

FAILING OR LEAKING MANURE STORAGE FACILITIES

COMPLIANCE WITH WISCONSIN AGRICULTURAL PERFORMANCE STANDARDS FOR
(NR 151.05(4))

This fact sheet explains the requirements for compliance with performance standards under s. NR 151.05(4) for failing and leaking manure storage facilities. This includes assessing and documenting current compliance status, and then informing landowners of that status and any steps needed to meet technical standards. Following these key steps is critical to ensuring that landowners meet and maintain standards compliance.

Standards for Structurally Sound Manure Storage Facilities

The purpose of this standard is to protect public health, fish, aquatic life and groundwater from the significant failure of storage facilities to contain pollutants. A structurally sound facility is one that poses no imminent threat to fish and aquatic life or public health, and that is not a cause of a groundwater standards violation. Imminent means “near at hand” or “impending.” Technical standards are available to meet this standard.

This standard applies to facilities built before October 1, 2002. Newer facilities built after October 1, 2002 are subject to the design, construction and maintenance requirements of NR 151.05(2).

Determining Compliance

There are three components that must be reviewed to determine compliance:

- The facility’s condition to determine if it is maintained to minimize leakage or other discharges that might violate groundwater standards, or create imminent threat to fish and aquatic life.
- The facility’s design and construction to determine if it was built to minimize structural failures and leakage.
- The available evidence including ground water monitoring data to determine if the facility is a source of significant groundwater pollution.

Documentation and Communication

Documenting current compliance status of a facility and communicating the results to the landowner are necessary steps in establishing the foundation for requiring the landowner to maintain compliance with the performance standard. This is mainly the local governmental unit’s responsibility. Appropriate documentation may include site visits showing the facility is in compliance, or office records confirming that the facility was in past compliance. The landowner should then be informed of the determination and the reasoning behind it. This is consistent with the process in the statewide Implementation Strategy for NR 151 Agricultural Performance Standards and Prohibitions.



A starting point for this determination is a site inspection to determine if there are visible signs of structural failure, leakage, adequate freeboard or other conditions that could lead to leaks or overflows. To best detect failures or leaks, the facility should be empty. The discovery of a significant problem can support a determination of non-compliance. If a facility experiences manure overflows because of poor management, the prohibition under NR 151.08(2) should be used.

These inspections may not reveal threats to ground water. Without groundwater samples, there will remain a question about compliance with the groundwater standards protection provisions of the performance standard. While farmers might be in a position to self-certify compliance with other aspects of this standard, it may not be appropriate to rely on self-certification for this element. Additional evidence will be particularly important to establish a case of non-compliance based on leakage, and may require soils investigations and monitoring wells.

Even in the face of some uncertainty related to leakage and failure, a facility can still be presumed to comply with the standard based on documentation that facility is designed and constructed adequately. The most conclusive documentation is a signed certification that the facility was designed and installed to applicable technical standards. Other construction related documentation such as permits and stamped engineering plans will help you with this determination. The presumption of compliance can be changed if leakage and failures are subsequently found at facilities formerly thought to be compliant. It may be appropriate to qualify a determination of compliance with a statement that the assessment is based on the best information available at the time and can be changed if additional information comes to light.

Effect of Compliance Determination on Cost-sharing

Facilities that pose a significant environmental threat to surface, ground water or public health will need to be upgraded, replaced or closed in order to come into compliance with the standard under NR 151.05(4). If significant leakage of an older facility is found, there will probably be a question as to when the leakage started. The facility may have been in compliance after October 1, 2002 and subsequently fallen out of compliance, or the leakage may have been occurring long before the standards came into effect. This has important cost sharing implications because facilities documented to be in compliance after October 1, 2002 must maintain compliance regardless of cost share. The cost-share requirements for these types of situations will have to be evaluated on a case-by-case basis.

Special consideration is warranted for cost-shared facilities that were constructed according to technical standards between October 1, 1992 and October 1, 2002. Although these are older facilities, they were likely within a required 10-year operation and maintenance period and should have been in compliance at the time this standard went into effect. Under the state administrative rules, facilities that were subject to a contractual operation and maintenance period on October 1, 2002 are assumed to have achieved compliance with this standard.



In cooperation with:

