

DATE: November 6, 2006 FILE REF: 3200

TO: Natural Resources Board

FROM: P. Scott Hassett

SUBJECT: Background Memo on Legislative Request for Unspecified Modifications to Chapter NR 243, Wis. Adm. Code, Relating to Regulations for Animal Feeding Operations

### Recommendation

The Senate Committee on Agriculture and Insurance has requested unspecified modifications to the department's rule relating to the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program for Concentrated Animal Feeding Operations (CAFOs). Prior to this request, the Natural Resources Board (NRB) adopted revisions to ch. NR 243 at the May 2006 Board meeting. The department has reviewed the Senate Committee's request and has met with legislators, agricultural and environmental group representatives and DATCP to identify modifications. Based on these meetings and further deliberation, the Department requests that the Natural Resources Board adopt modifications to ch. NR 243 as outlined in the "Background" section below.

### Background

The regulations contained in ch. NR 243 are intended to address water quality impacts from animal feeding operations. Ch. NR 243 includes requirements for large, medium and small CAFOs under the WPDES permit program. Some sections of ch. NR 243 address implementation of the performance standards and prohibitions contained in ch. NR 151, but the Department is not proposing any changes to these sections. Since water resources in Wisconsin protected by the WPDES permit program include navigable lakes, streams, other surface waters, groundwater and wetlands, ch. NR 243 includes requirements to protect all of these types of water resources. However, ch. NR 243 does not address non-water quality related issues such as air pollution, odor or noise. Since ch. NR 243 is an existing administrative code, much of the framework for the WPDES permit program for CAFOs has been in place since the mid-1980's and already includes some of the revised federal rules.

Following NRB adoption of ch. NR 243 at the May 2006 Board meeting, the Senate Committee on Agriculture and Insurance and the Assembly Committee on Agriculture held a joint hearing on the rule on August 3, 2006. Following the hearing, the Senate Committee on Agriculture and Insurance requested unspecified modifications to the rule. In response to this request, the Department has proposed modifications to ch. NR 243 which include:

- Minor changes to the definition of frozen ground and saturated soils.
- Deletion of unnecessary notes associated with discharges from drain tiles.
- Revision of land application restrictions based on forecasted precipitation. The version of ch. NR 243 originally adopted by the Board included language that prohibited surface applications if a 70% chance of ½" of rain was forecasted during non-winter months and 50% chance of ¼" of rain during winter months. This was an area of significant controversy and concern for agricultural interests during legislative hearings. The Department is proposing to replace this language with language from NRCS Standard 590 that states that surface applications are prohibited when precipitation capable of producing runoff is predicted.

- Allowing operations to surface apply solid manure on non-frozen ground with some snow cover (less than an inch) during February and March. The previously adopted version of the code prohibited solid manure applications during periods of February and March where snow was present in any amount.
- Stacking of **Solid** Manure and Winter Application Restrictions: Under chapter NR 243 regulations, a CAFO may not surface apply (can still incorporate) solid manure during February and March (high risk runoff period) if areas of a field are frozen or if there is an inch or more of snow. To meet this restriction regarding surface application of solid manure, CAFOs will either have to construct two months of storage, or stack the solid manure. Under the version of chapter NR 243 originally adopted by the Board, if an operation wanted to stack solid manure in lieu of constructing solid manure storage, the operation was prohibited from surface applying solid manure on frozen or snow-covered fields during the entire winter. In order to simplify the rule and in recognition that siting restrictions on stacks should provide adequate water quality protection, the proposed modifications remove the regulatory differences placed on those operations that stack solid manure versus those operations that construct storage. Specifically, the proposed modifications will allow CAFOs that choose stacking as the storage option during February and March to surface apply solid manure during other winter months.
- Clarification that weekly inspections for storage facilities apply only to liquid storage facilities.
- Clarification of Department intent to continue to address discharges from small and medium operations by working cooperatively to address discharges. Under federal law (and ch. NR 243), certain operations are CAFOs by definition while others may be designated by the Department as a CAFO on a case-by-case basis. The Department's authority to define or designate small and medium operations as a CAFO and require permit coverage has not changed significantly from the existing rule. However, agricultural representatives expressed concern that the Department would focus only on permit issuance to address discharges from small and medium animal feeding operations. The Department has inserted a note indicating its intent to continue the current practice of working cooperatively with operations to address discharges rather relying on the issuance of permits. This includes the use of Notices of Discharge and other voluntary and regulatory programs available in the state. These programs typically provide an opportunity to obtain cost-share and technical assistance to aid an operation to implement corrective measures. Permit coverage or enforcement action may be necessary in cases where an operation has repeated discharges or refuses to put in corrective measures to abate a significant discharge that is harming a stream or contaminating a well.
- Clarification of the applicability of WPDES permit nutrient management requirements to small and medium operations (those with fewer than 1,000 animal units). A note has been added that clarifies that WPDES permit requirements for nutrient management outlined in ch. NR 243 apply only to small and medium operations that have been issued a WPDES permit.

In order to address the Senate committee's request for unspecified changes, the Department asks that the NRB adopt these modifications to ch. NR 243.