

CHAPTER 1209

REGULATION OF ANIMAL FEEDING OPERATIONS AND RELATED PROVISIONS

H.F. 2494

AN ACT providing for agricultural production, including regulating animal feeding operations and making penalties applicable and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 7D.10A ALLOCATION TO MANURE STORAGE INDEMNITY FUND.

If moneys are not sufficient to support the manure storage indemnity fund as provided in chapter 204, the executive council may allocate from moneys in the general fund of the state, which are not otherwise obligated or encumbered, an amount to the manure storage indemnity fund as provided under section 204.2. However, not more than a total of one million dollars shall be allocated to the manure storage indemnity fund at any time.

Sec. 2. Section 204.1, subsections 4, 8, and 9, Code 1997, are amended to read as follows:

4. "Department" means the department of ~~agriculture and land stewardship~~ natural resources.

8. "Manure storage structure" means ~~a structure used to store manure as part of a confinement feeding operation subject to a construction permit issued by the department of natural resources pursuant to section 455B.173. A manure storage structure includes, but is not limited to, an anaerobic lagoon, formed manure storage structure, or earthen manure storage basin, the same~~ as defined in section ~~455B.161~~ 455B.171.

9. "Permittee" means a person who, pursuant to section 455B.200A, obtains a permit for the construction of a manure storage structure, or a confinement feeding operation, if a manure storage structure is connected to the confinement feeding operation.

Sec. 3. Section 204.2, subsections 2, 3, and 5, Code 1997, are amended to read as follows:

2. The fund consists of moneys from indemnity fees remitted by permittees to the department of ~~natural resources and transferred to the department of agriculture and land stewardship~~ as provided in section 204.3; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 204.3A; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this chapter; civil penalties assessed and collected by the department of ~~natural resources~~ or the attorney general pursuant to chapter 455B, against ~~permittees animal feeding operations~~; moneys paid as a settlement involving an enforcement action for a civil penalty subject to assessment and collection against permittees by the department of ~~natural resources~~ or the attorney general pursuant to chapter 455B; interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. The moneys collected under this section ~~and shall be~~ deposited in the fund and shall be appropriated to the department for the exclusive purpose of ~~indemnifying a county for expenses related to cleaning up the site of the confinement feeding operation, including removing and disposing of manure from a manure storage structure providing moneys for cleanup of abandoned facilities as provided in section 204.4~~, and to pay the department for costs related to administering the provisions of this chapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

5. The following shall apply to moneys in the fund:

a. On August 31 following the close of each fiscal year, moneys in the fund which are not

obligated or encumbered on June 30 of the past fiscal year, ~~less not counting~~ the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, and which are in excess of ~~one~~ three million dollars; shall be deposited in the organic nutrient management fund as created in section 161C.5 for purposes of supporting the organic nutrient management program.

b. The executive council may allocate moneys from the general fund of the state as provided in section 7D.10A in an amount necessary to support the fund, including payment of claims as provided in section 204.4. However, an allocation of moneys from the general fund of the state shall be made only if the amount of moneys in the fund, which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, is less than one million dollars.

c. The department shall credit an amount to the general fund of the state which is equal to an amount allocated to the fund by the executive council under paragraph "b". The department shall credit the moneys to the general fund of the state, if the moneys in the fund which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be transferred to the general fund under this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the general fund of the state during any one fiscal year.

Sec. 4. Section 204.3, Code 1997, is amended to read as follows:

204.3 FEES.

An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department ~~of natural resources~~, prior to issuing a permit for the construction of a confinement feeding operation as provided in section ~~455B.173~~ 455B.200A. The amount of the fees shall be based on the following:

1. If the confinement feeding operation has an animal weight capacity of less than six hundred twenty-five thousand pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ~~five~~ ten cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be ~~two~~ four cents per animal unit of capacity for confinement feeding operations.

2. If the confinement feeding operation has an animal weight capacity of six hundred twenty-five thousand or more pounds but less than one million two hundred fifty thousand pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ~~seven and one-half~~ fifteen cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be ~~three~~ six cents per animal unit of capacity for confinement feeding operations.

3. If the confinement feeding operation has an animal weight capacity of one million two hundred fifty thousand or more pounds, the following shall apply:

a. For all animals other than poultry, the amount of the fee shall be ~~ten~~ twenty cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be ~~four~~ eight cents per animal unit of capacity for confinement feeding operations.

The department ~~of natural resources~~ shall deposit moneys collected from the fees into the fund according to procedures adopted by the department ~~of agriculture and land stewardship~~.

Sec. 5. NEW SECTION. 204.3A MANURE MANAGEMENT PLAN — INDEMNITY FEE REQUIRED.

An indemnity fee shall be assessed upon persons required to submit a manure management plan as provided in section 455B.203, but not required to obtain a construction permit pursuant to section 455B.200A. The amount of the fees shall be ten cents per animal unit of capacity for confinement feeding operations.

Sec. 6. Section 204.4, subsections 1 and 2, Code 1997, are amended to read as follows:

1. A county that has acquired real estate containing a manure storage structure following nonpayment of taxes pursuant to section 446.19, may make a claim against the fund to pay ~~the costs of cleaning up the site of the confinement feeding operation, including the costs of removing and disposing of the manure from a manure storage structure~~ cleanup costs incurred by the county as provided in section 204.5. Each claim shall include a bid by a qualified person, other than a governmental entity, to remove and dispose of the manure for a fixed amount specified in the bid.

2. ~~The~~ If a county provides cleanup under section 204.5 after acquiring real estate following nonpayment of taxes, the department shall determine if a claim is eligible to be satisfied under this ~~section~~ subsection, and do one of the following:

a. Pay the amount of the claim required in this section, based on the fixed amount specified in the bid submitted by the county upon completion of the work.

b. Obtain a lower fixed amount bid for the work from another qualified person, other than a governmental entity, and pay the amount of the claim required in this section, based on the fixed amount in this bid upon completion of the work. The department is not required to comply with section 18.6 in implementing this section.

2A. If a county provides cleanup of a condition causing a clear, present, and impending danger to the public health or environment, as provided in section 204.5, the county may make a claim against the fund to pay cleanup costs incurred by the county, according to procedures and requirements established by rules adopted by the department. The department shall determine if a claim is eligible to be satisfied under this subsection, and pay the amount of the claim required in this section.

Sec. 7. NEW SECTION. 204.4A USE OF FUND FOR EMERGENCY CLEANUP.

If the department provides cleanup of a condition caused by a confinement feeding operation as provided in section 204.5, the department may use moneys in the fund for purposes of supporting the cleanup. The department shall reimburse the fund from moneys recovered by the department as reimbursement for the cleanup as provided in section 204.5.

Sec. 8. Section 204.5, Code 1997, is amended to read as follows:

204.5 SITE CLEANUP.

1. a. A county which that has acquired real estate ~~containing on which there is located a~~ confinement feeding operation structure, as defined in section 455B.161, following the nonpayment of taxes pursuant to section 446.19, may ~~clean up the site~~ provide for cleanup, including removing and disposing of manure at any time, remediating contamination which originates from the confinement feeding operation, or demolishing and disposing of structures relating to the confinement feeding operation. The county may seek reimbursement including by bringing an action for the costs of the ~~removal and disposal~~ cleanup from the person abandoning the real estate.

b. If the confinement feeding operation has caused a clear, present, and impending danger to the public health or the environment, the department may clean up the confinement feeding operation and remediate contamination which originates from the confinement feeding operation, pursuant to sections 455B.381 through 455B.399. If the department fails to commence cleanup within twenty-four hours after being notified of a condition requiring cleanup, the county may provide for the cleanup as provided in this paragraph. The department or county may seek reimbursement including by bringing an action for the costs of the cleanup from a person liable for causing the condition.

2. A person cleaning up a site confinement feeding operation located on real estate acquired by a county may demolish or dispose of any building or equipment ~~used in~~ of the

confinement feeding operation located on the land according to rules adopted by the department ~~of natural resources~~ pursuant to chapter 17A, which apply to the disposal of farm buildings or equipment by an individual or business organization.

Sec. 9. NEW SECTION. 331.304A LIMITATIONS ON COUNTY LEGISLATION.

1. As used in this section:

a. "Aerobic structure", "animal", "animal feeding operation", "animal feeding operation structure", and "manure" mean the same as defined in section 455B.161.

b. "County legislation" means any ordinance, motion, resolution, or amendment adopted by a county pursuant to section 331.302.

2. A county shall not adopt or enforce county legislation regulating a condition or activity occurring on land used for the production, care, feeding, or housing of animals unless the regulation of the production, care, feeding, or housing of animals is expressly authorized by state law. County legislation adopted in violation of this section is void and unenforceable and any enforcement activity conducted in violation of this section is void. A condition or activity occurring on land used for the production, care, feeding, or housing of animals includes but is not limited to the construction, operation, or management of an animal feeding operation, an animal feeding operation structure, or aerobic structure, and to the storage, handling, or application of manure or egg washwater.

Sec. 10. Section 455B.104, Code 1997, is amended to read as follows:

455B.104 DEPARTMENTAL DUTIES — PERMITS — REQUIREMENTS AND ASSISTANCE.

1. The department shall either approve or deny a permit to a person applying for a permit under this chapter, within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this ~~section~~ subsection shall not apply to applications for permits which are issued under division II, or division IV, parts 2 through 7.

2. For five years after the date of the last violation of this chapter committed by a person or by a confinement feeding operation in which the person holds a controlling interest during which the person or confinement feeding operation was classified as a habitual violator under section 455B.191, all of the following shall apply:

a. The department may not issue a new permit under this chapter to the person or confinement feeding operation.

b. The department may revoke or refuse to renew an existing permit issued under this chapter, to the person or confinement feeding operation, if the permit relates to a confinement feeding operation, and the department determines that the continued operation of the confinement feeding operation under the existing permit constitutes a clear, present, and impending danger to the public health or environment.

3. The department shall assist persons applying for assistance to establish and operate renewable fuel production facilities pursuant to the value-added agricultural products and processes financial assistance program established in section 15E.111.

Sec. 11. Section 455B.110, Code 1997, is amended to read as follows:

455B.110 ANIMAL FEEDING OPERATIONS — COMMISSION APPROVAL OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

1. A person may file a complaint alleging that an animal feeding operation is in violation of this chapter, including rules adopted by the department, or environmental standards or regulations subject to federal law and enforced by the department.

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

b. If the county board of supervisors receives a complaint, it shall conduct a review to determine if the allegation contained in the complaint constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue.

(1) If the county board of supervisors determines that the allegation does not constitute a violation, it shall notify the complainant, the animal feeding operation which is the subject of the complaint, and the department, according to rules adopted by the department.

(2) If the county board of supervisors determines that the allegation constitutes a violation, it shall forward the complaint to the department which shall investigate the complaint as provided in this section.

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint, if the department determines that the complaint is legally sufficient and an investigation is justified. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

(1) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of a threat to the quality of surface or subsurface water.

(2) The department shall notify the county board of supervisors in the county where the violation is alleged to occur prior to investigating the premises of the alleged violation. However, the department is not required to provide notice if the department determines that a clear, present, and impending danger to the public health or environment requires immediate action.

(3) The county board of supervisors may designate a county employee to accompany a departmental official during the investigation of the premises of a confinement feeding operation. The county designee shall have the same right of access to the real estate of the premises as the departmental official conducting the inspection during the period that the county accompanies the departmental official.

(4) Upon the completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending, or completed enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint and the board of supervisors of the county where the violation is alleged to have occurred.

d. A county board of supervisors or the department is not required to divulge information regarding the identity of the complainant.

2. When entering the premises of an animal feeding operation, a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent shall comply with section 455B.103. The person shall also comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

3. The department shall not initiate an enforcement action in response to a violation by an animal feeding operation as provided in this chapter or a rule adopted pursuant to this chapter, or request the commencement of legal action by the attorney general pursuant to section 455B.141, unless the commission has approved the intended action. This section subsection shall not apply to an enforcement action in which the department enforces a civil penalty of three thousand dollars or less. This section subsection shall also not apply to an order to terminate an emergency issued by the director pursuant to section 455B.175.

Sec. 12. Section 455B.161, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Aerobic structure" means an animal feeding operation structure other than an egg washwater storage structure which employs bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment.

NEW SUBSECTION. 5A. "Cemetery" means a space held for the purpose of permanent burial, entombment, or interment of human remains that is owned or managed by a political

subdivision or private entity, or a cemetery regulated pursuant to chapter 523I or 566A. However, "cemetery" does not include a pioneer cemetery as defined in section 331.325.

NEW SUBSECTION. 19A. "Spray irrigation equipment" means the same as defined in section 455B.171.

NEW SUBSECTION. 21. "Unformed manure storage structure" means a covered or uncovered animal feeding operation structure in which manure is stored, other than a formed manure storage structure, which is an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

Sec. 13. Section 455B.161, subsection 17, Code 1997, is amended to read as follows:

17. "Public use area" means ~~that~~ any of the following:

a. A portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

b. A cemetery.

Sec. 14. NEW SECTION. 455B.161A CONFINEMENT FEEDING OPERATIONS — SPECIAL TERMS.

For purposes of this part, all of the following shall apply:

1. Two or more confinement feeding operations are adjacent if all of the following apply:

a. An animal feeding operation structure which is part of one confinement feeding operation is located within the following distance from an animal feeding operation structure which is part of the other confinement feeding operation:

(1) One thousand two hundred fifty feet for all of the following:

(a) Confinement feeding operations having an animal weight capacity of less than one million two hundred fifty thousand pounds for animals other than bovine.

(b) Confinement feeding operations having an animal weight capacity of less than four million pounds for bovine.

(2) One thousand five hundred feet for all of the following:

(a) Confinement feeding operations having an animal weight capacity of one million two hundred fifty thousand pounds or more but less than two million pounds for animals other than swine kept in a farrow-to-finish operation or bovine.

(b) Confinement feeding operations having an animal weight capacity of one million two hundred fifty thousand pounds or more but less than two million five hundred thousand pounds for swine kept in a farrow-to-finish operation.

(c) Confinement feeding operations having an animal weight capacity of four million or more pounds but less than six million pounds for bovine.

(3) Two thousand five hundred feet for all of the following:

(a) Confinement feeding operations having an animal weight capacity of two million pounds or more for animals other than swine kept in a farrow-to-finish operation or bovine.

(b) Confinement feeding operations having an animal weight capacity of two million five hundred thousand pounds for swine kept in a farrow-to-finish operation.

(c) Confinement feeding operations having an animal weight capacity of six million or more pounds for bovine.

b. An animal feeding operation structure subject to the distance requirements of this subsection is constructed after March 20, 1996.

2. An animal feeding operation structure is "constructed" when any of the following occurs:

a. Excavation for a proposed animal feeding operation structure or proposed expansion of an existing animal feeding operation structure, including excavation for the footings of the animal feeding operation structure.

b. Forms for concrete are installed for a proposed animal feeding operation structure or the proposed expansion of an existing animal feeding operation structure.

c. Piping for the movement of manure is installed within or between animal feeding operation structures as proposed or proposed to be expanded.

Sec. 15. Section 455B.162, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The following shall apply to animal feeding operation structures:

1. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after May 31, 1995, but prior to the effective date of this section; and to the expansion of structures constructed on or after May 31, 1995; or, except as provided in section 455B.163, to the expansion of structures constructed prior to May 31, 1995: the effective date of this section.

Sec. 16. Section 455B.162, subsection 1, Code 1997, is amended to read as follows:

1. ~~Except as provided in subsection 2, the following table shall apply to animal feeding operation structures:~~

a. The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,000	1,500	2,000
Covered earthen manure storage basin	750	1,000	1,500
Covered formed manure storage structure	750	1,000	1,500
Confinement building	750	1,000	1,500
Egg washwater storage structure	750	1,000	1,500

1A. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after the effective date of this section and to the expansion of structures constructed on or after the effective date of this section. The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

<u>Type of structure</u>	<u>Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine</u>	<u>Minimum separation distance in feet for operations having an animal weight capacity of more than 625,000 pounds but less than 4,000,000 pounds for bovine</u>	<u>Minimum separation distance in feet for operations having an animal weight capacity of more than 4,000,000 pounds for bovine</u>
<u>Anaerobic lagoon</u>	1,250	1,875	2,500
<u>Uncovered earthen manure storage basin</u>	1,250	1,875	2,500
<u>Uncovered formed manure storage structure</u>	1,250	1,500	2,000
<u>Covered earthen manure storage basin</u>	1,000	1,250	1,875
<u>Covered formed manure storage structure</u>	1,000	1,250	1,875
<u>Confinement building</u>	1,000	1,250	1,875
<u>Egg washwater storage structure</u>	750	1,000	1,500

b. 1B. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after May 31, 1995; to the expansion of structures constructed on or after May 31, 1995; and to the expansion of structures constructed prior to May 31, 1995. The following table represents the minimum separation distance in feet required between animal feeding operation structures and a public use area or a residence not owned by the owner of the animal feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution located within the corporate limits of a city:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
Animal feeding operation structure	1,250	1,875	2,500

1C. Except as provided in section 455B.165, on and after the effective date of this section an animal feeding operation structure shall not be constructed or expanded within one hundred feet from a thoroughfare, including a road, street, or bridge which is constructed or maintained by the state or a political subdivision.

1D. Except as provided in section 455B.165, a person shall not apply liquid manure from a confinement feeding operation on land located within seven hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

Sec. 17. Section 455B.162, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. As used in this subsection, a “qualified confinement feeding operation” means a confinement feeding operation having an animal weight capacity of two million or more pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine kept in a confinement feeding operation; a swine farrow-to-finish operation having an animal weight capacity of two million five hundred thousand or more pounds; or a confinement feeding operation having an animal weight capacity of ~~six~~ eight million or more pounds for bovine.

Sec. 18. Section 455B.163, Code 1997, is amended to read as follows:

455B.163 SEPARATION DISTANCE REQUIREMENTS FOR ANIMAL FEEDING OPERATIONS — EXPANSION OF STRUCTURES CONSTRUCTED PRIOR TO MAY 31, 1995 PRIOR CONSTRUCTED OPERATIONS.

An animal feeding operation constructed or expanded prior to the date that a distance requirement became effective under section 455B.162 and which does not comply with the section’s distance requirements of section 455B.162 on May 31, 1995, requirement may continue to operate regardless of those separation distances the distance requirement. The animal feeding operation may be expanded on or after May 31, 1995, regardless of those separation distances, if either any of the following applies:

1. a. The An animal feeding operation structure as constructed or expanded prior to the effective date of this section, complies with the distance requirements of applying to that structure as provided in section 455B.162.

b. An animal feeding operation structure as constructed or expanded on or after the effective date of this section complies with the distance requirements applying to that structure as provided in section 455B.162.

2. All of the following apply to the expansion of the animal feeding operation:

a. No portion of the animal feeding operation after expansion is closer than before expansion to a location or object for which separation is required under section 455B.162.

b. The animal weight capacity of the animal feeding operation as expanded is not more than the lesser of the following:

(1) Double its capacity on May 31, 1995, for an animal feeding operation structure constructed prior to the effective date of this section, or on the effective date of this section, for an animal feeding operation structure constructed on or after the effective date of this section.

(2) Either of the following:

(a) Six hundred twenty-five thousand pounds animal weight capacity for animals other than bovine.

(b) One million six hundred thousand pounds animal weight capacity for bovine.

3. The animal feeding operation was constructed prior to the effective date of this section and is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures, if all of the following apply:

a. The animal weight capacity is not increased for that portion of the animal feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the animal feeding operation utilizing the formed manure storage structures during any fourteen-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under section 455B.162 than any other animal feeding operation structure which is part of the operation.

Sec. 19. Section 455B.164, Code 1997, is amended to read as follows:

455B.164 DISTANCE MEASUREMENTS.

All distances between locations or objects provided in this part shall be measured from their closest points, as provided by rules adopted by the department. However, a distance between a thoroughfare and an animal feeding operation structure shall be measured from the portion of the right-of-way which is closest to the animal feeding operation structure.

Sec. 20. Section 455B.165, subsections 2, 3, and 5, Code 1997, are amended to read as follows:

2. A confinement feeding operation structure, ~~other than an earthen manure storage basin,~~ if the structure is part of a confinement feeding operation which qualifies as a small animal feeding operation. However, this subsection shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

3. a. An animal feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located, If an animal feeding operation structure is constructed or expanded within the separation distance required between an animal feeding operation structure and a thoroughfare as required pursuant to section 455B.162, the state or a political subdivision constructing or maintaining the thoroughfare benefiting from the distance separation requirement may execute a written waiver with the titleholder of the land where the structure is located. The animal feeding operation structure shall be constructed or expanded under such terms and conditions that the parties negotiate.

b. ~~The A~~ written waiver under this subsection becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of ~~this part~~ section 455B.162 as it relates to a distance requirement between the animal feeding operation structure and the location or object benefiting from the separation distance requirement.

5. An animal feeding operation structure which is ~~located~~ constructed or expanded within any distance from a residence, educational institution, commercial enterprise, bona fide religious institution, city, or public use area, if the residence, educational institution, commercial enterprise, or bona fide religious institution was constructed or expanded, or the boundaries of the city or public use area were expanded, after the date that the animal feeding operation was established. The date the animal feeding operation was established is the date on which the animal feeding operation commenced operating. A change in ownership or expansion of the animal feeding operation shall not change the established date of operation.

Sec. 21. Section 455B.165, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. An animal feeding operation structure which is constructed or expanded within a separation distance required between an animal feeding operation structure and a thoroughfare as required pursuant to section 455B.162, if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which the separation distance is measured as provided in section 455B.164. The permanent vegetation must stand along the full length of the animal feeding operation structure. The permanent vegetation must be at least seedlings and have a mature predicted height of at least twenty feet. The department shall adopt rules to carry out this subsection.

NEW SUBSECTION. 6. The application of liquid manure on land within a separation distance required between the applied manure and an object or location for which separation is required under section 455B.162, if any of the following apply:

a. The liquid manure is injected into the soil or incorporated within the soil not later than twenty-four hours from the original application, as provided by rules adopted by the commission.

b. The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

c. The liquid manure originates from a small animal feeding operation.

d. The liquid manure is applied by spray irrigation equipment using a center pivot mechanism as provided by rules adopted by the department, if all of the following apply:

(1) The spray irrigation equipment uses hoses which discharge the liquid manure in a downward direction at a height of not more than nine feet above the soil.

(2) The spray irrigation equipment disperses manure through an orifice at a rate of not more than twenty-five pounds per square inch.

(3) The liquid manure is not applied within two hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

NEW SUBSECTION. 7. The distance between an animal feeding operation structure and a cemetery, if any of the following applies:

a. The animal feeding operation structure was constructed or expanded prior to the effective date of this section of this Act.

b. The construction or expansion of the animal feeding operation structure began prior to the effective date of this section of this Act.

Sec. 22. Section 455B.171, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 0A. "Aerobic structure" means the same as defined in section 455B.161.

NEW SUBSECTION. 1A. "Anaerobic lagoon" means the same as defined in section 455B.161.

NEW SUBSECTION. 2A. "Animal feeding operation structure" means the same as defined in section 455B.161.

NEW SUBSECTION. 3A. "Commercial manure applicator" means a person who engages in the business of and charges a fee for applying manure on the land of another person.

NEW SUBSECTION. 7A. "Earthen manure storage basin" means the same as defined in section 455B.161.

NEW SUBSECTION. 12A. "Manure storage structure" means an animal feeding operation structure used to store manure as part of a confinement feeding operation, including but not limited to a formed or unformed manure storage structure.

NEW SUBSECTION. 23A. "Restricted spray irrigation equipment" means spray irrigation equipment which disperses manure through an orifice at a rate of eighty pounds per square inch or more.

NEW SUBSECTION. 31A. "Spray irrigation equipment" means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for the aerial application of water to aid the growing of general farm crops.

NEW SUBSECTION. 32A. "Unformed manure storage structure" means the same as defined in section 455B.161.

Sec. 23. Section 455B.173, subsection 13, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

13. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in this part.

Sec. 24. Section 455B.191, subsection 7, unnumbered paragraph 2, Code 1997, is amended to read as follows:

This subsection shall not apply unless the department of natural resources has previously notified the person of the person's classification as a habitual violator ~~as provided in section 455B.173. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to their classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.~~

Sec. 25. NEW SECTION. 455B.200 GENERAL.

The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

Sec. 26. NEW SECTION. 455B.200A PERMIT REQUIREMENTS.

1. The department shall issue permits for the construction, including the expansion, of animal feeding operation structures, including structures which are part of confinement feeding operations, as provided by rules adopted pursuant to section 455B.200. The department shall issue a permit to an animal feeding operation if an application is submitted according to procedures required by the department and the application meets standards established by the department, regardless of whether the animal feeding operation is required to obtain such a permit. The department shall not require that a person obtain a permit for the construction of an animal feeding operation structure if the structure is part of a small animal feeding operation. For purposes of this section, an animal feeding operation structure includes a manure storage structure.

2. The department shall not issue a permit for the construction of an animal feeding operation structure which is part of a confinement feeding operation unless the person submits all of the following:

a. An indemnity fee as provided in section 204.3 which the department shall deposit into the manure storage indemnity fund created in section 204.2.

b. A manure management plan as provided in section 455B.203.

3. The department shall not issue a permit for the construction of three or more animal feeding operation structures unless the applicant files a statement approved by a professional engineer registered pursuant to chapter 542B certifying that the construction of the animal feeding operation structures will not impede the drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction.

4. Prior to issuing a permit to a person for the construction of an animal feeding operation, the department may require the installation and operation of a hydrological monitoring system for an exclusively earthen manure storage structure according to rules which shall be adopted by the department.

5. An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure until the person has been granted a permit for the construction of the animal feeding operation structure by the department.

6. The department shall make a determination regarding the approval or denial of a permit within sixty days from the date that the department receives a completed application for a permit.

7. The department shall deliver a copy or require the applicant to deliver a copy of the application for a construction permit for the construction of a confinement feeding operation or related animal feeding operation structure, including supporting documents, to the county board of supervisors in the county where the confinement feeding operation or related animal feeding operation structure subject to the permit is proposed to be constructed.

The county auditor may accept the application on behalf of the board. If the department requires the applicant to deliver a copy of the application to the county board of supervisors, the county shall notify the department that it has received the application according to procedures required by the department.

a. The county board of supervisors shall provide for comment as follows:

(1) The board shall publish a notice that it has received the application in a newspaper having a general circulation in the county. The notice shall include all of the following:

(a) The name of the person applying to receive the construction permit.

(b) The name of the township where the confinement feeding operation or animal feeding operation is to be constructed or expanded.

(c) Each type of animal feeding operation proposed to be constructed or expanded.

(d) The animal weight capacity of the confinement feeding operation if the construction permit is approved.

(e) The time when and the place where the application may be examined as provided in section 22.2.

(f) Procedures for providing public comments to the board of supervisors, as provided by the board.

(2) The board may hold a public hearing to receive public comments regarding the application for the construction permit. The county board of supervisors may submit comments by the board and the public to the department as provided in this section, including but not limited to all of the following:

(a) The existence of an object or location not included in the construction permit application which benefits from a separation distance requirement as provided in section 455B.162 or 455B.204.

(b) The suitability of soils and the hydrology of the site where construction or expansion of a confinement feeding operation or related animal feeding operation structure is proposed.

(c) The availability of land for the application of manure originating from the confinement feeding operation.

(d) Whether the construction or expansion of a proposed animal feeding operation structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

b. The department shall notify the county board of supervisors at least three days prior to conducting an inspection of the site that the construction is proposed in the permit application. The county board of supervisors may designate a county employee to accompany a departmental official during the site inspection. The county designee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

c. The department shall not approve the application until thirty days following delivery of the application to the county board of supervisors.

d. The department shall consider and respond to comments submitted by the county board of supervisors regarding compliance by the applicant with the legal requirements for approving the construction permit as provided in this chapter, including rules adopted by the department pursuant to section 455B.200, if the comments are delivered to the department within thirty days after receipt of the application by the county board of supervisors. Upon written request by a county resident, the county board of supervisors shall forward a copy of the board's comments and the department's responses to the county resident as provided in chapter 22.

8. The department shall notify the county board of supervisors of the county where a confinement feeding operation or related animal feeding operation structure subject to a construction permit is proposed to be constructed. The notice shall state the department's decision to approve or disapprove an application for the construction permit. The notice shall be delivered to the county within three days following the department's decision. The county board of supervisors may contest the decision by filing a demand for a hearing before the commission as provided by rules adopted by the department in conformance with chapter 17A. In contesting the decision, the county shall submit a statement to the department, providing all reasons why the application should be approved or disapproved according to legal requirements provided in this chapter.

a. The county board of supervisors must contest the decision within fourteen days following receipt of the department's notice to approve or disapprove the application.

b. The contested decision shall be heard by the commission according to procedures adopted by the commission. The commission may hear the case as a contested case proceeding under chapter 17A. The commission shall render a decision within thirty-five days from the date that the county board of supervisors files a demand for a hearing. The decision of the commission shall be final agency action under chapter 17A.

9. a. The department shall not issue a permit to a person under this section if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending, as provided in section 455B.202.

b. The department shall not issue a permit to a person under this section for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 455B.191.

Sec. 27. NEW SECTION. 455B.200B CONFINEMENT FEEDING OPERATIONS — SPECIAL TERMS.

For purposes of this part, all of the following shall apply:

1. Two or more confinement feeding operations are adjacent if any of the following apply:

a. All of the following apply:

(1) An animal feeding operation structure which is part of one confinement feeding operation is located within one thousand two hundred fifty feet from an animal feeding operation structure which is part of the other confinement feeding operation.

(2) The confinement feeding operations have a combined animal weight capacity of the following:

- (a) For animals other than bovine, less than six hundred twenty-five thousand pounds.
- (b) For bovine, less than one million six hundred thousand pounds.

(3) An animal feeding operation structure subject to the distance requirements of this paragraph must be constructed or expanded on or after the effective date of this section.

b. All of the following apply:

(1) An animal feeding operation structure which is part of one confinement feeding operation is located within two thousand five hundred feet from an animal feeding operation structure which is part of the other confinement feeding operation.

(2) The confinement feeding operations have a combined animal weight capacity of the following:

- (a) For animals other than bovine, six hundred twenty-five thousand pounds or more.
- (b) For bovine, one million six hundred thousand pounds or more.

(3) An animal feeding operation structure subject to the distance requirements of this paragraph must be constructed on or after the effective date of this section.

2. An animal feeding operation structure is "constructed" in the same manner as provided in section 455B.161A.

Sec. 28. Section 445B.201,* subsection 4, Code 1997, is amended by striking the subsection.

Sec. 29. Section 455B.202, Code Supplement 1997, is amended to read as follows:

455B.202 CONFINEMENT FEEDING OPERATIONS — PENDING ACTIONS AND HABITUAL VIOLATORS.

1. As used in this section, ~~"construction" means the same as defined by rules adopted by the department applicable to the construction of animal feeding operation structures as provided in this part unless the context otherwise requires:-~~

a. "Habitual violator" means a person classified as a habitual violator pursuant to section 455B.191.

b. "Operation of law" means a transfer by inheritance, devise or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

c. "Suspect site" means a confinement feeding operation or land where a confinement feeding operation could be constructed, if the site is subject to a suspect transaction.

d. "Suspect transaction" means a transaction in which a habitual violator does any of the following:

(1) Transfers a controlling interest in a suspect site to any of the following:

(a) An employee of the habitual violator or business in which the person holds a controlling interest.

(b) A person who holds an interest in a business, including a confinement feeding operation, in which the habitual violator holds a controlling interest.

(c) A person related to the habitual violator as spouse, parent, grandparent, lineal ascendant of a grandparent or spouse and any other lineal descendant of the grandparent or spouse, or a person acting in a fiduciary capacity for a related person. This paragraph does not apply to a transaction completed by an operation of law.

(2) Provides financing for the construction or operation of a confinement feeding operation to any person, by providing a contribution or loan to the person, or providing cash or other tangible collateral for a contribution or loan made by a third person.

e. "Transaction" includes a transfer in any manner or by any means, including any of the following:

* Section 455B.201 probably intended

(1) Delivery and acceptance between two parties, including by contract or agreement with or without consideration, including by sale, exchange, barter, or gift.

(2) An operation of law.

2. a. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation, if the person is a any of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator ~~under section 455B.191.~~

~~3. c.~~ This section subsection shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if any of the following apply:

~~a.~~ (1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

~~b.~~ (2) The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

d. For purposes of this subsection, "construct" or "expand" includes financing and contracting to build an animal feeding operation structure regardless of whether the person subsequently leases, owns, or operates the animal feeding operation structure.

3. A person who receives a controlling interest in a suspect site pursuant to a suspect transaction must submit a notice of the transaction to the department within thirty days. If, after notice and opportunity to be heard, pursuant to the contested case provisions of chapter 17A, the department finds that one purpose of the transaction was to avoid the conditions and enhanced penalties imposed upon a habitual violator, the person shall be subject to the same conditions and enhanced penalties as applied to the habitual violator at the time of the transaction.

