestock facility siting and expansion law required Wisconsin Department of Agriculture, Trade, and Commerce Protection (DATCP) to create rules setting standards for new and expanding livestock facilities.⁶⁷ The law charged DATCP with creating standards that were: (1) protective of public health and safety, (2) cost-effective, (3) objective, (4) based on available scientific information that has been subjected to peer review, (5) designed to promote the growth and viability of animal agriculture in this state, (6) designed to balance the economic viability of farm operations with protecting natural resources and other community interests, (7) usable by officials of political subdivisions. The board is required to review these rules every 4 years.⁶⁸ In response, DATCP created ATCP 51, called the Livestock Facility Siting rule, in 2006.

Who does ATCP 51 apply to?

This rule applies to political subdivisions such as cities, towns and villages. If a local government wants to regulate the placement of new or expanded livestock facilities that will have 500 or more animal units, local governments must follow the standards provided in the Livestock Facility Siting Rule.⁶⁹ While local governments may choose to regulate large livestock facilities under the Rule, if they choose to they must do so with the standards set out in the Rule.

Can the political subdivision have more stringent local standards?

The political subdivision may not apply local standards that are more stringent than DATCP. However, if four criteria are met, the political subdivision may qualify for an exception. The criteria are: 1) that the political subdivision is authorized to adopt the standards under other applicable laws, 2) the more stringent standards were in place before an application for an expansion was received, 3) the more stringent standards are based on "reasonable and scientifically defensible" findings and they are adopted by the political subdivision, and 4) the "reasonable and scientifically defensible" findings clearly demonstrate that the more stringent standards are necessary to "protect public health or safety."⁷⁰

What are the restrictions on livestock structures?

All livestock structures must comply with local ordinances for setback requirements.⁷¹ However, there are some restrictions on the local ordinance. No ordinance may require a facility with less than 1,000 animal units to have a set back more than 100 feet away from any public road or property line.⁷² If the facility has more than 1,000 animal units, the ordinance cannot require a livestock structure to be set back more than 200 feet from any property line or more than 150 feet from any public road.⁷³ The ordinance cannot disallow the use or the expansion of a structure that was built within the setback area prior to the ordinance passing.⁷⁴

What about manure structures?

Manure structures have different set back limits than livestock structures. A waste storage structure cannot be within 350 feet of a public road or any property line. There are three exceptions. First, if the manure storage location complies with a local ordinance permitting a lesser set back; second, if the structure existed before May 1, 2006; and third, if the waste storage unit existed before May 1, 2006, a single new waste storage structure can be erected on the same tax parcel as long as it is no larger than the existing structure and is located within 50 feet of the existing structure.⁷⁵

What else must the livestock facility comply with?

A livestock facility must comply with applicable shore land and wetland zoning ordinances.⁷⁶ A livestock facility also needs to follow applicable flood zoning ordinances.⁷⁷ All wells on the property must comply with NR 811 and NR 812. Furthermore, certain setback distances from a well to new or substantially altered livestock structures must be met, regardless if the livestock operator owns the land where the wells are located. All of those setback distances can be found in NR 811 and 812. Structures in existence before May 1, 2006, may be altered so long as they do not decrease the set back distance between the structure and a well.⁷⁸

What are the Odor Standards?

Each applicant is required to fill out an odor score worksheet and the facility must earn an odor score of at least 500.⁷⁹ There are exemptions from the odor standards. A facility does not need to complete an odor score sheet if they are expanding and will have fewer than 1,000 animal units. Also, if the facility is located 2500 or more feet away from the nearest affected neighbor, no odor scoring sheet is required.⁸⁰

Cluster Exception: If there are clusters of livestock structures and they are within 750 feet from one another. Each cluster may have its own odor score sheet rather than one sheet for the entire facility.⁸¹

Local Discretionary Credit: A political subdivision may, in its discretion, approve an application with an odor score less than 500, but it cannot approve a facility with an odor score less than 470. If this discretionary authority is used, the local government must provide a written decision stating their reasons for doing so. The livestock siting facility board has no authority to review a decision of a political subdivision to permit an odor score between 470 and 500 or the reasoning behind it.⁸²

Odor Control Practice Credits: Livestock facility owners may claim credits for odor control practices listed in the appendix. They may also get credits for odor control practices not listed if they are approved by DATCP.⁸³

Future Reference Points: To complete the odor score worksheet, the operator must calculate the effect on neighbors. If an affected neighbor waives their right to be calculated in the score, that neighbor does not need to be included in future applications for expansion. This waiver carries with land so, if the property is later sold, the farmer does not have to consult the new owners in calculating his or her odor score.⁸⁴

What are the nutrient management standards?

Land applications of manure must comply with the Natural Resources Conservation Service's (NRCS) Nutrient Management Technical Standard 590.⁸⁵ A nutrient management checklist must be submitted with every local approval of an application. There must be "reasonable documentation to substantiate each answer," but the documentation does not need to be submitted with the worksheet.⁸⁶ The political subdivision may ask for this information and if they do not find it substantiates the answers, they may deny the application.⁸⁷ The nutrient management checklist applies to some operations with fewer than 500 animal units, if they have a low ratio of animals to land area.⁸⁸ An operator can update their nutrient management plan, but they do not need to re-submit it for approval; however, the political subdivision may ask for the plan at any time.⁸⁹

What about manure pits?

All waste storage facilities need to be designed, constructed, and maintained to minimize the risk of structural failure and leakage. The risk of the discharge reaching groundwater or surface water must be minimized. In accordance with these goals, an unlined earthen waste storage facility cannot be located near a site susceptible to groundwater contamination.⁹⁰ Moreover, the construction, alteration, or closure of the actual facility must not deviate materially from the application unless the political subdivision has approved it.⁹¹

The statutes require existing, new, altered and closed facilities to be certified by an engineer as complying with the relevant NRCS standards.⁹² The storage capacity should be based on adequate and foreseeable needs based upon the operator's strategy found in the nutrient management section.⁹³

What about runoff management?

New or substantially altered animal lots: These lots should comply with *NRCS technical guide wastewater strip standard 635* from January 2002.⁹⁴

Existing Animal Lots: Using the BARNY model, the predicted average annual phosphorus runoff cannot be more than 15 pounds if the animal lot is not located within 1,000 ft. of a navigable lake or 300 ft. of a navigable stream or 5 pounds if any of the animal lot is located within that range. Runoff from an animal lot may NEVER discharge to any direct conduit to groundwater.⁹⁵

Feed Storage: The feed storage should be designed and kept in a way that prevents any “significant discharge of leachate or polluted runoff” from the stored feed into a waterway. When storing feed with 70% or higher moisture content, there are specific restrictions for existing, new, and substantially altered feed storage structures. An existing paved area may be used, but surface water runoff must be diverted so that it does not enter the paved area. If the paved area covers more than an acre, then the leachate must be collected and stored so that it cannot discharge into a waterway. A new or substantially altered feed storage structure should be designed, constructed and maintained to ensure that surface water runoff will be diverted from entering the feed storage area. The leachate should be collected before it leaves the structure, and the structure should be at least 3 feet vertically above groundwater and bedrock. If the structure is over 1,000 square feet, there should be a tile drainage network.⁹⁶ Leachate must be stored and discarded in a manner that ensures it will not reach surface or groundwater. Livestock facilities must not deviate from the design submitted in the application for local approval without express authorization from the political subdivision.⁹⁷

Clean Water Diversion: All runoff from a livestock facility should be prevented from any contact with animal lots, manure piles, paved feed storage areas, and waste storage facilities within 1,000 ft. of a navigable lake or 300 ft. of a navigable stream.⁹⁸

Overflow of waste storage facilities: Waste storage facilities should be large enough to meet the operation’s reasonably foreseeable needs.⁹⁹

Unconfined manure piles: Unconfined manure piles may not be located within 1000 ft. of a navigable surface water and 300 ft. of a navigable stream.¹⁰⁰

Access to Surface Waters: Livestock facilities may have access to surface waters, but access must be restricted if it will affect the vegetative cover on banks of the water body.¹⁰¹

What is the fee?

The political subdivision may charge an application fee of no more than \$1,000. This fee is intended to offset the cost of review and processing by the political subdivision. An applicant is not required to post any bond or security with the political subdivision.¹⁰² The lack of a bond requirement is significant because a bond or security would provide the local government with funds to clean up an abandoned or improperly closed facility.

What is the application submission process?

The political subdivision has 45 days to inform the livestock facility whether or not their application is complete. A notice of completeness does not constitute an approval of the facility.¹⁰³ However, submitting completed section worksheets and certifications in the completed application creates a presumption of compliance with respect to those sections.¹⁰⁴

If the applicant has a WPDES permit for the number of animal units proposed in the livestock siting application, the applicant may attach a copy of the WPDES permit to their application and be in compliance regarding nutrient management, waste storage facilities, and runoff management.

Once an application is submitted and is deemed complete, a political subdivision has 90 days to approve or deny the application. They may extend the 90 day period, but only if the political subdivision requires additional information (it is incomplete), or the applicant materially modifies the application or agrees to an extension.¹⁰⁵

What are the notice requirements?

Once a facility receives notice that their application is complete, they must mail a copy of the notice to property owners of land adjacent to the proposed livestock facility. If notice is never sent by the applicant or received by the adjacent property owners, it does not create an action by the property owner against the political subdivision, nor does it have any bearing upon the approval of the livestock facility's application.¹⁰⁶

What is the approval/denial process for the political subdivision?

The local government's decision should be issued in writing and the decision should be supported by facts contained in the application. The local government may support their decision on the basis that certain application sections (completed worksheets, certifications, etc) are presumed to comply with the Rule as long as they are complete. This decision must be sent to DATCP within 30 days, however failure to do so does not invalidate their decision to grant or deny a local approval.¹⁰⁷

Approving an application

Under ATCP 51.34(1), a political subdivision SHALL grant an application if the application is complete, and contains "sufficient and credible information to show, in absence of clear and convincing information to the contrary," that the application meets or is exempt from the standards contained in the Rule.¹⁰⁸

Denying an application

A political subdivision may deny an application under 3 conditions: (1) The application is not complete, (2) there is clear and convincing information that the proposed livestock facility does not meet standards and should not be exempted, and (3) there is other clear and convincing information in the record that indicates the proposed livestock facility does not comply with the standards.¹⁰⁹

How much time does the facility have to expand or build?

Once the application is approved by the local political subdivision, that expansion plan runs with the land.¹¹⁰ The applicant can start expanding whenever he pleases after the application has been approved.¹¹¹ However, the political subdivision may withdraw a local approval within 2 years after it has been granted as long as the applicant has not begun to populate the facility and begun building a new structure as part of the approved plan.¹¹²

How do you challenge a livestock siting decision?

An “aggrieved person” may appeal a livestock siting decision. An “aggrieved person” is one who lives within two miles of the proposed livestock facility.¹¹³ Within 30 days, an aggrieved person may appeal the local decision to the Livestock Siting Facility board. The decision may be challenged in 2 ways: (1) the standards were incorrectly applied, or (2) the local decision violated the Livestock Facility Siting Law.¹¹⁴ The Board must notify the political subdivision that its decision is under appeal and to submit its decision-making record to the Board within 30 days. The Board will review the local record and make a decision within 60 days of receiving the record; this deadline may be extended for good cause.¹¹⁵ If the board determines the challenge is valid, it must overturn the political subdivision’s decision. If the political subdivision fails to follow the Board’s decision, an “aggrieved person” may bring a court action to enforce the Board’s decision.¹¹⁶ Either an “aggrieved person” or the political subdivision may appeal the Board’s decision to circuit court.¹¹⁷

What is the local record?

The Board and a circuit court will base their decisions regarding an aggrieved person’s challenge from the local record. The local record is: (1) the application and subsequent additions or applicant amendments, (2) a copy of the notices to adjacent owners or any other correspondence between the political subdivision in relation to the application, (3) and public hearing records including any documents of evidence submitted by the hearing participants, (4) copies of any materials the political subdivision used in its decision, (5) minutes for any board of committee meeting held on the topic, (6) the decision of the political subdivision in writing, (7) any other documents the political subdivision prepared to document its decision (including drafts), and (8) copies of any local ordinances cited in the decision.¹¹⁸ The record must be kept for at least 7 years.¹¹⁹

Can the political subdivision require any other restrictions?

The political subdivision holds the authority to monitor compliance and withdraw its approval if any of the following occur: (1) the information in the application was misrepresented, (2) the operator does not follow the commitments listed in the application, or (3) the facility does not comply with the standards of the application.¹²⁰

WPDES Permitting Process

The Wisconsin Pollution Discharge Elimination System (WPDES) is Wisconsin's water pollution regulation program. The WPDES program implements the requirements of the federal Clean Water Act. Under the program, any discharge of pollutants into any rivers, lakes, or streams requires a permit.¹²¹ In the 1980s, the Wisconsin Department of Natural Resources (DNR) promulgated new rules intended to protect groundwater, surface waters and wetlands from impacts associated with animal feeding operations. Any facility with at least 1000 animal units that stores manure in a pit or land applies manure, must hold a WPDES permit.¹²² If the facility is in compliance with its WPDES permit, discharges into waterways are not a violation of the Clean Water Act.¹²³

WPDES permits for CAFOs must include a nutrient management plan (NMP) for manure disposal, runoff control restrictions, designs and plans of structures for manure storage, and conditions for monitoring and reporting discharges.¹²⁴ The NMP must outline the amount, timing, location, and methods regarding the CAFO's manure and wastewater land spreading.¹²⁵ CAFO NMPs must take into account nearby surface waters, and implement conservation practices to prevent manure or wastewater contamination.¹²⁶ Special rules apply to manure spreading near surface waters, such as following a 100-foot setback requirement or an equivalent conservation practice.¹²⁷ NMPs must also minimize the potential for phosphorus runoff into waterways.¹²⁸

The permit must include control measures to limit the potential for rain to wash over barnyards, feedlots, feed storage, and storage facilities to end up in waterways.¹²⁹ General restrictions in all CAFO WPDES permits include a prohibition on any manure or wastewater runoff from an application site (except in the case of a 25 year, 24 hour storm event), a prohibition on manure or wastewater forming a pond on the site, and a prohibition on fecal contamination of a well.¹³⁰ There are further restrictions for specific physical land characteristics, including a prohibition on manure application to saturated soils and a prohibition on manure application within 100 feet of a private well.¹³¹

CAFO WPDES permits are also required to include plans and specifications of certain CAFO operation structures in order to allow for DNR review including manure storage and runoff control.¹³² The WPDES permits also mandate monitoring and reporting, which allows the DNR to determine whether or not a CAFO is complying with the terms of the permit.¹³³ The permit must also contain pollution limits and require certain pollution control technologies per general WPDES requirements of Chapter 283. In 2007, the DNR revised NR 243 to include, among others things, restrictions on manure spreading on frozen or snow covered ground and also required that CAFOs to have the capability to store six months worth of liquid manure.¹³⁴

To obtain a permit, a new or expanding CAFO must apply through the DNR and begin the application process at least 12 months before operation as a CAFO begins.¹³⁵ The DNR must

then hold public hearings on the proposed permit and allow concerned citizens the opportunity to comment on the permit.

Before the issuance of a WPDES permit, DNR is required to complete an Environmental Assessment (EA), and may even be required to perform a more extensive Environmental Impact Statement (EIS) if the DNR decides the project could significantly affect the quality of the human environment.¹³⁶ Both processes are intended to be thorough reviews of the environmental and economic impacts of granting a WPDES permit so that those impacts can be considered when considering or writing the proposed permit. The EA or EIS process also requires DNR to provide an opportunity for concerned citizens to review and comment on it, though this public hearing process may coincide with WPDES permit public hearings for the same project.¹³⁷

For citizen groups that are concerned about a CAFO project that could potentially be located within their communities, the EA/EIS and WPDES permit processes provides a crucial opportunity to ensure that local voices are heard. Concerned residents can request an informational hearing on the proposed application and voice their opinions regarding the EA prepared for the CAFO. Legal assistance is not required to attend these events, and citizens can learn how to participate in the next chapter of this toolkit and in MEA's *Being Heard: A Citizen's Guide to DNR Hearings*.¹³⁸

Although citizens are encouraged to get involved in hearings themselves, legal assistance strengthens the community's case. WPDES permits and EIS/EA documents are generally very complicated and include technical information. Attorneys with experience in the permitting process can provide valuable assistance in understanding a proposed permit and how to most effectively focus comments on it.

Once a WPDES permit is issued to a CAFO, there are processes available for concerned citizens to challenge any condition of the permit. Any five or more persons may request a DNR contested case hearing within 60 days after issuance of the permit.¹³⁹ Citizens can also seek judicial review of the WPDES permit within 30 days of issuance.¹⁴⁰ Judicial review is complicated and often confusing, and the rules that govern the process are rigid. Professional legal assistance is critical to ensuring the right to judicial review is available. Information on the WPDES permit challenge process or judicial review is in the next chapter and in MEA's *Being Heard: A Citizen's Guide to DNR Hearings*.¹⁴¹

Air Permits

Wisconsin first began regulating toxic air emissions in 1988 by setting emission standards for 438 hazardous air contaminants.¹⁴² These hazardous substances are known or suspected to cause cancer, or known to cause other health effects. Ammonia and hydrogen sulfide, two toxic air contaminants commonly associated with CAFOs, are included.¹⁴³ The DNR had issued toxic air emissions standards for agricultural wastes, such as livestock manure.

The most recent air toxic rule revisions exempted emissions from existing CAFOs from regulation for a certain period of time.¹⁴⁴ The exemption period was originally set to expire on July 2007, but DNR ordered the period to be extended until July 31, 2011.¹⁴⁵ After that date, all new CAFOs would have been required to meet NR 445 standards, and existing CAFOs would be required to meet those standards within a year.¹⁴⁶ However, the implementation of the new agricultural emissions standards after July 2011 was suspended, and only voluntary compliance with air emissions standards is expected.¹⁴⁷

Implementing best management practices (BMPs), approved by the DNR, is intended to be a compliance option for agricultural wastes. This means that, in place of meeting air emission requirements, CAFO operators may choose to adopt an alternative management practice from a list approved by DNR and still be considered compliant.

Mobilize Your Community

Whether your community wants to avoid the environmental and social risks CAFOs present, or whether you want to monitor existing CAFOs for compliance, there are ways your community can get involved.

Collaborate with Others¹⁴⁸

Collaborating with likeminded neighbors, often called grassroots community organizing, is an essential first step. Grassroots community organizing is a way to build power and work for change. It is most often used to achieve social justice with and for those who are otherwise disadvantaged and ignored in society. Ideally, this is a participatory process of working together for needed change. People involved in grassroots organizations and groups learn how to take greater responsibility for the future of their communities, gain mutual respect for one another and achieve growth as individuals. Grassroots groups have made enormous progress against long odds in a wide range of areas. Here are some ways to make your efforts at community organizing successful.

Find collaborators within groups of people most affected by CAFOs: ¹⁴⁹

- Talk to landowners and those who live near the facility or land where the manure waste is being applied.
- The elderly and very young are both affected by CAFO pollution. Talk to parents of young children and local senior citizens to see if they have experienced adverse health conditions due to the presence of a CAFO.
- People with sensitive immune systems are more likely to be affected by the CAFOs gases, emissions, and pollution discharges to land, air, and water. Those individuals may be motivated to help you work for change.

- Local family farmers are also deeply affected by CAFOs. Large farm operations can degrade the water supplies other farmers depend on and create economic or social concerns.

Keep people active:

- Regular meetings are a must to be effective and hold your group together—use the same time and place if possible to stay consistent.
- Always have a sign-in sheet at meetings that includes contact information. Use the sign in sheet to immediately start a database of your members and allies.
- Encourage people to volunteer for active roles in the group, such as a calling committee, a media spokesperson, etc.
- Spread the workload and involve as many people as possible—people are there to contribute, so keep them active and they'll stay involved!
- Ask group members to invite others.
- Don't try and do everything yourself—good leaders know how to delegate
- Try and use as many ideas as possible—it is very important to increase group members involvement in the decision making process

And keep them informed:

- Create a weekly/monthly newsletter to update group members. If most people use email, it may be the cheapest and most efficient way to distribute updates.
- Start a website.
- Have pamphlets available to pass out at events.
- If your issue is more complex, have a mini-training event—make sure new group members know your message and are kept up to date with decisions that have been made.

Get Noticed & Keep their Attention:

- Bumper stickers, posters, buttons, pencils/pens, t-shirts with your group's message.
- Yard and road signs
- Web site
- Talk radio – give your local stations a call.
- Events – Plan an event that highlights your position.
- Protests
- Write letters to the editor and opinion editorials for the local paper and other groups' newsletter.
- Go to meetings/events of other potential ally groups to spread your message.

Media

- Develop a media database to inform the larger public, empower residents, nudge local officials, and add momentum to a grassroots initiative.
 - o Local media can include local newspapers, local television, and radio
- Send out a press release to your media database whenever an event or news develops that you want to comment on.
 - o Make sure your press releases have multiple contact people, list the group's name and your message (put it on group letterhead if possible), have a strong newspaper headline, NOT LONGER than one page.

Find Information¹⁵⁰

Researching, finding information, and planning are the most important parts of community organizing. Acting before researching can waste time and energy. It can also reinforce the stereotype of active groups as highly vocal, but largely uninformed. That stereotype is often used as an excuse for dismissing calls for greater public participation in local decision-making. The goals of your research are to understand the issues at play and learn how your organization can address the issues of concern to you.

Start off by exploring community newsletters and newspapers for articles that provide a history of the issue you are investigating. In addition, your town board or municipal planning department may have community profiles, traffic studies, zoning and other maps, aerial photos, and possibly an official community plan that relates to the issue. Another option is to go to local health authorities or agencies (like the DNR) which may have a needs assessment or more focused studies of your area, as well as results from any past testing that has been done.

File an Open Records Request¹⁵¹

If you want records at a public agency or department office, you have a right to request and receive most of their records. The Public Records Law sets forth the public's right to view and/or copy governmental records. In addition, it is important to consider exemptions to the Open Meetings Law, court decisions, and Attorney General Opinions and Correspondence. While our state government is only bound by the state Public Records Law, federal law, such as the Freedom of Information Act, shares the same policies and can factor into a balancing of interests.

The following sections will provide information on the type of records that are available, the time line and procedure for receiving the records and the important role a public records request can have in shaping land-use decisions.

What Can I Request?

Unless it is within specific statutory exemptions or contrary to the public interest, a member of the public (“requester”) has the right to inspect or copy any “record” held by the government.

A "record" includes:

- any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority;
- maps, charts, photos, films, printouts and disks

A "record" does not include:

- drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working;
- materials which are purely the personal property of the custodian and have no relation to his or her office;
- published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.
- purely personal materials
- materials that are protected by copyright
- Generally, “[c]ontent, not medium or format, determines whether document is a ‘record’ or not.”

What records are considered “public”?

A member of the public (“requester”) has the right to inspect or copy most records created or held by an “authority,” but what exactly is an “authority”?

According to the Wisconsin Statutes, members of the public can access records from any government branch, agency or unit, including:

- An agency, board, commission, committee, council, department or public body corporate and politic created by constitutional, law, ordinance, rule or order;
- A nonprofit corporation that receives more than 50% of its funds from a county or municipality and which provides services related to public health or safety to the county or municipality; and

Can I copy the documents or just view them?

Requesters can get copies or transcripts of any record. If it is impractical to copy the record, the requester can inspect the records. If inspection is the only option, the requester can ask to photograph the record.

The requester has a right to a written copy of the original record, often called “source” material, even if the material is not currently in written document. For example, the Attorney General identifies a right to a copy of a computer tape, and a right to have the information on the tape printed out in a readable format.

The requester does not, however, have a right to make his/her own requested copies. “If a requester appears personally to request a copy of a record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.”

How do I request the documents?

There is no magic form for public records requests. Requests can be oral or written. Requests can be submitted by mail, in person or by another means that ensures its arrival. Requesters are not required to state the purpose of the request and, with a few exceptions, requesters are not required to identify themselves. Finally, the request can be as broad or as specific as is required. However, the goal of a request is to receive records as quickly, cheaply and easily as possible. Certain methods work better than others and, therefore, it is best to follow some guidelines.

Submit a Written Request

Written requests are much better than oral requests. Written requests save confusion during the process and allow the requester to cite specific portions of the request if the response does not meet the original request. Written requests also require written responses, which are the key to reviewing the records custodian’s thought process. Perhaps most importantly, the request must be in writing “before an action to enforce the request is commenced.” In other words, if the authority violates the public records laws with respect to an oral request, the requester needs to resubmit a written request before he or she can pursue an enforcement action.

While a requester is not required to give a reason for his or her request, a custodian “almost inevitably must evaluate context to some degree” when reviewing the request. A written request can provide some context to save time.

Make Sure That Your Request is Specific and Limited in Scope

The request must be reasonably specific as to subject matter and time frame involved.²⁰ State the type of records, the subject matter and the time frame, noting the statutory definitions of “records” and the specific statute sections that allow access to these records.

Again, no magic words are needed. However, you can use our Sample Public Records Request to draft your own letter. MEA’s sample is available in Appendix C attached.

Understand What Your Community Wants and Who Can Give it To You

The second goal in your research is to find out what people want. Ask the other group members questions to determine what they need as individuals and what the goals of the group are. Common questions are: Why are people involved and what is their top priority? Who will benefit from the actions? And who will be harmed by the action? Once you find a common ground, you can identify your allies and opponents. You can research potential allies on the web and contact them for advice. Another option is to call your neighbors since they are likely having the same problems as you.

Then, you should research the decision making process. Find out how a decision will be made on your issue and how the public can participate in the decision making process. Important questions to ask are: (1) who ultimately approves the project you are opposing? (2) What are the steps the project has to take in order to be approved? (3) Is there a public hearing coming up? (4) How is public participation part of the decision making? (5) What roles do the mayor or other government approvals (local, state, and/or federal) play in the project? Your research on the issues should help you identify the appropriate person to answer the above questions. You might have to be persistent in getting answers from the appropriate agency or department. After you find the answers to these questions, you can take the next step and request meeting notes on how decision of past meetings were made or investigate similar proposals in other parts of the state or country.

Understand Applicable Legal Requirements

Doing some background research on the law that applies to your situation can be very helpful. The decision-making process and opportunity for public participation will make a lot more sense if you understand the broader context of the laws and regulations. This toolkit reviews the laws that apply to CAFO regulations: the Livestock Siting Law, WPDES permits, and potentially in the future, Air Permits. The DNR publishes useful guides on these laws¹⁵², and you can read the laws at the Wisconsin State Legislature¹⁵³ website.

