

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 459.103(3), 459.311(2) and 459A.104(1), the Environmental Protection Commission (Commission) hereby amends Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The Iowa Legislature has directed the Commission to adopt rules requiring confinement feeding operations that are concentrated animal feeding operations (CAFOs) to comply with applicable National Pollutant Discharge Elimination System (NPDES) permit requirements. These rules “shall be no more stringent” than the requirements in U.S. EPA’s rules set out in 40 CFR Parts 122 and 412. See Iowa Code section 459.311(2). Adoption of rules is also required by the Work Plan Agreement (Work Plan) entered into between the Department of Natural Resources (Department) and U.S. EPA on September 11, 2013. The Work Plan requires that the Department recommend to the Commission the adoption of certain rules, including the adoption by reference of “federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S.”

In light of the reasons above, the Commission has adopted a rule that incorporates by reference U.S. EPA’s CAFO rule. See Item 8 of the amendments. The Commission also rescinded the outdated term “operation permit” from the confinement feeding operation rules. See Items 2, 3, 6, 7 and 9 of the amendments. The amendments eliminate the need for “operation permits” in the confinement animal feeding operation program.

In addition, the amendments incorporate the Work Plan requirement that the Department recommend to the Commission that it “adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs.” The Commission considered this recommendation and has adopted an amendment that incorporates by reference the federal setback requirements. See Item 10 of the amendments. To ensure equivalency with the open feedlot program, the Commission has amended this setback requirement for confinement feeding operations as well. See Items 4 and 5 of the amendments.

To assist stakeholders in understanding how the basic NPDES permitting requirements in Chapter 64 apply to the more specific requirements for CAFOs in Chapter 65, the Commission has adopted changes to the existing rule to better outline how these two chapters work in conjunction with each other regarding NPDES CAFO permits. See Item 1 of the amendments.

By letter dated January 23, 2014, U.S. EPA Region 7 informed the Department that the amendments “meet the requirements ... of the Work Plan and ensure that Iowa’s NPDES authorities are consistent with federal requirements.”

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 16, 2014, as **ARC 1421C**. Oral comments were received at six public hearings, and hundreds of written comments were received during the comment period.

As a result of the comments, the following changes have been made to the amendments as published under Notice of Intended Action:

- In rule 567—65.1(455B,459B) (Item 2), the definition of “applicant” is amended by deleting the reference to operation permit.
- In paragraph 65.3(3)“h” (Item 5), the catchphrase language “for confinement feeding operations with NPDES permits” is repeated in the text.
- In subrule 65.7(1) (Item 9), paragraph “a” is rescinded.
- In subparagraph 65.101(6)“c”(2) (Item 10), the catchphrase language “for open feedlot operations with NPDES permits” is repeated in the text.

After analysis and review of this rule making, the Commission has determined that jobs could be negatively impacted. However, in complying with Iowa Code section 459.311(2), which requires the rules to be no more stringent than the federal regulations, and by including only federal regulations

essential to fully implement the NPDES permit program for confinement feeding operations, the Commission has necessarily minimized adverse impacts on jobs.

These amendments are intended to implement Iowa Code chapters 455B, 459, 459A, and 459B.

These amendments shall become effective October 22, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 567—64.18(455B) as follows:

567—64.18(455B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, ~~if an animal feeding operation is required to apply for and obtain an NPDES permit,~~ the provisions of this chapter relating concerning NPDES permits which relate to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply to animal feeding operations which are required to apply for and obtain an NPDES permit to the extent that such requirements are not inconsistent with 567—Chapter 65.

ITEM 2. Amend rule **567—65.1(459,459B)**, definition of “Applicant,” as follows:

“*Applicant*” means the person applying for a construction ~~or operation~~ permit for a confinement feeding operation.

ITEM 3. Rescind the definition of “Operation permit” in rule **567—65.1(459,459B)**.

ITEM 4. Amend paragraph **65.3(3)“g”** as follows:

g. Designated areas. A person shall not apply manure on land within 200 feet from a designated area, or in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. ~~For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(e)(5).~~

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

ITEM 5. Adopt the following **new** paragraph **65.3(3)“h”**:

h. Setback requirements for confinement feeding operations with NPDES permits. For confinement feeding operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5) as amended through July 30, 2012.

ITEM 6. Rescind and reserve rule **567—65.4(459,459B)**.

ITEM 7. Amend subrule 65.5(2) as follows:

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall:

a. ~~Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in the following subparagraphs shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation:~~

- ~~(1) 300 beef cattle.~~
- ~~(2) 200 dairy cattle.~~
- ~~(3) 750 butcher and breeding swine (over 55 lbs.).~~
- ~~(4) 3000 sheep or lambs.~~
- ~~(5) 16,500 turkeys.~~

~~(6) 30,000 broiler or layer chickens.~~

~~(7) 150 horses.~~

~~(8) 300 animal units.~~

~~b. Institute~~ institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This ~~paragraph~~ subrule shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

ITEM 8. Rescind rule 567—65.6(459,459B) and adopt the following new rule in lieu thereof:

567—65.6(459,459B) Concentrated animal feeding operations; NPDES permits. Iowa Code subsection 459.311(2) requires a confinement feeding operation that is a concentrated animal feeding operation as defined in 40 CFR 122.23(b) to comply with applicable NPDES permit requirements pursuant to rules adopted by the commission. The following regulations as amended through July 30, 2012, are adopted by reference:

- 40 CFR 122.21, application for a permit.
- 40 CFR 122.23, concentrated animal feeding operations.
- 40 CFR 122.42(e), additional conditions applicable to specified categories of NPDES permits.
- 40 CFR 122.63(h), minor modification of permits.
- 40 CFR Part 412, concentrated animal feeding operations (CAFO) point source category.

ITEM 9. Amend subrule 65.7(1) as follows:

65.7(1) Confinement feeding operations required to obtain a construction permit.

~~a. An animal feeding operation covered by the operation permit provisions of subrules 65.4(1) to 65.4(3) shall obtain a construction permit prior to constructing, installing, or modifying a manure control system for that operation or reopening the operation if it was discontinued for 24 months or more.~~

b. No change.

ITEM 10. Amend paragraphs **65.101(6)“b”** and **“c”** as follows:

b. *Designated areas.* A person shall not apply manure on land within 200 feet from a designated area or, in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. ~~For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(c)(5).~~

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. *CAFOs.*

(1) Land application discharges from a CAFO are subject to NPDES permit requirements. The discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent to waters of the United States from a CAFO as a result of the application of that manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where the discharge is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For the purpose of this paragraph, where the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent as specified in 65.112(8), a precipitation-related discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent from land areas under the control of a CAFO is an agricultural storm water discharge.

(2) Setback requirements for open feedlot operations with NPDES permits. For open feedlot operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5) as amended through July 30, 2012.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/17/14.