4. The department shall conduct an annual review of each confinement feeding operation which is a habitual violator and each confinement feeding operation in which a habitual violator holds a controlling interest.

Sec. 30. Section 455B.203, subsection 1, Code 1997, is amended to read as follows:

1. ~~In order to receive~~ The following persons shall submit a manure management plan to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation, if the animal feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation was required to be constructed pursuant to a construction permit approved by rules adopted by the department.

b. The owner of a confinement feeding operation, if the confinement feeding operation is required to be constructed pursuant to a permit issued by the department pursuant to section 455B.200A.

c. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

1A. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan submitted by the owner of the confinement feeding operation as provided by the department on forms prescribed by the department. The department may adopt rules allowing a person to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department. The department shall approve or disapprove a manure management plan within

sixty days of the date that the department receives a completed plan. The department shall not issue a permit for the construction of a confinement feeding operation or a related animal feeding operation structure unless the applicant submits a manure management plan together with an application as provided in section 455B.173, ~~a person shall submit a manure management plan to the department together with the application for a construction permit 455B.200A.~~

Sec. 31. Section 455B.203, subsection 4, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~A person receiving a permit for the construction of a confinement feeding operation required to submit a manure management plan to the department~~ shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

Sec. 32. Section 455B.203, subsection 5, Code 1997, is amended to read as follows:

5. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 455B.191. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection. ~~However, in order to access the operation, the departmental inspector must comply with standard disease control restrictions customarily required by the operation. The department shall comply with section 455B.103 in conducting an investigation of the premises where the animals are kept.~~

Sec. 33. NEW SECTION. 455B.203A MANURE APPLICATORS CERTIFICATION.

1. As used in this section, unless the context otherwise requires:

a. "Commercial manure applicator" means the same as defined in section 455B.171.

b. "Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

c. "Confinement site manure applicator" means a person who applies manure stored at a confinement site other than a commercial manure applicator.

2. a. A commercial manure applicator shall not apply manure to land, unless the person is certified pursuant this section.

b. A confinement site manure applicator shall not apply manure to land, unless the person is certified pursuant to this section.

3. a. A person required to be certified as a commercial manure applicator must be certified by the department each year. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or three hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

b. A person required to be certified as a confinement site manure applicator must be certified by the department each three years. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or two hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

4. The department shall adopt, by rule, requirements for the certification, including educational program requirements. The department may establish different educational programs designed for commercial manure applicators and confinement site manure applicators. The department shall adopt rules necessary to administer this section, including

establishing certification standards, which shall at least include standards for the handling, application, and storage of manure, the potential effects of manure upon surface water and groundwater, and procedures to remediate the potential effects on surface water or groundwater.

a. The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination.

b. The department shall administer the continuing instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the continuing instructional courses. The department is not required to compensate persons to teach the continuing instructional courses. In selecting persons, the department shall consult with organizations interested in the application of manure, including associations representing manure applicators and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the continuing instructional courses. The Iowa cooperative extension service may teach continuing instructional courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. The department, in administering the certification program under this section, and the department of agriculture and land stewardship in administering the certification program for pesticide applicators may cooperate together.

5. a. This section shall not require a person to be certified as a commercial manure applicator if any of the following applies:

(1) The person is any of the following:

(a) Actively engaged in farming who trades work with another such person.

(b) Employed by a person actively engaged in farming not solely as a manure applicator who applies manure as an incidental part of the person's general duties.

(c) Engaged in applying manure as an incidental part of a custom farming operation.

(d) Engaged in applying manure as an incidental part of a person's duties as provided by rules adopted by the department providing for an exemption.

(2) The person applies manure for a period of thirty days from the date of initial employment as a commercial manure applicator if the person applying the manure is acting under the instructions and control of a certified commercial manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

b. This section shall not require a person to be certified as a confinement site manure applicator if all of the following apply:

(1) The person is a part-time employee of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified commercial manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

6. a. The department may charge a fee for certifying persons under this section. The fee for certification shall be based on the costs of administering and enforcing this section and paying the expenses of the department relating to certification.

b. All moneys received by the department under the provisions of this chapter shall be handled in the same manner as repayment receipts, as defined in section 8.2, and shall be used solely for the administration and enforcement of this chapter.

Sec. 34. NEW SECTION. 455B.203B APPLICATION REQUIREMENTS.

1. The department shall adopt rules governing the application of manure originating from an anaerobic lagoon or aerobic structure which is part of a confinement feeding operation. The rules shall establish application rates and practices to minimize groundwater or

surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. The rules shall establish different application rates and practices based on the water holding capacity of the soil at the time of application.

2. A person shall not apply manure by spray irrigation equipment, except as provided by rules adopted by the department pursuant to chapter 17A. However, a person shall not use restricted spray irrigation equipment to apply manure originating from a confinement feeding operation, unless the manure has been diluted as provided by rules adopted by the department, including diluted by use of an anaerobic lagoon.

Sec. 35. Section 455B.204, Code 1997, is amended to read as follows:

455B.204 DISTANCE REQUIREMENTS.

1. ~~An animal feeding operation structure shall be located at least five hundred feet away from the surface intake of an agricultural drainage well or known sinkhole, and at least two hundred feet away from~~ As used in this section, unless the context otherwise requires:

a. "Major water source" means a lake, reservoir, river, or stream located within the territorial limits of the state, any marginal river area adjacent to the state, which can support a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding which has been identified by rules adopted by the commission.

b. "Watercourse" means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with water flow or the occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian.

2. Except as provided in subsection 3, the following shall apply:

a. An animal feeding operation structure shall not be constructed closer than five hundred feet away from a surface intake, wellhead, or cistern of an agricultural drainage well or known sinkhole.

b. An animal feeding operation structure shall not be constructed if the animal feeding operation structure as constructed is closer than any of the following:

(1) Two hundred feet away from a watercourse other than a major water source.

(2) Five hundred feet away from a major water source.

c. A watercourse, other than a major water source, shall not be constructed, expanded, or diverted, if the watercourse as constructed, expanded, or diverted is closer than two hundred feet away from an animal feeding operation structure.

d. A major water source shall not be constructed, expanded, or diverted, if the water source as constructed, expanded, or diverted is closer than five hundred feet from an animal feeding operation structure.

3. ~~However, no distance~~ A separation is distance required between a in subsection 2 shall not apply to any of the following:

a. A location or object and a farm pond or privately owned lake, as defined in section 462A.2.

b. A manure storage structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier, including design standards.

4. All distances between locations or objects shall be measured from their closest points, as provided by rules adopted by the department.

2. ~~A person shall not dispose of manure closer to a designated area than provided in section 159.27.~~

5. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 455I.5.

Sec. 36. NEW SECTION. 455B.205 MANURE STORAGE STRUCTURES — CONSTRUCTION STANDARDS — INSPECTIONS.