Make Your Voice Heard¹⁵⁴

Participate in the Livestock Facility Siting Process

As explained above, local communities can choose to regulate the placement of CAFOs, as long as they don't establish stricter standards than allowed by state law, unless they first prove a public health or safety reason for more strict rules. If your county, city or town has not passed a livestock siting law, let your local county, city and town representatives know that you want new CAFOs to adhere to the requirements established in state law.

If your local government has passed a livestock siting rule, get involved when a facility applies for a permit. The proposed CAFO must complete a worksheet determining the impact of facility odors on the surrounding community, and they must achieve a certain score to be permitted. If you have property next to a proposed CAFO, you may contribute to calculating the facility's odor score. If you don't neighbor the facility, urge community members who are neighbors to participate. If the facility's neighbors don't choose to participate when the CAFO is first permitted, neither they nor anyone who purchases their property in the future will have a right to contribute to the odor score calculation when the facility proposes an expansion.

If a permit is granted in your community and you feel it violates the Livestock Facility Siting laws or incorrectly applies the regulations, you may challenge the permit.

Community members can also encourage their local government to exercise continuing authority over sited CAFOs. The siting regulations do not restrict the authority of political subdivisions to monitor permitted facilities or to withdraw approval if the facility fails to "honor relevant commitments made in the application."¹⁵⁵

Participate in the CAFO WPDES Permitting Process

Wisconsin law requires the DNR to obtain public input regarding many of the important decisions that it makes. Whether the DNR is considering a new administrative rule that will apply statewide or issuing a specific permit to a single manufacturing facility, state law requires that the public be given the opportunity to comment on the proposed action. Public comments on proposed DNR actions can be provided in writing directly to the DNR. Public comments can also be provided at public administrative hearings.

For the most part, the rules that govern the DNR hearings establish a fairly informal process and most administrative hearings resemble a town hall or similar public meeting. Typically, anyone who attends such a hearing is invited to voice his or her opinion, present facts or legal arguments, and critique or support the action that the DNR is considering.

The informality of the process should not disguise the importance of such hearings. The DNR makes important decisions that affect the quality of the water you drink and the air you breathe and have significant social and economic impacts. Public hearings are one critical component of the DNR's decision making process and, once the hearings have been held and the

DNR has made its decision, *it is very rare for a court to substitute its judgment for that of the DNR and undo what the DNR has done.* Typically, courts will defer to the DNR's expertise and to the detailed administrative decision making process that the DNR goes through to make most decisions.

This information is intended to facilitate your participation in the DNR's decision making process. Nevertheless, depending upon the nature of the proposed DNR action and the potential impacts it may have on your interests, it may be advisable to obtain professional legal assistance.

DNR Hearings for CAFO Permits

The two most important types of public hearings for CAFO permitting are informational and contested case hearings. An informational hearing is available before the DNR grants the permit in question and a contested case hearing is available after the DNR has issued the permit.

Since the DNR has issued a general CAFO WPDES permit for operations with between 1000 and 5720 animal units¹⁵⁶, only selected issues may be discussed at the hearing. This is because the general permit has already gone through the notice and hearing process and the DNR has already incorporated public comments.¹⁵⁷ Citizens can review the specifications detailed in the general permit online. If your particular problem with a proposed CAFO is not specifically permitted by the general permit, an informational hearing is your opportunity to voice your concerns. After the permit is issued, if you still don't feel your concerns were addressed, you may seek a contested case hearing.

Proposed CAFOs: Attend Informational Hearings on WPDES Permits.

If the DNR proposes to issue a WPDES permit to a CAFO in your area, you may individually, or as part of a group of people, request a public informational hearing on the application for the permit. The hearing is your opportunity to learn more about the proposed permit and to make a statement about the proposed permit. The DNR must consider your statement when determining whether to issue or deny the permit.¹⁵⁸

After the DNR receives a complete CAFO WPDES application, it publishes a notice of its receipt of a completed application in a local newspaper.¹⁵⁹ If five or more people sign a petition requesting an informational hearing on the proposed permit within 30 days of the publication of this notice, the DNR is required to hold a public hearing on the permit application. If less than five people request a public hearing, the DNR has the discretion to decide whether or not to hold a hearing.¹⁶⁰

In the case of a modification to a WPDES permit, it is within the DNR's discretion to hold a hearing when five or more people ("the petitioners") file a petition. The request for a hearing on the permit modification must indicate why the petitioners are interested and/or will be affected by the permitted activities and must also state why the petitioners believe that a hearing is warranted.¹⁶¹

To request a hearing, your petition must be in writing, must be dated, must indicate your interest in the proposed permit, must identify the issues that you want to be considered at the hearing, and must include the identification number of the proposed permit or application.¹⁶²

Where is the hearing held?

Whenever possible, the DNR holds the hearing in the area affected by the proposed permit.¹⁶³

Can the time or place of a public hearing be changed?

The DNR or a judge may change the time or place of the hearing only if someone can show “good cause” for a change. If the request for a change is made after the notice has been published, the person requesting the change must pay for the notice to be republished.¹⁶⁴

Who conducts the informational hearing?

The Secretary of the DNR or someone designated by the Secretary will conduct the hearing.¹⁶⁵ The Secretary will usually designate a person from the DNR’s legal staff to conduct the hearing.¹⁶⁶ The person conducting the hearing is called the “hearing examiner” or the “presiding officer.”¹⁶⁷

Who can attend and how are comments received?

Anyone may participate in an informational hearing¹⁶⁸ by making a statement, offering evidence or asking questions about the proposed permit.¹⁶⁹ If you make a statement, you cannot be cross-examined; although anyone at the hearing can ask you informational or clarifying questions through the hearing examiner.¹⁷⁰

The hearing examiner may impose a time limit on an individual’s statement in order to ensure that everyone present has the opportunity to make a statement and to prevent repetitious comments.¹⁷¹ The hearing examiner may also limit the number of representatives that may speak on behalf of any organized group.¹⁷² The hearing examiner may schedule certain times for testimony if he or she decides it is necessary to ensure maximum public participation.¹⁷³

The DNR does not require that you testify at the hearing; written statements are also acceptable.¹⁷⁴ Generally, you can submit a written statement for up to one week after an informational hearing. The DNR encourages you to submit multiple copies of written comments, but only requires you to submit one legible copy of your written comments to the hearing examiner.¹⁷⁵ The notice of the proposed permit will specify to whom you should send your written comments. Be certain to send them to that person. This is typically the same person who drafted the permit.

What is the agenda for the hearing?

The hearing examiner opens the hearing and makes a statement about the scope and purpose of the hearing and states what procedures will be used during the hearing.¹⁷⁶ The hearing examiner has the discretion to use any procedures necessary to ensure that the hearing is conducted in an orderly and expeditious manner. However, this discretion is limited by the requirement that the hearing is intended to promote broad public participation.¹⁷⁷

After establishing the procedure for the hearing, the hearing examiner will explain how the DNR will give notice of its final decision to grant or deny the proposed permit. The hearing examiner will explain how you can request a more formal review of the DNR's final decision in a public adjudicatory hearing.¹⁷⁸ There are two types of these: non-contested or contested case hearings.

After establishing procedures, the hearing examiner will enter appearances on the record for those who have indicated that they want to participate in the hearing.¹⁷⁹ Appearance slips are generally passed out or are available in the hearing room. You indicate on the appearance slip whether you intend to present a spoken or a written statement at the hearing.¹⁸⁰ The slip will also often provide a box for you to check indicating your support or opposition to the proposed permit. You will have the opportunity to testify and/or submit your written comments.¹⁸¹

The hearing examiner will call the names of those who have entered appearances and give each an opportunity to enter their comments into the record.¹⁸² Passionate advocacy of your position is encouraged, but keep in mind that factual support for your position is generally the most persuasive.

The hearing examiner has the power to exclude anyone from the hearing for “contemptuous conduct.”¹⁸³

The hearing examiner makes a written report of the public's participation at the hearing,¹⁸⁴ and a recording of the hearing may be transcribed. If you would like a copy of the report or a recording of the hearing, you may request a copy from DNR. If you want a written transcript of the hearing, you will have to pay to have the recording transcribed.¹⁸⁵ Within seven days of the date the DNR mails the hearing transcript, you may file a written notice with the hearing examiner of any errors that you find in the transcript. The hearing examiner will decide whether or not to accept your proposed corrections.¹⁸⁶

What happens after the hearing?

After an informational hearing, the DNR may issue a document called the “Response to Public Comment,” in which the DNR addresses any significant changes that the DNR proposes to make to the terms and conditions of the final permit, as compared to the terms and conditions contained in the draft permit.¹⁸⁷

The DNR makes its final determination on whether or not to issue or deny the permit based upon consideration of statements by the public, legal standards, the permit application, statements by government agencies and any other information it finds important.¹⁸⁸ The DNR mails notice of the final determination to everyone who filled out appearance slips at the public informational hearing or submitted written statements.¹⁸⁹

Although it is unusual for the DNR to deny a permit on the basis of information gathered from the public at an informational hearing, it may impose stricter standards on the permit applicant because of information it learned at the hearing.¹⁹⁰ This underscores the point that the most effective comments are generally fact-based comments about the impacts of the specific permit that the DNR is considering. Sweeping comments regarding the general degradation of the environment are rarely effective in defining the terms and conditions of a proposed permit.

How do I challenge the final permit?

Once the DNR issues the final permit, you can challenge the permit by seeking a contested case hearing with an administrative law judge, or judicial review in state court. A request to challenge a permit decision in state court must be filed within thirty (30) days after the decision by the agency.¹⁹¹ A request to challenge through a contested case hearing must be filed within sixty (60) days.¹⁹²

Permitted CAFOs: Contested Case Hearing on a WPDES Permit (also called Public Adjudicatory Hearings)

If a CAFO WPDES permit has already been issued, you may request a contested case hearing.

When can you challenge a WPDES Permit?

By statute you may obtain a hearing on a WPDES permit in order to review the:

- Denial, modification or suspension of a WPDES permit;
- The reasonableness of or necessity for any term or condition of any issued or modified WPDES permit;
- The establishment of a proposed thermal effluent limitation; or
- The establishment of any proposed water quality related limitation.¹⁹³

Although the statute provides review on the permit grant and conditions, CAFO general WPDES permits complicate the matter. The CAFO general WPDES permit has already been through the administrative process, so the opportunity to challenge general permit conditions has passed. If a community wishes to challenge the reasonableness or necessity of a condition related to the nutrient management plan or other element of the WPDES permit that is not prescribed in the general permit, review may be available.

Who can seek review of a WPDES permit in a contested case hearing and when?

Any five or more people may seek review if they file their petition within 60 days after notice of any reviewable action, such as those listed above.¹⁹⁴ The petition must include the specific issues you want to have reviewed, state your unique interest in the issue, and the reasons why a hearing is warranted.¹⁹⁵

Neither the Wisconsin Statutes nor the Wisconsin Administrative Code set forth the criteria by which the DNR will determine whether or not to grant your petition for this type of hearing. Therefore, it is a good idea to satisfy the requirements set forth in section 227.42 for a contested case hearing. Those requirements are that:

- You have a substantial interest that is injured or threatened with injury by agency action or inaction regarding the WPDES permit;
- There is evidence of legislative intent that your interest is to be protected;
- Your injury is different from the injury to the general public that may be caused by the agency action or inaction on the WPDES permit; and
- There is a dispute of material fact, (i.e., facts that may influence the outcome of the decision).¹⁹⁶

What is a WPDES contested case hearing like?

A contested case hearing is more formal than an informational hearing and is similar to a court trial.¹⁹⁷ A hearing examiner runs the hearing much like a judge runs a trial. Often, lawyers represent the parties (people involved in the dispute).

At a contested case hearing, people who want to make statements do so as "witnesses." They give testimony under oath. The testimony can include exhibits. Witnesses can be cross-examined by the parties and/or the hearing examiner. The parties may also make legal arguments. The hearing examiner makes final factual determinations (a decision about which version of the facts is correct) and may decide certain legal issues.¹⁹⁸

Although the general rules for contested case hearings are found in Chapter 227 of the Wisconsin Statutes and Chapter NR 2 of the Wisconsin Administrative Code, there are also specific rules that apply to contested cases regarding certain DNR actions, such as the issuance of a WPDES permit. If you plan to become involved in initiating a contested case hearing, it is recommended that you retain professional legal assistance. If the specific rules that control the contested case process for a specific DNR action are not precisely followed, it is possible that the right to legal review of the DNR action could be lost.

Where is the hearing held?

Whenever it is possible, the DNR holds the hearing in the area affected by the discharge permit.¹⁹⁹

Can the time or place of a public hearing be changed?

The DNR or a judge may change the time or place of the hearing only if someone can show “good cause” for a change. If the request for a change is made after the notice has been published, the person requesting the change must pay for the notice to be republished.²⁰⁰

Who is allowed to participate in the WPDES contested case hearing?