1. The department shall establish by rule engineering standards for the construction of

manure storage structures required to be constructed pursuant to a permit issued under section 455B.200A.

2. The design standards for unformed manure storage structures established by the department shall account for special design characteristics of animal feeding operations, including all of the following:

a. The lining of the structure shall be constructed with materials deemed suitable by the department in order to minimize seepage loss through the lining's seal.

b. The structure shall be constructed with materials deemed suitable by the department in order to control erosion on the structure's berm, side slopes, and base.

c. The structure shall be constructed to minimize seepage into near-surface water sources.

d. The top of the floor of the structure's liner must be above the groundwater table as determined by the department. If the groundwater table is less than two feet below the top of the liner's floor, the structure shall be installed with a synthetic liner. If the department allows an unformed manure storage structure to be located at a site by permanently lowering the groundwater table, the department shall confirm that the proposed system meets standards necessary to ensure that the structure does not pollute groundwater sources. If the department allows drain tile installed to lower a groundwater table to remain where located, the department shall require that a device be installed to allow monitoring of the water in the drain tile line. The department shall also require the installation of a device to allow shutoff of the drain tile lines, if the drain tile lines do not have a surface outlet accessible on the property where the structure is located.

3. a. The department shall conduct a routine inspection of each unformed manure storage structure at least once each year. A routine inspection conducted pursuant to this subsection shall be limited to a visual inspection of the site where the unformed manure storage structure is located. The department shall inspect the site at a reasonable time after providing at least twenty-four hours' notice to the person owning or managing the confinement feeding operation. The visual inspection shall include, but not be limited to, determining whether any of the following exists:

(1) An adequate freeboard level.

(2) The seepage of manure from the unformed manure storage structure.

(3) Erosion.

(4) Inadequate vegetation cover.

(5) The presence of an opening allowing manure to drain from the unformed manure storage structure.

b. Nothing in this subsection restricts the department from conducting an inspection of an animal feeding operation which is not routine.

Sec. 37. NEW SECTION. 455B.206 EXCEPTION TO REGULATION.

1. As used in this section, "research college" means an accredited public or private college or university, including but not limited to a university under the control of the state board of regents as provided in chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

2. The requirements of this part which regulate animal feeding operations, including rules adopted by the department pursuant to section 455B.200, shall not apply to research activities and experiments performed under the authority and regulations of a research college, if the research activities and experiments relate to animal feeding operations, including but not limited to the confinement of animals and the storage and disposal of manure originating from animal feeding operations.

3. This section shall not apply to requirements provided in any of the following:

a. Section 455B.201, including rules adopted by the department under that section.

b. Section 455B.204, including rules adopted by the department under that section.

Sec. 38. Section 657.11, subsections 2, 3, 5, 6, 7, and 8, Code 1997, are amended to read as follows:

2. ~~If a person has received all permits required pursuant to chapter 455B for an animal feeding operation, as defined in section 455B.161, there shall be a rebuttable presumption that an~~ An animal feeding operation is, as defined in section 455B.161, shall not be found to be a public or private nuisance under this chapter or under principles of common law, and ~~that the animal feeding operation does shall not unreasonably and continuously be found to~~ interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. ~~The rebuttable presumption also applies to persons who are not required to obtain a permit pursuant to chapter 455B for an animal feeding operation as defined in section 455B.161. The rebuttable presumption~~ However, this section shall not apply if the person bringing the action proves that an injury to a the person or damage to the person's property is proximately caused by a either of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. ~~3. The rebuttable presumption may be overcome by clear and convincing evidence of both~~ Both of the following:

a. ~~(1) The animal feeding operation unreasonably and continuously for substantial periods of time interferes with another the person's comfortable use and enjoyment of the person's life or property.~~

b. ~~(2) The injury or damage is proximately caused by the negligent operation of the animal feeding operation failed to use existing prudent generally accepted management practices reasonable for the operation.~~

5. ~~The rebuttable presumption created by this~~ This section shall apply regardless of the established date of operation or expansion of the animal feeding operation. ~~The rebuttable presumption~~ A defense against a cause of action provided in this section includes, but is not limited to, a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

6. ~~An animal feeding operation that complies with the requirements in chapter 455B for animal feeding operations shall be deemed to meet any common law requirements regarding the standard of a normal person living in the locality of the operation.~~

7. ~~A If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person for whom the rebuttable presumption created who may raise a defense under this section is not rebutted,~~ shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action, ~~if the court determines that a claim is frivolous.~~

8 ~~7. The rebuttable presumption created in this~~ This section does not apply to an injury to a person or damages to property caused by the animal feeding operation before ~~May 31, 1995~~ the effective date of this section.

Sec. 39. Section 657.11, subsection 4, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~The rebuttable presumption~~ This section does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. ~~The rebuttable presumption~~ This section shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, "confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

Sec. 40. 1995 Iowa Acts, chapter 195, section 37, is amended to read as follows:

SEC. 37. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The department of natural resources shall request that the Iowa pork producers association, the Iowa cattlemen's association, the Iowa poultry association, the Iowa dairy products association,

~~an organization representing agricultural producers generally, Iowa state university, the soil conservation division of the department of agriculture and land stewardship, and the natural resources conservation service of the United States department of agriculture, and after the effective date of this section of this Act as amended by 1998 Iowa Acts, House File 2494,* two organizations representing agricultural producers generally~~ each appoint one member to consult with the department ~~regarding~~. The appointees shall consult with the department regarding this Act, rules adopted pursuant to this Act, and the Act's implementation. The department shall consult with representatives in meetings which shall be conducted by the department, upon the call of the director of the department or the director's designee, or upon the request to the department of any three members. The department shall request that the representatives provide the department with recommendations regarding the adoption of rules required to administer this Act. This section is repealed on March 31, 2005.

Sec. 41. 1995 Iowa Acts, chapter 195, section 38, is amended to read as follows:

SEC. 38. INDEMNITY FEES — PRIOR PERMITTEES.

1. The indemnity fee imposed upon permittees pursuant to section 204.3, as enacted in this Act, shall be imposed upon all persons who have received a permit by the department of natural resources for the construction of a confinement feeding operation with a manure storage structure as defined in section 455B.161 204.1, as enacted in this Act, prior to the effective date of this Act. However, an indemnity fee shall not be imposed upon a person the following persons:

a. A person who has received a construction permit more than ten years prior to the effective date of this Act.

b. A person who has received a construction permit within ten years prior to May 31, 1995, if the confinement feeding operation was not constructed under the permit and the permit has expired.