The parties named in the pleadings, the DNR, and any member of the public may participate in a contested case hearing.²⁰¹ The DNR or administrative law judge serving as hearing examiner must admit any person as a party to a contested case hearing who requests to be a party and whose substantial interest may be affected by the DNR decision that will be made following the contested hearing.²⁰² All parties have the opportunity to present evidence and testimony and to cross-examine witnesses at the contested hearing. All parties will receive copies of all documents filed with the DNR or hearing examiner prior to the final decision and all parties will be served a copy of the final decision.²⁰³ Only people who are certified as “parties” in the final decision will receive copies of post-decision filings and appeals.²⁰⁴ If you want to be a “certified” party, be certain to make that request on the record during the hearing and be prepared to explain how your substantial interest will be affected by the proposed DNR decision.

If you file documents with the DNR prior to the DNR’s issuance of a final decision in the case, you must serve the documents on everyone who entered an appearance at the hearing.²⁰⁵

What role do witnesses and subpoenas have in contested case hearings?

The DNR or the hearing examiner may issue subpoenas to compel the attendance of witnesses at hearing or at pretrial information-gathering proceedings, called “discovery.”²⁰⁶ A party’s attorney of record may also issue a subpoena to compel the attendance of a witness or the production of evidence. The attorney must, at the time the subpoena is issued, send a copy of the subpoena to the hearing examiner or other representatives of the DNR and to all parties.²⁰⁷ You may testify at the hearing as a witness. You may also ask the DNR or the hearing examiner to issue a subpoena for you requiring a witness to appear at the hearing or during “discovery” to give testimony and/or to produce material for you. Your request for the subpoena must specify why you believe the testimony or documents will be helpful and you must specify the documents you want from the witness.²⁰⁸

Is there discovery in a contested case hearing?

There is always an opportunity for discovery for a Class 2 hearing. It is within the hearing examiner's discretion to allow discovery for a Class 1 or 3 hearing. The notice of the hearing will specify the "class" of the hearing. As permitted, the DNR or any party to a contested case hearing may obtain discovery and preserve testimony. The hearing examiner may set the time during which discovery takes place, may issue orders to protect people or parties from annoyance, embarrassment, oppression or undue burden during discovery,²⁰⁹ and may also issue orders to compel discovery.²¹⁰

What are informal conferences, and when are they held?

In any action to be set for a contested case hearing, the agency or hearing examiner may direct the parties to appear at an informal conference to:

- Clarify the issues and take any procedural steps necessary to notify all parties and the public if the issues that will be considered at the hearing change.
- Consider whether the parties can agree to certain facts and documents to avoid unnecessary discovery and reduce the time needed at the hearing.
- Limit the number of witnesses.
- Consider any other matters that may help resolve the dispute.²¹¹

The DNR or the hearing examiner may call an informal conference any time before or during the course of a hearing and may require the attendance of anyone who is or wants to be certified as a party to the hearing.²¹² At the informal conference, the parties may make agreements that will bind the parties during the hearing, and the hearing examiner will record such agreements.²¹³

If the DNR or the hearing examiner holds an informal conference and the parties agree that there is no material dispute of fact, the DNR or hearing examiner may cancel the hearing and may decide the matter on the basis of briefs, i.e., written arguments submitted by the parties.²¹⁴ In other words, if the parties agree about the facts, but disagree about how the law should be applied to these facts, discovery and testimony may not be necessary, and the hearing examiner can simply consider and decide disputed legal issues.

What procedure is followed in a contested case hearing?

The hearing examiner opens the hearing and makes a statement about the hearing's scope and purpose. Then the hearing examiner records appearances on the record by taking down the names of those present at the hearing.²¹⁵

Next, the parties may make opening statements. An opening statement must be confined to a brief summary or outline, in clear and concise form, of the evidence you intend to offer during the hearing and a statement of the ultimate legal points that support your position.²¹⁶

Proceedings are not conducted off the record unless allowed by the hearing examiner. This means that anything said at the hearing, or any evidence presented, is included in a record of the hearing, unless the hearing examiner tells those present at the hearing that something is not going to be included in the record. If the administrative law judge deems that a conversation held off the record is pertinent, he or she may summarize it on the record.²¹⁷

The hearing examiner records any party's objection to receipt of evidence or motion to strike evidence.²¹⁸

The hearing examiner may exclude anyone from a contested case hearing or impose any other such remedy provided by law for contemptuous conduct.²¹⁹

Burden of proof.

The party with the burden of proof at the contested case hearing must prove its case by a "preponderance of the evidence." A preponderance of the evidence is simply the majority of the "credible" evidence submitted at the hearing. If the party with the burden of proof does not prove its case by a preponderance of the evidence, the other party wins. The DNR has the burden of proof if the hearing is about a DNR order.²²⁰ In cases where a person has been granted a review hearing or is an applicant for a license or permit, those persons or applicants have the burden of proof. In all other cases, the hearing examiner will decide which party has the burden of proof.²²¹

Is there a transcript of the hearing?

Hearings are recorded either stenographically or electronically. You can request a tape recording of the hearing. You can also request a typed transcript, even if the DNR has not prepared one, if you pay for the costs of preparing it. If several parties request typed transcripts, the DNR will divide the costs of transcription equally among the parties. A request for either a tape recording or a written transcript must be submitted in writing to the hearing examiner.²²²

You may receive a free copy of the transcript, if one has been produced, if you can establish to the satisfaction of the DNR or hearing examiner that you are indigent and have a legal need for the transcript.²²³

If you think that there is an error in the transcript, you may file with the hearing examiner a notice in writing of any claimed error in the transcript within 7 days of the date of mailing of the transcript. You must also mail a copy of your notice of the error to each party. Within 12 days of the date of the mailing of the transcript, other parties may contest your claimed error, and you may contest any of their claimed errors, by simply notifying the hearing examiner and the

other parties. The hearing examiner will advise all parties of any authorized corrections to the record.²²⁴

When would a party file a brief?

Briefs are often used to address procedural and other pre-hearing issues. Additionally, after the close of testimony, the parties can request that they be allowed to file post-hearing briefs. The hearing examiner may establish a schedule for the filing of briefs.²²⁵ A brief is a written discussion of the facts, the evidence, and the applicable law and is intended to persuade the hearing examiner of the correctness of the brief writer's legal arguments.

There are normally three rounds of brief writing that may occur after the close of testimony. In the first round, the party or parties with the burden of proof files a brief. In the second round, the other parties may file a response to the first brief or briefs. In the third round, all of the parties have the opportunity to file briefs in response to briefs filed in the second round. In the alternative, the hearing examiner may direct that briefs of all parties be filed simultaneously.²²⁶

If you file a brief, you should send copies of your brief to all of the parties in the contested case. Unless otherwise provided for by the hearing examiner, one copy of all briefs shall be filed with the Division of Hearings and Appeals together with a certification showing when and upon whom copies have been served. If your brief contains a summary of evidence or facts from the hearing, you must include reference to the specific portions of the record that contain the cited evidence.²²⁷

What are the rules of evidence in WPDES contested case hearings?

Contested case hearings are similar to court trials. During a trial, what evidence a judge and jury can consider in making its decision is governed by certain rules called "rules of evidence." For example, when you are watching a TV show about a courtroom drama, you often see lawyers stand up and say, "I object!" By making an objection, the lawyer is arguing that one of the "rules of evidence" is being violated, and that the judge or jury should not hear (or see) the evidence the other side is trying to present.

Even though a contested case hearing is like a court trial, in general, the rules of evidence do not apply. However, there are still some guidelines used at contested case hearings to decide what evidence should be admitted into the record. More important, these guidelines, even if they are not used to exclude evidence from the record, will be used by the hearing examiner to determine the "weight" or significance that should be given to the evidence. In addition, there are many rules and guidelines that anyone participating in a contested case hearing should understand. Attorneys are usually familiar with these rules and that is one reason that anyone who intends to participate in a contested case hearing should consider obtaining professional legal help. Some of these rules and guidelines are:

- The normal courtroom rules of evidence do not automatically apply to a contested case hearing. However, the hearing examiner has the discretion to use the rules of evidence when he or she determines that the rules are the best means to produce a sound record.²²⁸
- Rules of privilege, for example that a husband does not have to testify against his wife, do apply to contested case hearings.²²⁹
- The hearing examiner must admit all evidence that has reasonable probative value (i.e., that is reasonably related to the issue being considered), and must exclude all evidence that is immaterial, irrelevant or unduly repetitious.²³⁰ If you believe that evidence your opponent is trying to present is immaterial, irrelevant or unduly repetitious, you should ask the hearing examiner to exclude it.
- The hearing examiner must allow every party the opportunity to rebut or offer evidence to counteract evidence offered by another party.²³¹
- A party may conduct cross-examination of a witness.²³²
- The hearing examiner may order parties using documentary exhibits or prepared testimony to furnish copies of the exhibits or testimony to all other parties before the hearing. The hearing examiner may also provide reasonable time for the parties to review the exhibits or prepared written testimony. The hearing examiner may admit written testimony and exhibits into evidence as though given orally, if those who provide the written testimony or exhibits are present and available for cross-examination at the hearing.²³³
- If evidence consists of technical figures so numerous that it would be difficult to follow an oral presentation of the evidence, it may be presented in an exhibit that is explained by oral testimony.²³⁴
- If an original document that a party wishes to place into the record is not available, the hearing examiner may receive a copy or an excerpt of the document instead. Upon request, the hearing examiner must give the parties the opportunity to compare the copy with the original.²³⁵
- Evidence submitted at the time of hearing does not need to be limited to the issues identified in the request for a hearing or the notice of the hearing. The

request for, and notice of, hearing are collectively referred to in the Wisconsin Administrative Code as the “pleadings” for purposes of a contested case hearing. If new issues are raised at the hearing, the “pleadings” can be considered amended by the record of the hearing and the hearing examiner may grant additional time to give the parties adequate time to prepare evidence to address the new issues.²³⁶

- Parties may make objections to evidence and may make an offer of proof for evidence not admitted by the hearing examiner. An offer of proof is used to help the hearing examiner decide whether certain evidence should be admitted. A party who disagrees with the hearing examiner’s decision on whether or not to allow certain evidence makes an argument that is included in the record.²³⁷ This is important if a party decides to appeal the hearing examiner’s final decision. On appeal, the person reviewing the record can consider the party’s argument as it is in the record.
- Parties may file petitions or written communications not admissible as evidence with the hearing examiner but they will not be part of the record.²³⁸

When is the WPDES contested case proceeding over?

After all of the evidence is submitted, and the time period has elapsed for filing briefs, the hearing examiner will close the hearing.²³⁹

If you find new documentary evidence after the close of testimony, but before the DNR’s final decision has been published, you can submit the documents into the record if the other parties stipulate (agree) to the submission of the new documents.²⁴⁰

When does the DNR make a final decision?

The DNR issues its decision on the issues raised by the petition within 90 days after the close of the hearing.²⁴¹ You may petition the circuit court for judicial review of the final decision within thirty (30) days.²⁴²

What information is in a decision?

Every proposed or final decision includes a list of the names and addresses of all the people who appeared before the agency as parties in the contested case.²⁴³ Each decision also includes a notice of any right a party has to petition for a rehearing, administrative review, or judicial review of an adverse decision. The decision will inform you of the deadline for filing each petition for review and will identify the party you must name as the respondent, i.e., the person you are “suing” if you are seeking judicial review. Absent an agency providing notice of

a 30-day time period for judicial review, a petitioner has six months from the date of the agency's decision to file a petition for judicial review.²⁴⁴

Every decision is signed, filed and served to each party, or the party's attorney, by the DNR through personal delivery or mailing.²⁴⁵ The time period for filing a petition for judicial review or administrative review begins to run when the DNR mails its decision,²⁴⁶ regardless of when, or if, you receive it.²⁴⁷

Can you recover the costs you incur in connection with the contested case hearing?

If you are an individual,²⁴⁸ a small non-profit corporation²⁴⁹ or a small business,²⁵⁰ and you are the winning party, you can submit a motion (written request) requesting reimbursement of the costs you incurred in connection with the contested case.²⁵¹ The hearing examiner must award you the costs,²⁵² unless the hearing examiner finds that the DNR's position was "substantially justified,"²⁵³ or that special circumstances exist that would make the award unjust.²⁵⁴

When more than one issue is contested, the hearing examiner takes into account the relative importance of each issue in determining which party is the winning party, and the hearing examiner can then order partial awards of costs.²⁵⁵

The hearing examiner determines the amount of costs you should be awarded and includes an order for payment of costs in the final decision. The DNR has 15 working days from the date of the receipt of your motion to respond to it in writing and send it to the hearing examiner.²⁵⁶

Caution! If the hearing examiner finds that your motion for costs is frivolous, the examiner may award the DNR all reasonable costs it incurred in responding to your motion. Your motion is frivolous if the examiner finds one or more of the following:

- You submitted the motion in bad faith, solely for purposes of harassing or maliciously injuring the DNR; or
- You or your attorney knew, or should have known, that the motion did not have any reasonable basis in law and could not be supported by a good faith argument for an extension, modification or reversal of existing law.²⁵⁷

Is there an opportunity for a rehearing?

If you believe the DNR's final order after the contested case hearing was wrong and injures your interest, within 20 days after service of the order you can file a written petition for a rehearing before the DNR. The petition must be received by the agency within the 20 day period.²⁵⁸ Your petition must specify the grounds for the relief you seek and authorities (laws, rules or decisions in other cases) that support your argument that DNR's decision was incorrect.

The DNR may order a rehearing on its own motion within 20 days after service (mailing) of the final order.²⁵⁹ If you request a rehearing you must serve (mail or deliver) copies of your petition for rehearing to everyone listed as a party in the record. Those parties may file replies and support or oppose your petition for rehearing.²⁶⁰

The DNR only grants a rehearing if it believes there was some material error of law or fact or if you discover new evidence that is strong enough to reverse or change the final decision. The new evidence has to be evidence that you could not have discovered before the contested case hearing.²⁶¹

The DNR must make a decision regarding your petition for rehearing within 30 days after you file it. The DNR may order a rehearing or enter a new order based on your petition without granting you a rehearing. If the DNR does not enter an order within the 30-day period, the petition for rehearing is deemed to have been denied on the date of the expiration of the 30-day period.²⁶²

Even if you file a petition for rehearing, the effective date of the order in the final decision is not suspended or delayed. The order takes effect on the date fixed by the DNR and continues in effect unless the petition is granted or until the order is superseded, modified or set aside.²⁶³

However, the time period for requesting judicial review of the decision is postponed until the petition for rehearing is decided by the DNR.²⁶⁴

If the agency grants you a rehearing, it must schedule the matter for further proceedings as soon as practicable. The procedure in a rehearing conforms as nearly as possible to the procedure of an original hearing, except as the DNR directs. After the rehearing, the DNR may reverse, change, modify or suspend the original decision if the department decides that the original decision was wrong. Any decision made after the rehearing has the same force and effect as an original decision.²⁶⁵

Administrative Review.

Instead of a rehearing, you may also file a written petition to have the final decision reviewed by the Secretary of the DNR or the Secretary's designee. The Secretary cannot delegate the review to anyone who had prior involvement in either the hearing or decision-making process.²⁶⁶

Within 14 days of the receipt of your petition, the Secretary must decide whether or not to grant your request. If the Secretary decides to grant the review, the Secretary may order that you file briefs, present an oral argument, or have a rehearing on all or part of the evidence presented at the original contested case hearing.²⁶⁷

However, unlike when filing a petition for a rehearing, filing a petition for administrative review **does not suspend or delay** the time period for filing a petition for judicial review. You are not required to file a petition for administrative review before you seek judicial review (review by a court) of the final decision,²⁶⁸ and you may want to file both petitions simultaneously. While your petition for administrative review is pending, the order from the contested case continues in effect.²⁶⁹

Judicial Review

If you want to ask a judge to review the DNR's decision, you must do so within 30 days of the date that the DNR mails its final decision unless a rehearing request has been properly filed.²⁷⁰ The rules that govern proper timing, service and content of a petition for judicial review are rigid and are sometimes complicated and confusing. If they are not followed, your right to judicial review may be denied. Thus, it is critical that you obtain professional legal assistance if you intend to seek judicial review of a DNR decision.

Monitoring Water Quality

Why Monitor Water Quality?

Public water quality monitoring is extremely important. By tracking the water quality of an area, you accomplish several objectives. First, you are helping to establish baseline water quality data. Unless the community knows what the quality of a waterway is, it's hard to know if the water quality has been degraded after a CAFO moves upstream. Second, by tracking water quality, you may discover problems or possible WPDES permit violations. Your data can alert the appropriate authorities so they can conduct an official investigation. Third monitoring water quality helps your community establish credibility and a reputation for accuracy.

This section describes two levels of investigation: basic and advanced. The basic toolkit prepares you to make basic observations of water quality. The advanced toolkit includes equipment for testing dissolved oxygen, E. coli and nutrient levels. An advanced toolkit provides you with more information about your water quality, but you will need resources to pay for meters or testing, and to get the sample to the lab within the appropriate time frame.

Your community's concerns, the specific threats posed by area CAFOs and your available resources should determine what level of water quality monitoring is will meet your needs. With all water quality monitoring, adhere to consistent standards and your data will be the most useful to officials who can respond to your concerns.

How to Monitor Water Quality

Map the Area

First, you will need maps of the area you are concerned about. You may be concerned about a watershed in general or you may be interested in the effects of a specific CAFO. A map of all the CAFOs registered in Wisconsin is located on DNR's website:

http://www.dnr.wi.gov/topic/agbusiness/documents/cafo_map.pdf. Whether you are interested in a specific facility or a watershed, the map gives you a general idea of CAFO locations. You can find more information on farms in your area by reviewing the DNR's real-time CAFO permit database at: http://www.dnr.wi.gov/topic/AgBusiness/data/CAFO/cafo_all.asp. The website doesn't include specific addresses, but phone books or online resources may provide more detail.

Once you identify the CAFO(s) you would like to monitor, learn more about their operation. The CAFO's Nutrient Management Plan (NMP) is useful because it should tell you where the facility plans to spread manure and when. This should help you decide where the impacts to waterways may occur, and the NMP is a good resource to have to help you understand the CAFO facility overall. To receive a specific NMP, make a request to the DNR contact person in charge of NMPs at the DNR website:

<http://www.dnr.wi.gov/topic/agbusiness/cafo/nutrientmanagementplan>. Your request should be allowed by open records laws, which you can read more about in MEA's guide.²⁷¹ The NMP is a part of the facility's WPDES permit, so that means the facility is obligated to follow the NMP. You can also request information about the CAFOs facilities such manure pits and feed storage facilities.

The next step is to compare the CAFO facilities with water resources. Maps can help you identify where water contamination may occur. Topographic maps, Google Earth, and plat maps are all valuable resources. Wisconsin has a program on-line called the "Surface Water Viewer" where you can see all the surface waters in Wisconsin.²⁷² Drain tile maps may be especially useful as drain tile moves subsurface water out of the soil and can be a contamination site. Request available drain tile maps from your local county Land Conservation Department.

Once the maps are gathered, put together all the maps and aerial images in order to identify all the water sources around the CAFO. Look at the location of the waterways in relation to other structures on the CAFO property, paying close attention to manure lagoons, feed storage structures, and where the animals are held. Also, pay close attention to the flow of the water and its relation to the livestock facility structures.²⁷³ If necessary, sketch your own combined map of the structures and the waterways. The more concise, the better, so be sure to also include GPS coordinates if they are available to you. This will make it easier for DNR to understand exactly what you are monitoring and reporting.

Make Field Observations

After you have a sense of where potential water contamination exists, plan a monitoring trip. To conduct basic observations, gather a basic toolkit. A basic toolkit includes: (a) camera with ability to date-stamp pictures, (b) relevant maps including road maps with right-of-way information, CAFO site maps, and topographical maps (c) clean bottle for water sample, (d) rubber gloves, clean water for hand washing or hand sanitizer, (d) notebook or tape recorder for documentation. It helps to wear something with pockets during a field investigation in order to hold your phone or camera.²⁷⁴

When you are conducting field observations, you should never leave the public highway. Do not trespass by entering private land without permission! Get permission from neighboring landowners to conduct observations, if possible. From the road, drive around the facility in a one-mile radius, recording what you observe. If you can see them, note the number of buildings at the site, and if possible the types of buildings and structures seen (barns, milk houses, residences, silage or compost storage bins).²⁷⁵ Other things to note include:

- The location of any waste storage lagoons relative to creeks or drains.
- The flow direction of drains, creeks or other waterways within the one mile radius.
- Upstream waters, if they exist, for comparison of water quality.²⁷⁶

Take photographs to document your observations. Note the location, what you are observing, and include landmarks in the photo where possible. Also, photograph any manure application occurring when you are there, or if there is evidence of recent applications. Lastly, take photos if the applied waste is close to open waterways or is draining into ditches and waterways.²⁷⁷

Make Water Observations

Next, take some basic water observation notes. You will need to find public access to the waterway you want to observe. If the waterway crosses the road, you can make your observations just upstream from the bridge to avoid any bridge-related contamination. Again, be sure not to trespass on private lands. Choose a site you'll have ready access to because you want to follow the same exact procedures each time, from the same location.

First, smell the water. Is there an odor? A strong odor, particularly of manure, is an immediate cause for concern, however not all pollutants from CAFOs smell bad. Then, look at the color of the water. Compare it with any upstream waters that flow into the CAFO, if there are any. Contaminated water from CAFOs can range in color from white (milk house wastes) to black (manure), with brown (manure), green from silage leachate (with algae from nutrients), pink (diesel fuel) and yellow (chemical treatments) based on the contaminants. Look at the water's turbidity, is it cloudy or foamy? If the water is clear, what does the sediment look like?

Note the direction the water flows. Is there water or liquid flowing in this waterway when no other waterways are flowing? Look to see if there are any dead fish or other aquatic organisms. Are there bloodworms or other indicators of ongoing contamination? If you suspect a discharge, take a picture of your water samples at the location with something white (like a sheet of paper) behind it in order to show the real color of the sample.²⁷⁸ If you feel a report should be made to WDNR, call after you complete all of the necessary readings and samples so that you can relay the proper information about the issue to them.

Take Water Quality Samples

The next step in conducting a water quality monitoring program is to take water samples. In order to do this, assemble an intermediate toolkit. An intermediate toolkit includes everything in the basic toolkit plus: (a) a dissolved oxygen meter and (b) sterile water-sample bottles to test contaminants. A GPS device is useful for recording accurate location information as well. You can often get sterile bottles from the lab you'll use to test your samples. In order to properly collect water samples, the following are helpful: long-reach water sample pole, cooler with ice to keep water samples cold until they're delivered to the lab, notebook, waterproof markers, pencils, lab forms, and rubber bands for attaching forms to sample bottles.²⁷⁹

There are two types of water quality samples: those that go to the lab for testing and those that are tested onsite with a handheld meter. Dissolved Oxygen (DO) levels can be taken on-site with a DO meter. You should write down the reading from the DO meter, as well as photograph the meter such that the numbers can be seen with the sampling location behind it.²⁸⁰ Then, you have the time, date, and place on record. If you have a GPS device, use it to record precise locations of testing sites.

Samples for testing biochemical oxygen demand (BOD), fecal bacteria (*E. coli*), suspended solids, pH, and phosphorus need to be brought to a lab. The testing lab you choose to work with should provide detailed instructions about collecting and delivering samples. Generally, these samples must be delivered to a certified lab, in a cooler with ice, within four hours of collection.²⁸¹

Appendix A contains a list of commercial labs that are approved by the Wisconsin DNR. These labs conduct testing for four of the five tests you may want: biochemical oxygen demand (BOD), suspended solids, pH, and phosphorus. Testing surface waters for *E. coli* is more difficult. Call the laboratory where you are taking your other samples to see if they perform *E. coli* testing. Local health departments and metropolitan sewage plants test for *E. coli*, but they usually only do so on drinking water samples, not surface water samples. You might need to consider testing private drinking wells for *E. coli*.

Additional CAFO Monitoring

Water quality monitoring is essential to protecting public waterways. If you are also concerned about air quality issues, consider adding a hydrogen sulfide meter (H₂S) to your

toolkit. This meter will measure air emissions of hydrogen sulfide which is a foul-smelling gas resulting from CAFO wastes. Hydrogen sulfide emissions may be less important to track than water quality because hydrogen sulfide is not regulated on CAFOs, and is unrelated to the CAFO's WPDES permit. Air quality data is certainly useful and it can help build a case related to livestock siting. But, it isn't relevant to a WPDES permit.

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²“Animal Feeding Operations – NRCS” Natural Resources Conservation Service, 29 June 2011.
<http://www.nrcs.usda.gov/technical/afo/>.

³Daniel Imhoff, *Concentrated Animal Feeding Operations*, EarthAware 2010; Carrie Hribar, “Understanding Concentrated Animal Feeding Operations and Their Impact on Communities”, *National Association of Local Boards of Health*, p.3 2010.

⁴*Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*, US Environmental Protection Agency: Washington DC, p. 2-1, 2-2, (2001)..available at http://www.epa.gov/npdes/pubs/cafo_proposed_env_assess_ch1-3.pdf

⁵*Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*, US Environmental Protection Agency: Washington DC, p. 2-17, (2001).

⁶*Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*, US Environmental Protection Agency: Washington DC, p. 3-2, (2001).

⁷*Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*, US Environmental Protection Agency: Washington DC, p. 1-2, (2001).

⁸*Environmental Assessment of Proposed Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operations*, US Environmental Protection Agency: Washington DC, p. 1-2, (2001).3-16, (2001).

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¹⁰James M. MacDonald, et al. *Profits, Costs, and the Changing Structure of Dairy Farming, ERR-47*, Economic Research Service/USDA: Washington DC, p. 2 (2007), available at <http://www.ers.usda.gov/publications/err47/>

¹¹James M. MacDonald, et al. *Profits, Costs, and the Changing Structure of Dairy Farming, ERR-47*, Economic Research Service/USDA: Washington DC, p. 2 (2007), available at <http://www.ers.usda.gov/publications/err47/>

¹²USDA, 2007 Census of Agriculture, Volume 1, Chapter 1, Wisconsin, Table 1: Historical highlights: 2007 and Earlier Census Years.

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¹⁴Wisconsin Department of Natural Resources, WDNR Runoff Management – CAFO Permittees, http://dnr.wi.gov/topic/agbusiness/documents/cafo_map.pdf

¹⁵Wisconsin Department of Natural Resources, WDNR Runoff Management – CAFO Permittees http://dnr.wi.gov/topic/AgBusiness/data/CAFO/cafo_stats.asp

¹⁶Curtis W. Stofferahn, *Industrialized Farming and Its Relationship to Community Well-Being*, prepared for the State of North Dakota, Office of the Attorney General, p. 30 (Sept. 2006).

¹⁷Daniel Imhoff, *Concentrated Animal Feeding Operations*, EarthAware 2010

¹⁸2010 Dairy Producer Survey USDA National Agricultural Statistics Service & DATCP (2010), available at http://www.nass.usda.gov/Statistics_by_State/Wisconsin/Publications/Dairy/index.asp

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- ³² Bryan Bunton, et al., "Monitoring and Modeling of Emissions from Concentrated Animal Feeding Operations: Overview of Methods", *Environmental Health Perspectives* 115: 304 (Feb. 2007).
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- ⁴³ Carrie Hribar, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, National Association of Local Boards of Health, 3 (2010).
- ⁴⁴ Dick Heederick, et al., "Health Effects of Airborne Exposures from Concentrated Animal Feeding Operations" *Environmental Health Perspectives* 115: 299 (Feb. 2007).
- ⁴⁵ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 15, 2006, available at <http://www.ncifap.org/reports/>
- ⁴⁶ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 15, 2006, available at <http://www.ncifap.org/reports/>

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- ⁴⁷ JoAnn Burkholder et. al., “Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality”, *Environmental Health Perspectives* 115 p.308, 2007
- ⁴⁸ JoAnn Burkholder et. al., “Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality”, *Environmental Health Perspectives* 115 p.310, 2007
- ⁴⁹ JoAnn Burkholder et. al., “Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality”, *Environmental Health Perspectives* 115 p.310, 2007
- ⁵⁰ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 43, 2006, available at <http://www.ncifap.org/reports/>
- ⁵¹ Curtis W. Stofferahn, *Industrialized Farming and Its Relationship to Community Well-Being*, prepared for the State of North Dakota, Office of the Attorney General, p. 12 (Sept. 2006)
- ⁵² Curtis W. Stofferahn, *Industrialized Farming and Its Relationship to Community Well-Being*, prepared for the State of North Dakota, Office of the Attorney General, p. 31 (Sept. 2006)
- ⁵³ Curtis W. Stofferahn, *Industrialized Farming and Its Relationship to Community Well-Being*, prepared for the State of North Dakota, Office of the Attorney General, p. 31 (Sept. 2006)
- ⁵⁴ Curtis W. Stofferahn, *Industrialized Farming and Its Relationship to Community Well-Being*, prepared for the State of North Dakota, Office of the Attorney General, p. 31 (Sept. 2006)
- ⁵⁵ Curtis W. Stofferahn, *Industrialized Farming and Its Relationship to Community Well-Being*, prepared for the State of North Dakota, Office of the Attorney General, p. 32 (Sept. 2006).
- ⁵⁶ Curtis W. Stofferahn, *Industrialized Farming and Its Relationship to Community Well-Being*, prepared for the State of North Dakota, Office of the Attorney General, p. 32 (Sept. 2006).
- ⁵⁷ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 43, 2006, available at <http://www.ncifap.org/reports/>
- ⁵⁸ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 43, 2006, available at <http://www.ncifap.org/reports/>
- ⁵⁹ Restatement (Second) of Torts, § 821B; *Milwaukee Metro. Sewerage Dist. v. City of Milwaukee*, 277 Wis.2d 635, 658 (Wis., 2005) (“MMSD”). An example of a public nuisance might be an activity that affects public health or safety, such as the storage of dangerous materials in a highly populated area.
- ⁶⁰ Restatement (Second) of Torts § 821D; *MMSD*, 277 Wis. 2d. at 657.
- ⁶¹ Wis. Stat §823.08(3)(a) (2010).
- ⁶² Wis. Stat §823.08(3)(b) (2010).
- ⁶³ Wis. Stat §823.08(3)(b) (2010).
- ⁶⁴ Wis. Stat §823.08(3)(b) (2010).
- ⁶⁵ Wis. Stat §823.08(4) (2010).
- ⁶⁶ Wis. Stat §823.08(4) (2010).
- ⁶⁷ Wis. Stat. § 93.90 (1). The following Statutes/Administrative Code Sections are from 2010 unless otherwise identified.
- ⁶⁸ Wis. Stat. § 93.90 (2).
- ⁶⁹ Wis. Admin. Code ATCP § 51.02(1).
- ⁷⁰ Wis. Admin. Code ATCP § 51.10(3).
- ⁷¹ Wis. Admin. Code ATCP § 51.12(1).
- ⁷² Wis. Admin. Code ATCP § 51.12(1)(a).
- ⁷³ Wis. Admin. Code ATCP § 51.12(1)(b).
- ⁷⁴ Wis. Admin. Code ATCP § 51.12(1)(d).
- ⁷⁵ Wis. Admin. Code ATCP § 51.12(2).
- ⁷⁶ Wis. Admin. Code ATCP § 51.12(3).
- ⁷⁷ Wis. Admin. Code ATCP § 51.12(4).
- ⁷⁸ Wis. Admin. Code ATCP § 51.12(5).
- ⁷⁹ Wis. Admin. Code ATCP § 51.14(1).
- ⁸⁰ Wis. Admin. Code ATCP § 51.14(2).
- ⁸¹ Wis. Admin. Code ATCP § 51.14(3).
- ⁸² Wis. Admin. Code ATCP § 51.14(4).
- ⁸³ Wis. Admin. Code ATCP § 51.14(5).
- ⁸⁴ Wis. Admin. Code ATCP § 51.14(6).
- ⁸⁵ Wis. Admin. Code ATCP § 51.16(1)(a)1; A copy of NRCS nutrient management technical standard 590 is available at <http://efotg.nrcs.usda.gov/references/public/IA/IA590Dec08.pdf>

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- ⁸⁶ Wis. Admin. Code ATCP § 51.16(1)(a)2.
⁸⁷ Wis. Admin. Code ATCP § 51.16(1)(b).
⁸⁸ Wis. Admin. Code ATCP § 51.16(1)(c).
⁸⁹ Wis. Admin. Code ATCP § 51.16(3).
⁹⁰ Wis. Admin. Code ATCP § 51.18(3).
⁹¹ Wis. Admin. Code ATCP § 51.18(6).
⁹² Wis. Admin. Code ATCP § 51.18(2); 51.18(3); 51.18(4)
⁹³ Wis. Admin. Code ATCP § 51.18(5).
⁹⁴ Wis. Admin. Code ATCP § 51.20(1).
⁹⁵ Wis. Admin. Code ATCP § 51.20(2).
⁹⁶ Wis. Admin. Code ATCP 51.20(c)(4)
⁹⁷ Wis. Admin. Code ATCP § 51.20(3).
⁹⁸ Wis. Admin. Code ATCP § 51.20(4).
⁹⁹ Wis. Admin. Code ATCP § 51.20(5).
¹⁰⁰ Wis. Admin. Code ATCP § 51.20(6).
¹⁰¹ Wis. Admin. Code ATCP § 51.20(7).
¹⁰² Wis. Admin. Code ATCP § 51.30(4).
¹⁰³ Wis. Admin. Code ATCP § 51.30(5).
¹⁰⁴ Wis. Admin. Code ATCP § 51.12(6), 51.14(7), 51.16(2), 51.18(4), 51.20(8).
¹⁰⁵ Wis. Admin. Code ATCP § 51.32.
¹⁰⁶ Wis. Admin. Code ATCP § 51.30(6).
¹⁰⁷ Wis. Admin. Code ATCP § 51.34.
¹⁰⁸ Wis. Admin. Code ATCP § 51.34(1).
¹⁰⁹ Wis. Admin. Code ATCP § 51.34(2).
¹¹⁰ Wis. Admin. Code ATCP § 51.08(1)(a).
¹¹¹ Wis. Admin. Code ATCP § 51.08(1)(b).
¹¹² Wis. Admin. Code ATCP § 51.08(2).
¹¹³ Wis. Stat. 93.90(5)(a)
¹¹⁴ Wis. Stat. 93.90(5)(b)
¹¹⁵ Wis. Stat. 93.90(5)(c)
¹¹⁶ Wis. Stat. 93.90(5)(d)
¹¹⁷ Wis. Stat. 93.90(5)(e)
¹¹⁸ Wis. Admin. Code ATCP § 51.36.
¹¹⁹ Wis. Admin. Code ATCP § 51.36.
¹²⁰ Wis. Admin. Code ATCP § 51.34(4).
¹²¹ Wis. Stat. Ch. 283
¹²² Wis. Admin. Code NR § 243.11(3) (2010).
¹²³ Wis. Stat. Ch. 283.31(1)
¹²⁴ Wis. Admin. Code NR 243.14(1)(a)
¹²⁵ Wis. Admin. Code NR 243.14(1)(a)
¹²⁶ Wis. Admin. Code NR 243.14(2)(b)
¹²⁷ Wis. Admin. Code NR 243.14(4), NR 243- CAFO Fact Sheet #1,
<http://dnr.wi.gov/runoff/pdf/rules/nr243/SWQMA.pdf>
¹²⁸ Wis. Admin. Code NR 243.14(5)
¹²⁹ Wis. Admin. Code NR 243.15(2)
¹³⁰ Wis. Admin. Code NR 243.14(2)(b)
¹³¹ Wis. Admin. Code NR 243.14(2)(b)
¹³² Wis. Admin. Code NR § 243.12(2)(a)
¹³³ Wis. Admin. Code NR § 243.19
¹³⁴ Wis. Admin. Code NR § 243.14(6)
¹³⁵ Wis. Admin. Code NR § 243.12(1)(a) (2010).
¹³⁶ Wis. Admin. Code NR § 150.20(1)(c)(3) (2010).
¹³⁷ Wis. Admin. Code NR § 150.
¹³⁸ *Being Heard: A Citizen's Guide to DNR Hearings*, <http://www.midwestadvocates.org/resources/list/28>
¹³⁹ Wis. Admin. Code NR § 203.16 (2010)

¹⁴⁰ Wis. Stat. §227.53(1) (2010)

¹⁴¹ *Being Heard: A Citizen's Guide to DNR Hearings*, <http://www.midwestadvocates.org/resources/list/28>

¹⁴² Wisconsin Air Toxics Rules PDF, DNR website - <http://dnr.wi.gov/air/pdf/overview.pdf>

¹⁴³ Wis. Admin. Code NR § 445.08(6)(d)(2010).

¹⁴⁴ Natural Resource Board "Green Sheet" and "Background Memo" from Ch. NR 445 Rule Revision Package, <http://dnr.wi.gov/air/toxics/nr445/NRBadoption.htm>

¹⁴⁵ *Natural Resources Board Agenda Item* <http://www.dnr.state.wi.us/org/nrboard/2008/January/01-08-3A3.pdf>

¹⁴⁶ Wis. Admin. Code NR § 445.08(6)(d)(2010).

¹⁴⁷ *Natural Resources Board Agenda Item*, <http://dnr.wi.gov/org/nrboard/2011/June/06-11-3A2.pdf>

¹⁴⁸ All information from this section, unless otherwise noted, is from *A Guide to Community Organizing*, Midwest Environmental Advocates, <http://www.midwestadvocates.org/resources/list/28>

¹⁴⁹ Sierra Club, Michigan Chapter, Facing Problems with an Existing CAFO? How to Organize Community Members to Help Stop CAFO Pollution, http://michigan.sierraclub.org/issues/greatlakes/articles/cafo_organize.html.

¹⁵⁰ *A Guide to Community Organizing*, Midwest Environmental Advocates, <http://www.midwestadvocates.org/resources/list/28>

¹⁵¹ *Public Records Law*, Midwest Environmental Advocates, <http://midwestadvocates.org/resources/list/28>

¹⁵² Wisconsin DNR Agricultural Runoff Management, <http://dnr.wi.gov/runoff/ag/>; Wisconsin DNR Concentrated Animal Feeding Operations, <http://dnr.wi.gov/runoff/ag/cafo.htm>.

¹⁵³ <http://legis.wisconsin.gov/>

¹⁵⁴ *Being Heard: A Citizen's Guide to DNR Hearings*, <http://www.midwestadvocates.org/resources/list/28>

¹⁵⁵ ATCP 51.34(4)

¹⁵⁶ *Large Dairy CAFO General Permit Fact Sheet*. Wisconsin DNR, http://dnr.wi.gov/runoff/pdf/ag/Large_Dairy_CAFO_GP-WPDES_Permit.pdf

¹⁵⁷ The general permit has also gone through the Environmental Assessment and/or Environmental Impact Statement review, as required by the Wisconsin Environmental Policy Act, so those subjects are unavailable for review also.

¹⁵⁸ See, e.g., Wis. Admin. Code § NR 203.04 (2010) (WPDES).

¹⁵⁹ See Wis. Admin. Code NR § 203.02(4)(a) (2010).

¹⁶⁰ See Wis. Stat. § 283.49(1) (2010); Wis. Admin. Code NR § 203.05 (4) (2010) (Timing of the hearing request is critical. "No request or petition for hearing under this section shall be timely unless received by the department within 30 calendar days of the issuance of the public notice of the receipt of a completed permit application."); Wis. Stat. § 990.001(4) (2010) explains how time for appeals and requests are calculated and is reprinted below:

(a) The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last; and when any such time is expressed in hours the whole of Sunday and of any legal holiday, from midnight to midnight, shall be excluded.

(b) If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day.

(c) When the last day within which a proceeding is to be had or taken or an act done, which consists of any payment to or the service upon or the filing with any officer, agent, agency, department or division of the state or of any county, city, village, town, school district or other subdivision of the state, of any money, return, statement, report, notice or other document, falls on a Saturday and the duly established official office hours of such officer, agent, agency, department or division to which such payment is to be made or upon which such service is to be made or with which such return, statement, report, notice or other document is required to be filed, do not include any office hours thereof on such Saturday, said proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or a legal holiday.

(d) Regardless of whether the time limited in any statute for the taking of any proceeding or the doing of an act is measured from an event or from the date or day on which such event occurs, the day on which such event took place shall be excluded in the computation of such time.

(e) “Legal holiday” as used in this section means any statewide legal holiday provided in s. 995.20. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section.

See also Wis. Stat. § 985.09 (2010) (provides for the computation of time for publications).

¹⁶¹ *See* Wis. Stat. § 283.53(2)(d) (2010).

¹⁶² *See* Wis. Admin. Code NR § 203.05(3) (2010).

¹⁶³ *See* Wis. Admin. Code § NR 203.07 (2010); Wis. Stat. § 289.26(4) (2010).

¹⁶⁴ *See* Wis. Admin. Code § NR 2.09(1) (2010).

¹⁶⁵ *See* Wis. Admin. Code § NR 203.10(2) (2010).

¹⁶⁶ E-mail from Tom Bauman, Agricultural Runoff Program, Wisconsin Department of Natural Resources, to extern@midwestadvocates.org, Fall 2010 Law Clerk (Nov. 24, 2010, 10:57 a.m. CST)(on file with author).

¹⁶⁷ *See* Wis. Admin. Code NR § 203.10(2-3) (2010).

¹⁶⁸ *See* Wis. Admin. Code NR § 203.08 (2001); Wis. Admin. Code § NR 2.135(2)(a) (2010).

¹⁶⁹ *See* Wis. Admin. Code NR § 2.135(2)(b) (2010).

¹⁷⁰ *See* Wis. Admin. Code NR § 2.135(2)(b) (2010); NR 203.10(3)(d)(2010).

¹⁷¹ *See* Wis. Admin. Code NR § 203.10(3)(e) (2010).

¹⁷² *See* Wis. Admin. Code NR § 203.10(3)(f) (2010).

¹⁷³ *See* Wis. Admin. Code NR § 203.10(3)(g) (2010).

¹⁷⁴ E-mail from Tom Bauman, Agricultural Runoff Program, Wisconsin Department of Natural Resources, to extern@midwestadvocates.org, Fall 2010 Law Clerk (Nov. 24, 2010, 10:57 a.m. CST)(on file with author).

¹⁷⁵ *See* Wis. Admin. Code NR § 203.10(3)(h) (2010).

¹⁷⁶ *See* Wis. Admin. Code NR § 203.10(3)(b) (2010).

¹⁷⁷ *See* Wis. Admin. Code NR § 203.10(3)(a) (2010).

¹⁷⁸ *See* Wis. Admin. Code NR § 203.10(3)(b) (2010).

¹⁷⁹ *See, e.g.*, Wis. Admin. Code § NR 490.04(1) (2010).

¹⁸⁰ *See* Wis. Admin. Code NR § 203.10(3)(c) (2010).

¹⁸¹ *See id.* and Wis. Admin. Code NR § 490.04(1) (2010).

¹⁸² *See* Wis. Admin. Code NR § 490.04 (2010).

¹⁸³ *See* Wis. Admin. Code NR § 203.10(4) (2010).

¹⁸⁴ *See* Wis. Admin. Code NR § 203.10(5) (2010).

¹⁸⁵ *See* Wis. Admin. Code NR § 203.11(1) (2010).

¹⁸⁶ *See* Wis. Admin. Code NR § 203.11(2) (2010).

¹⁸⁷ *See* Wis. Admin. Code NR § 203.13(2) (2010).

¹⁸⁸ *See* Wis. Admin. Code NR § 203.12 (2010).

¹⁸⁹ *See* Wis. Admin. Code NR § 203.13(3)(b) (2010).

¹⁹⁰ E-mail from Tom Bauman, Agricultural Runoff Program, Wisconsin Department of Natural Resources, to extern@midwestadvocates.org, Fall 2010 Law Clerk (Nov. 24, 2010, 10:57 am CST)(on file with author).

¹⁹¹ *See* Wis. Stat. § 227.53(1)(a)(2) (2010).

¹⁹² *See* Wis. Admin. Code NR § 203.16 (2010).

¹⁹³ *See* Wis. Admin. Code NR § 203.15(1) (2010).

¹⁹⁴ *See* Wis. Stat. § 283.63 (2010).

¹⁹⁵ *See* Wis. Admin. Code NR § 203.17 (2010).

¹⁹⁶ *See* Wis. Stat. § 227.42(1) (2010).

¹⁹⁷ *See* Wis. Stat. § 227.44 (2010).

¹⁹⁸ *See, e.g.*, Wis. Stat. § 227.46 (2010).

¹⁹⁹ *See* Wis. Admin. Code NR § 203.19 (2010); NR § 203.07 (2010).

²⁰⁰ *See* Wis. Admin. Code NR § 2.09(1) (2010).

²⁰¹ *See* Wis. Admin. Code NR § 2.08(1) (2010).

²⁰² *See* Wis. Stat. § 227.44(2m) (2010).

²⁰³ *See* Wis. Admin. Code NR § 2.08(4) (2010).

²⁰⁴ *See* Wis. Admin. Code NR § 2.08(5-7) (2010).

²⁰⁵ See Wis. Admin. Code NR § 2.08(4) (2010).

²⁰⁶ See Wis. Admin. Code NR § 2.10 (2010).

²⁰⁷ See Wis. Stat. § 227.45(6m) (2010).

²⁰⁸ See Wis. Admin. Code NR § 2.10 (2010).

²⁰⁹ See Wis. Stat. § 227.45(7) (2010); Wis. Admin. Code § NR 2.11 (2010).

²¹⁰ See Wis. Admin. Code NR § 2.11(1) (2010).

²¹¹ See Wis. Stat. § 227.44(4)(a) (2010); Wis. Admin. Code § NR 2.12 (2010).

²¹² See Wis. Stat. § 227.44(4)(a) (2010); Wis. Admin. Code § NR 2.12 (2010).

²¹³ See Wis. Admin. Code NR § 2.12(2) (2010).

²¹⁴ See Wis. Admin. Code NR § 2.12(4) (2010).

²¹⁵ See Wis. Admin. Code NR § 2.13(1) (2010).

²¹⁶ See Wis. Admin. Code NR § 2.13(2) (2010).

²¹⁷ See Wis. Admin. Code NR § 2.13(4) (2010).

²¹⁸ See Wis. Admin. Code NR § 2.13(5) (2010).

²¹⁹ See Wis. Admin. Code NR § 2.13(6) (2010).

²²⁰ See Wis. Admin. Code NR § 2.13(3)(a) (2010).

²²¹ See Wis. Admin. Code NR § 2.13(3) (2010).

²²² See Wis. Admin. Code NR § 2.17(1) (2010).

²²³ See Wis. Admin. Code NR § 2.17(2) (2010).

²²⁴ See Wis. Admin. Code NR § 2.17(3) (2010).

²²⁵ See Wis. Admin. Code NR § 2.18(1) (2010).

²²⁶ See Wis. Admin. Code NR § 2.18(1) (2010).

²²⁷ See Wis. Admin. Code NR § 2.18(2) (2010).

²²⁸ See Wis. Stat. § 227.45(1) (2010).

²²⁹ See Wis. Stat. § 227.45(1) (2010).

²³⁰ See Wis. Stat. § 227.45(1) (2010).

²³¹ See Wis. Stat. § 227.44(3) (2010).

²³² See Wis. Stat. § 227.45(6) (2010).

²³³ See Wis. Admin. Code NR § 2.14(5) (2010).

²³⁴ See Wis. Admin. Code NR § 2.14(3) (2010).

²³⁵ See Wis. Stat. § 227.45(5) (2010).

²³⁶ See Wis. Admin. Code NR § 2.14(2) (2010).

²³⁷ See Wis. Stat. § 227.45(1) (2010).

²³⁸ See Wis. Admin. Code NR § 2.14(4) (2010).

²³⁹ See Wis. Admin. Code NR § 2.15(1) (2010).

²⁴⁰ See Wis. Admin. Code NR § 2.15(2) (2010).

²⁴¹ See Wis. Stat. § 283.63(1)(d) (2010); *see also* Wis. Admin. Code NR § 203.20 (2010).

²⁴² See Wis. Stat. § 283.63(2) (2010).

²⁴³ See Wis. Stat. § 227.47(1) (2010).

²⁴⁴ See Wis. Stat. § 227.48(2) (2010), *but see Habermehl Elec., Inc. v. Wisc. DOT*, 2003 WI App 39, ¶ 22, 260 Wis. 2d 466, 487, 659 N.W.2d 463 (as set forth in Wis. Stat. §§ 227.48(2) and 227.53(1)(a)2, absent an agency providing notice of a 30-day time period for judicial review, a petitioner has six months from the date of the agency’s decision to file a petition for judicial review).

²⁴⁵ See Wis. Stat. § 227.48(1) (2010).

²⁴⁶ See Wis. Stat. § 227.48(2) (2010).

²⁴⁷ See *In re Proposed Inc. of Pewaukee*, 72 Wis. 2d 593, 596, 241 N.W.2d 603 (Wis. 1974); *Torke/Wirth/Pujara, Ltd. v. Lakeshore Towers of Racine*, 192 Wis. 2d 481, 499-500 (Wis.Ct. App. 1995).

²⁴⁸ Wis. Stat. § 227.485(3) (2010); Wis. Stat. § 227.485(7) (2010).

²⁴⁹ Wis. Stat. § 227.485(2)(d) (2010). A small non-profit corporation is defined as “a nonprofit corporation which employs fewer than 25 full-time employees.”

²⁵⁰ Wis. Stat. § 227.485(2)(c) (2010). A small business is defined as “a business entity, including its affiliates, which is independently owned and operated, and which employs fewer than 25 full-time employees or which has gross annual sales of less than \$5,000,000.”

²⁵¹ See Wis. Stat. § 227.485(3) (2010); Wis. Stat. § 227.485(5) (2010).

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- ²⁵² Wis. Stat. § 227.485(1) (2010) (“The legislature intends that hearing examiners and courts in this state, when interpreting this section, be guided by federal case law, as of November 20, 1985, interpreting substantially similar provisions under the federal equal access to justice act, 5 U.S.C. § 504.”).
- ²⁵³ Wis. Stat. § 227.485(2)(f) (2010)(“‘Substantially justified’ means having a reasonable basis in law and fact.”).
- ²⁵⁴ See Wis. Stat. § 227.485(3) (2010).
- ²⁵⁵ See Wis. Stat. § 227.485(4) (2010).
- ²⁵⁶ See Wis. Stat. § 227.485(5) (2010).
- ²⁵⁷ See Wis. Stat. § 227.485(10) (2010).
- ²⁵⁸ See Wis. Stat. § 227.49(1) (2010); see also *Currier v. Wis. Dep’t of Revenue*, 2006 WI App 12, ¶ 17, 288 Wis. 2d 693, 709 N.W.2d 520 (“The filing of a petition for rehearing under § 227.49(1) is not accomplished upon its mailing. Rather, a petition is filed when it is physically delivered to and received by the relevant authority”).
- ²⁵⁹ See Wis. Stat. § 227.49(1) (2010).
- ²⁶⁰ See Wis. Stat. § 227.49(4) (2010).
- ²⁶¹ See Wis. Stat. § 227.49(3) (2010).
- ²⁶² See Wis. Stat. § 227.49(5) (2010).
- ²⁶³ See Wis. Stat. § 227.49(2) (2010).
- ²⁶⁴ See Wis. Stat. § 227.53(1)(a)(2) (2010).
- ²⁶⁵ See Wis. Stat. § 227.49(6) (2010).
- ²⁶⁶ See Wis. Admin. Code NR § 2.20(1) (2010).
- ²⁶⁷ See Wis. Admin. Code NR § 2.20(3) (2010).
- ²⁶⁸ See Wis. Admin. Code NR § 2.20(4) (2010).
- ²⁶⁹ See Wis. Admin. Code NR § 2.20(5) (2010).
- ²⁷⁰ See Wis. Stat. § 227.53(1) (2010).
- ²⁷¹ MEA’s “Public Records Toolkit” available at: <http://midwestadvocates.org/resources/list/28>
- ²⁷² <http://dnr.wi.gov/topic/surfacewater/swdv/>
- ²⁷³ Adapted from: Sierra Club, Michigan Chapter - Facing Problems with an Existing CAFO? <http://michigan.sierraclub.org/issues/greatlakes/articles/createlayout.html>
- ²⁷⁴ Adapted from: Sierra Club, Michigan Chapter, The Basic Toolkit Investigation, http://michigan.sierraclub.org/issues/greatlakes/articles/toolbox_basic.html
- ²⁷⁵ Adapted from: Sierra Club, Michigan Chapter - Facing Problems with an Existing CAFO? <http://michigan.sierraclub.org/issues/greatlakes/articles/createlayout.html>
- ²⁷⁶ Adapted from: Sierra Club, Michigan Chapter - Facing Problems with an Existing CAFO? <http://michigan.sierraclub.org/issues/greatlakes/articles/createlayout.html>
- ²⁷⁷ Adapted from: Sierra Club, Michigan Chapter - Facing Problems with an Existing CAFO? <http://michigan.sierraclub.org/issues/greatlakes/articles/createlayout.html>
- ²⁷⁸ Adapted from: Sierra Club, Michigan Chapter - Facing Problems with an Existing CAFO? <http://michigan.sierraclub.org/issues/greatlakes/articles/createlayout.html>
- ²⁷⁹ Adapted from: Sierra Club, Michigan Chapter, The Intermediate Toolkit Investigation, http://michigan.sierraclub.org/issues/greatlakes/articles/toolbox_intermed.html
- ²⁸⁰ Adapted from: Sierra Club, Michigan Chapter - Facing Problems with an Existing CAFO? <http://michigan.sierraclub.org/issues/greatlakes/articles/cafowatersampling.html>
- ²⁸¹ Adapted from: Sierra Club, Michigan Chapter - Facing Problems with an Existing CAFO? <http://michigan.sierraclub.org/issues/greatlakes/articles/cafowatersampling.html>

Appendix A: Commercial Labs That Test Drinking and Surface Water

Below you will find the labs that test for 4 of the 5 things that should be tested on surface water. These labs are all commercial labs and should accept both drinking and surface water samples. However, you should always call before you bring any samples to them to ensure they will be able to test your sample.

Information gathered from:

http://dnr.wi.gov/org/es/science/lc/PW/LabLists/Comm_Labs.pdf

AgSource Cooperative Services

1001 Frontage Road

Stratford WI 54484-

Phone: (715) 687-4165

Lab ID: 737109450

thutter@agsource.com

TYPE: Commercial Environmental Lab

Contact: Tim Hutter

Matrix: Aqueous

Demand assays

- Biochemical Oxygen Demand (BOD)

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: Solid

- Phosphorus, Total

Badger Laboratories & Eng Co Inc

501 W Bell Street

Neenah WI 54956-1392

Lab ID: 445023150

Phone: (920) 729-1100

jwagner@badgerlabs.com

TYPE: Commercial Environmental Lab

Contact: Jeffrey Wagner

Matrix: Aqueous

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: Solid

Colorimetry / Turbidimetry

- Phosphorus, Total

Braun Intertec Corporation
11001 Hampshire Avenue S
Minneapolis MN 55438-
Lab ID: 999462640
Phone: (952) 995-2674
cfoxhoven@braunintertec.com
TYPE: Commercial Environmental Lab
Contact: Craig Foxhoven
Matrix: *Aqueous*
Colorimetry / Turbidimetry
▪ Phosphorus, Total
Gravimetry - Residue
▪ Residue, Nonfilterable (TSS)
Matrix: *Solid*
Colorimetry / Turbidimetry
▪ Phosphorus, Total

Cardinal Environmental, Inc.
3303 Paine Ave
Sheboygan WI 53081-
Lab ID: 460024950
Phone: (920) 459-2500
agreuel@cardinalenvironmental.com
TYPE: Commercial Environmental Lab
Contact: Amanda Greuel
Matrix: *Aqueous*
Demand assays
▪ Biochemical Oxygen Demand (BOD)
▪ Phosphorus, Total
Electrometric Assay (ISE)
▪ Residue, Nonfilterable (TSS)
Matrix: *Solid*
Colorimetry / Turbidimetry
▪ Phosphorus, Total

Commercial Testing Laboratory Inc.
PO Box 526
Colfax WI 54730-
Lab ID: 617013980
Phone: (715) 962-3121
pamg@ctlcolfax.com
TYPE: Commercial Environmental Lab
Contact: Pamela Gane

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Electrometric Assay (ISE)

- pH

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*

ICP Emission Spectrometry (ICP)

- Phosphorus, Total

CT Laboratories

1230 Lange Ct.

Baraboo WI 53913-

Lab ID: 157066030

Phone: (608) 356-2760

delwood@ctlaboratories.com

TYPE: Commercial Environmental Lab

Contact: Dan Elwood

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Electrometric Assay (ISE)

- pH

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*

Colorimetry / Turbidimetry

- Phosphorus, Total

ICP Emission Spectrometry (ICP)

Davy Laboratories

115 South 6th Street

La Crosse WI 54601-

Lab ID: 632021390

Phone: (608) 782-3130

pharris@davyinc.com

TYPE: Commercial Environmental Lab

Contact: Paul Harris

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Electrometric Assay (ISE)

- pH

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Drinking Water*

Secondary Contaminants (Non-Metals)

- pH - SM 4500-H+ B

Matrix: *Solid*

Colorimetry / Turbidimetry

- Phosphorus, Total

Env. Chemistry Consulting Services (EC

2525 Advance Rd.

Madison WI 53718-6774

Lab ID: 113289110

Phone: (608) 221-8700

mjl@eccsmobilelab.com

TYPE: Commercial Environmental Lab

Contact: Michael Linskens

Matrix: *Aqueous*

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Environmental Monitoring & Technologies

8100 N. Austin Ave.

Morton Grove IL 60053-

Lab ID: 999888890

Phone: (847) 967-6666

bgoyette@emt.com

TYPE: Commercial Environmental Lab

Contact: Brian Goyette

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*

Colorimetry / Turbidimetry

- Phosphorus, Total

Era Laboratories, Inc.

4730 Oneota Street

Duluth MN 55807-
Lab ID: 999446800
Phone: (218) 727-6380
jim@eralabs.com
TYPE: Commercial Environmental Lab
Contact: James Taraldsen
Matrix: *Aqueous*
Demand assays
▪ Biochemical Oxygen Demand (BOD)
Colorimetry / Turbidimetry
▪ Phosphorus, Total
Gravimetry - Residue
▪ Residue, Nonfilterable (TSS)
Matrix: *Solid*
Colorimetry / Turbidimetry
▪ Phosphorus, Total

L V Laboratories
P.O. Box 343
Lancaster WI 53813-
Lab ID: 122046870
Phone: (608) 723-4096
lesv@chorus.net
TYPE: Commercial Environmental Lab
Contact: Lester Vondra
Matrix: *Aqueous*
Demand assays
▪ Biochemical Oxygen Demand (BOD)
Colorimetry / Turbidimetry
▪ Phosphorus, Total
Gravimetry - Residue
▪ Residue, Nonfilterable (TSS)

Lab-Tech Services
N6411 Vacha Lane
Deerbrook WI 54424-
Lab ID: 734044960
Phone: (715) 623-6281
solins02@newnorth.net
TYPE: Commercial Environmental Lab
Contact: Dave Solin
Matrix: *Aqueous*
Demand assays
▪ Biochemical Oxygen Demand (BOD)
Gravimetry - Residue
▪ Residue, Nonfilterable (TSS)

Marquette Univ., Environmental Laboratory
1515 W. Wisconsin Ave.

Milwaukee WI 53233-

Lab ID: 241293690

Phone: (414) 288-3523

mdollhopf@hotmail.com

TYPE: Commercial Environmental Lab

Contact: Mike Dollhopf

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Northern Lake Service Inc (NLS)

400 North Lake Ave

Crandon WI 54520-1286

Lab ID: 721026460

Phone: (715) 478-2777

TomP@NLSLAB.com

TYPE: Commercial Environmental Lab

Contact: Tom Priebe

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*

Colorimetry / Turbidimetry

- Phosphorus, Total

Operation and Management Services (O

380 Woodlake Road

Kohler WI 53044-

Lab ID: 460100850

Phone: (920) 457-1869

sbneerhof@att.net

TYPE: Commercial Environmental Lab

Contact: Bruce Neerhof

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)
- Gravimetry - Residue
- Residue, Nonfilterable (TSS)

Pace Analytical Services, Inc. Green Bay
1241 Bellevue Street
Green Bay WI 54302-
Lab ID: 405132750
Phone: (920) 469-2436
Kate.grams@pacelabs.com
TYPE: Commercial Environmental Lab
Contact: Kate Grams
Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*
Colorimetry / Turbidimetry

- Phosphorus, Total

Pace Analytical Services, Inc.
1700 SE Elm St. Suite 200
Minneapolis MN 55414-
Lab ID: 999407970
Phone: (612) 607-1700

Melanie.Ollila@pacelabs.com
TYPE: Commercial Environmental Lab
Contact: Melanie Ollila
Matrix: *Aqueous*
Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*
Colorimetry / Turbidimetry

- Phosphorus, Total

Scientific Control Laboratories, Inc.
3158 S. Kolin
Chicago IL 60623-

Lab ID: 998091930
Phone: (773) 254-2406
lkenny@sclweb.com
TYPE: Commercial Environmental Lab
Contact: Linda Kenny
Matrix: *Aqueous*
Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

S-F Analytical Laboratories, Inc.
2345 S. 170th Street
New Berlin WI 53151-
Lab ID: 241249360
Phone: (262) 754-5300
thungerford@sflabs.com
TYPE: Commercial Environmental Lab
Contact: Tom Hungerford
Matrix: *Aqueous*
Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*
Colorimetry / Turbidimetry

- Phosphorus, Total

Siemens Water Technologies
301 West Military Road
Rothschild WI 54474-
Lab ID: 737053130
Phone: (715) 359-7226
cindy.varga@siemens.com
TYPE: Commercial Environmental Lab
Contact: Cindy Varga
Matrix: *Aqueous*
Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Electrometric Assay (ISE)

- pH
- Gravimetry - Residue
- Residue, Nonfilterable (TSS)
- Matrix: Solid**
- Colorimetry / Turbidimetry
- Phosphorus, Total
- Electrometric Assay (ISE)
- pH

SpecPro / Badger AAP Env. Lab
1 Badger Road Hwy 12
Baraboo WI 53913-5000
Lab ID: 157005530
Phone: (608) 643-3361
carolyn.dallmann@specpro-inc.com
TYPE: Commercial Environmental Lab
Contact: Carolyn Dallmann
Matrix: Aqueous
 Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Synergy Environmental Lab, LLC
1990 Prospect Court
Appleton WI 54914-
Lab ID: 445037560
Phone: (920) 830-2455
mricker@water-right.com
TYPE: Commercial Environmental Lab
Contact: Michael Ricker
Matrix: Aqueous
 Gravimetry - Residue

- Residue, Nonfilterable (TSS)

TestAmerica Watertown
602 Commerce Drive
Watertown WI 53094-
Lab ID: 128053530
Phone: (800) 833-7036
Karri.Warnock@testamericainc.com
TYPE: Commercial Environmental Lab
Contact: Karri Warnock

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Electrometric Assay (ISE)

- pH

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Matrix: *Solid*

Colorimetry / Turbidimetry

- Phosphorus, Total

UWSP Water and Environmental Analysis

800 RESERVE STREET

STEVENS POINT WI 54481-

Lab ID: 750040280

Phone: (715) 346-3209

rstephen@uwsp.edu

TYPE: Commercial Environmental Lab

Contact: Richard Stephens

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Colorimetry / Turbidimetry

- Phosphorus, Total

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Water Quality Testing Serv. (div. NLS, Inc

2420 North Grandview Blvd

Waukesha WI 53188-

Lab ID: 268533760

Phone: (262) 547-3406

markm@nlslab.com

TYPE: Commercial Environmental Lab

Contact: Mark Milanowski

Matrix: *Aqueous*

Demand assays

- Biochemical Oxygen Demand (BOD)

Electrometric Assay (ISE)

- pH

Gravimetry - Residue

- Residue, Nonfilterable (TSS)

Appendix B: Sample Petition Form for WPDES Hearing

TO THE DEPARTMENT OF NATURAL RESOURCES:

The undersigned hereby petition(s) for a review of the department's

(proposed rule) (decision) entitled _____ and dated _____, 2 _____. The specific issue(s) requested to be reviewed

(is) (are):

The specific interest(s) of the petitioner(s) (is) (are): _____.

The reasons why a hearing is warranted are: _____.

Date _____

Signature(s) _____

Verification _____

Appendix C: Sample Open Records Request Letter

<<Your Address>>

<<Date>>

<<Department Address>>

Re: Public Records Request

Dear Records Custodian:

I am writing to request copies of all records regarding <<subject>>. Specifically, <<Add details>>. These records should include, but not be limited to, <<More details on exact records>>

This request is submitted pursuant to Wisconsin's Public Records Law, sections 19.31 to 19.39, Wis. Stats. Under this law, any person may request a record from an authority that has custody of the record. See Wis. Stat. § 19.32(3). If you do not have custody of studies or ordinances that are addressed in this request please forward this request to records custodians that have access to these records.

Under section 19.32, the "record" is "any material on which written, drawn, printed . . . information is recorded or preserved . . . which has been created or is being kept by an authority." Wis. Stat. § 19.32(2). Under this definition, the above documents are clearly "records" that can be requested by any person. Please let me know, in writing, if you have any questions regarding the request or need additional information.

Additionally, please provide notice, with an estimated cost of copying, and wait for my consent before copying files. <<Given our financial situation and the amount of personal time spent on this matter, I request that fees be reduced or waived, pursuant to section 19.35(3)(e), Wis. Stats.>>

I look forward to hearing from you in approximately ten working days, as this is deemed reasonable by the Wisconsin Department of Justice.

I appreciate your time and effort to produce these records. Thank you very much.

Sincerely,

<<Name>>