2. To every extent possible, the department of natural resources shall notify all persons required to pay the fee. The notice shall be in writing. The department shall establish a date when the fees must be paid to the department, which shall be not less than three months after the delivery of the notice. If a person is delinquent in paying the indemnity fee when due, or if upon examination, an underpayment of the fee is found by the department, the person is subject to a penalty of ten dollars or an amount equal to the amount of deficiency for each day of the delinquency, whichever is less. After the date required for payment, the department shall transfer all outstanding claims to the department of agriculture and land stewardship.

3. The department of natural resources shall deliver to receive from the department of agriculture and land stewardship the most current available information regarding the persons required to pay the fee and any delinquency penalty, including the names and addresses of the persons, and the capacity of the confinement feeding operations subject to the permit. The department of agriculture and land stewardship natural resources, in cooperation with the attorney general, may bring a court action in order to collect indemnity fees and delinquency penalties required to be paid under this section.

Sec. 42. AMNESTY PERIOD. Notwithstanding 1995 Iowa Acts, chapter 195, section 38, a person who has not paid an indemnity fee as required by that Act, as amended by this Act, shall not be subject to a delinquency penalty as provided in that Act, if the person pays the full amount of the indemnity fee to the department of agriculture and land stewardship** on or before December 31, 1998, as required by the department.

Sec. 43. EFFECT OF THIS ACT — REFUND. Nothing in this Act requires the department of natural resources or the department of agriculture and land stewardship to refund an indemnity fee or delinquency penalty payment paid by permittees pursuant to 1995 Iowa Acts, chapter 195, section 38.

* This chapter, chapter 1209 herein

** Department of agriculture and land stewardship and department of natural resources probably intended

Sec. 44. INDEMNITY FEES — PRIOR MANURE MANAGEMENT PLAN SUBMITTEES.

1. The indemnity fee imposed upon persons required to submit a manure management plan pursuant to section 204.3A, as enacted in this Act, shall be imposed upon all persons who are required to submit a manure management plan under section 455B.203 as amended in this Act. However, a fee shall not be imposed upon a person who was not required to submit a manure management plan to the department of natural resources pursuant to 1995 Iowa Acts, chapter 195, and 567 IAC section 65.18(455B).

2. To every extent possible, the department shall notify all persons required to pay the fee. The notice shall be in writing. The department shall establish a date when the fees must be paid to the department, which shall be not less than three months after the delivery of the notice. If a person is delinquent in paying the indemnity fee when due, or if upon examination, an underpayment of the fee is found by the department, the person is subject to a penalty of ten dollars or an amount equal to the amount of deficiency for each day of the delinquency, whichever is less.

Sec. 45. INDEMNITY FEES — PRIOR CONSTRUCTION PERMITTEES. The department of agriculture and land stewardship shall deliver to the department of natural resources the most current available information regarding persons required to pay the indemnity fee imposed pursuant to 1995 Iowa Acts, chapter 195, section 38. The department of natural resources, in cooperation with the attorney general, may bring a court action in order to collect indemnity fees and delinquency penalties as provided in that Act for deposit into the manure storage indemnity fund as created in section 204.2.

Sec. 46. MANURE MANAGEMENT PLAN SUBMISSIONS. All persons required to submit a manure management plan pursuant to section 455B.203 as amended by this Act shall submit a manure management plan according to the same requirements, as provided in that section or rules adopted by the department pursuant to that section. Persons who have submitted a manure management plan that complies with those requirements are not required to submit a new manure management plan. Persons who have not submitted a manure management plan that complies with those requirements shall not be required to submit a new manure management plan until July 1, 1999.

Sec. 47. MANURE APPLICATOR CERTIFICATION — DELAYED APPLICABILITY. A person shall not be required to be certified as a commercial manure applicator or a confinement site manure applicator as required pursuant to section 455B.203A, as enacted in this Act, for sixty days following the effective date of that section of this Act.

Sec. 48. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The department of natural resources shall consult with the members of the animal agriculture consulting organization regarding this Act, rules adopted pursuant to this Act, and the Act's implementation, to the same extent and in the same manner as required in 1995 Iowa Acts, chapter 195, section 37, as amended by this Act.

Sec. 49. DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES — RULEMAKING. The department of natural resources shall adopt all rules necessary to administer and enforce this Act by January 1, 1999. The department is required to adopt rules under this Act, including adopting new rules or amending existing rules, only to the extent that rules must be adopted in order to comply with the requirements of this Act. This section shall not be construed to limit the authority of the department to adopt rules under this Act or other statutory authority which the department determines is necessary or advisable.

Sec. 50. DIRECTIONS TO IOWA CODE EDITOR.

1. The Iowa Code editor is directed to transfer chapter 204, as amended by this Act, to a chapter determined appropriate by the Iowa Code editor. The Iowa Code editor shall correct internal references as necessary.

2. The Iowa Code editor is directed to transfer section 159.27 to or near section 455B.204A.

Sec. 51. TRANSFER OF PROVISIONS. The transfer of provisions from one section to another section does not affect the effect or applicability of rules adopted by the department of natural resources, except as required by the provisions of this Act.

Sec. 52. SEVERABILITY. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which shall be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 53. EFFECTIVE DATES.

1. Sections 9, 10, 14, 27, 29, 38, 39, 40 through 43, 48, 49, and this section, being deemed of immediate importance, take effect upon enactment.

2. Sections 11, 13, 15, 16, 18 through 21, 23, 26, 30, 31, and 33 through 35 take effect on January 1, 1999.

Approved May 21, 1998

CHAPTER 1210

FEDERAL BLOCK GRANT APPROPRIATIONS

H.F. 2218

AN ACT appropriating federal funds made available from federal block grants and other federal grants, allocating portions of federal block grants, and providing procedures if federal funds are more or less than anticipated or if federal block grants are more or less than anticipated.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. SUBSTANCE ABUSE APPROPRIATION.

1. There is appropriated from the fund created by section 8.41 to the Iowa department of public health for the federal fiscal year beginning October 1, 1998, and ending September 30, 1999, the following amount:

..... \$ 11,945,086

a. Funds appropriated in this subsection are the anticipated funds to be received from the federal government for the designated federal fiscal year under 42 U.S.C., chapter 6A, subchapter XVII, which provides for the substance abuse prevention and treatment block grant. The department shall expend the funds appropriated in this subsection as provided in the federal law making the funds available and in conformance with chapter 17A.

b. Of the funds appropriated in this subsection, an amount not exceeding 5 percent shall be used by the department for administrative expenses.

c. The department shall expend no less than an amount equal to the amount expended for treatment services in state fiscal year beginning July 1, 1997, for pregnant women and women with dependent children.

d. Of the funds appropriated in this subsection, an amount not exceeding \$24,585 shall be used for audits.

e. Of the funds appropriated in this subsection, an amount not exceeding \$461,342 shall be used for current and former recipients of federal supplemental security income (SSI).

2. The funds remaining from the appropriation made in subsection 1 shall be allocated as follows: