

ANIMAL AGRICULTURE COMPLIANCE ACT

Footnotes

Chapter transferred from sections in chapter 455B and from chapter 455J in Code 2003 pursuant to Code editor directive; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

459.101 Title.

This chapter shall be known and may be cited as the "*Animal Agriculture Compliance Act*".

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*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.
2. "*Anaerobic lagoon*" means an unformed manure storage structure, if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:
 - a. A settled open feedlot effluent basin as defined in section 459A.102.
 - b. An anaerobic treatment system that includes collection and treatment facilities for all off gases.
3. "*Animal*" means a species classified as cattle, swine, horses, sheep, chickens, or turkeys.
4. "*Animal feeding operation*" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market.
5. "*Animal feeding operation structure*" means a confinement building, manure storage structure, or egg washwater storage structure.
6. "*Animal unit*" means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor as follows:
 - a. Slaughter or feeder cattle 1.000
 - b. Immature dairy cattle 1.000
 - c. Mature dairy cattle 1.400
 - d. Butcher or breeding swine weighing more than fifty-five pounds 0.400

e. Swine weighing fifteen pounds or more but not more than fifty-five pounds 0.100

f. Sheep or lambs 0.100

g. Horses 2.000

h. Turkeys weighing one hundred twelve ounces or more 0.018

i. Turkeys weighing less than one hundred twelve ounces 0.0085

j. Chickens weighing forty-eight ounces or more 0.010

k. Chickens weighing less than forty-eight ounces 0.0025

7. "*Animal unit capacity*" means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in sections 459.201 and 459.301.

8. "*Animal weight capacity*" means the product of multiplying the maximum number of animals which the owner or operator confines in an animal feeding operation at any one time by the average weight during a production cycle.

9. "*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. However, "*cemetery*" does not include a pioneer cemetery as defined in section 331.325.

10. "*Commercial enterprise*" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

11. "*Commercial manure service*" means a sole proprietor or business association as defined in section 202B.102, engaged in the business of transporting, handling, storing, or applying manure for a fee.

12. "*Commercial manure service representative*" means a natural person who is any of the following:

a. A manager of a commercial manure service. As used in this paragraph a "*manager*" is a person who is actively involved in the operation of a commercial manure service and takes an important part in making management decisions substantially contributing to or affecting the success of the commercial manure service.

b. An employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the commercial manure service.

13. "*Commission*" means the environmental protection commission created pursuant to section 455A.6.

14. "*Confinement feeding operation*" means an animal feeding operation in which animals are confined to areas which are totally roofed.

15. "*Confinement feeding operation building*" or "*confinement building*" means a building used in conjunction with a confinement feeding operation to house animals.

16. "*Confinement feeding operation structure*" means an animal feeding operation structure that is part of a confinement feeding operation.
17. "*Confinement site manure applicator*" means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.
18. "*Covered*" means organic or inorganic material placed upon an animal feeding operation structure used to store manure as provided by rules adopted by the department after receiving recommendations which shall be submitted to the department by the college of agriculture at Iowa state university.
19. "*Critical public area*" means land as designated by the department pursuant to rules adopted pursuant to chapter 17A, if all of the following apply:
- a. The land is part of a public park, preserve, or recreation area that is owned or managed by the federal government; by the department, including under chapter 461A or 465C; or by a political subdivision.
 - b. The land has a unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system.
20. "*Department*" means the department of natural resources created pursuant to section 455A.2.
21. "*Designated wetland*" means land designated as a protected wetland by the United States department of the interior or the department of natural resources, including but not limited to a protected wetland as defined in section 456B.1, if the land is owned and managed by the federal government or the department of natural resources. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.
22. "*Director*" means the director of the department of natural resources.
23. "*Document*" means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in section 459.303, manure management plans as provided in section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to section 459.304, and notices required under those sections.
24. "*Earthen manure storage basin*" means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year.
25. "*Educational institution*" means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.
26. "*Egg washwater storage structure*" means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs.
27. "*Family member*" means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such a related person.
28. "*Formed manure storage structure*" means a covered or uncovered impoundment used to store manure

from an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

29. "*High-quality water resource*" means that part of a water source or wetland that the department has designated as any of the following:

a. A high-quality water (Class "HQ") or a high-quality resource water (Class "HQR") according to 567 IAC ch. 61, in effect on January 1, 2001.

b. A protected water area system, according to a state plan adopted by the department in effect on January 1, 2001.

30. "*Indemnity fee*" means a fee provided in section 459.502 or 459.503.

31. "*Karst terrain*" means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

32. "*Livestock market*" means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

33. "*Major water source*" means a water source that is a lake, reservoir, river, or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting 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.

34. "*Manure*" means animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.

35. "*Manure storage structure*" means a formed manure storage structure or an unformed manure storage structure. A manure storage structure does not include an egg washwater storage structure.

36. "*One hundred year floodplain*" means the land adjacent to a major water source, if there is at least a one percent chance that the land will be inundated in any one year, according to calculations adopted by rules adopted pursuant to section 459.103. In making the calculations, the department shall consider available maps or data compiled by the federal emergency management agency.

37. "*Permittee*" means a person who, pursuant to section 459.303, 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.

38. "*Professional engineer*" means a person engaged in the practice of engineering as defined in section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to section 542B.17.

39. "*Public thoroughfare*" means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

40. "*Public use area*" means 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.

41. "*Qualified confinement feeding operation*" means a confinement feeding operation having an animal unit capacity of any of the following:

a. For a confinement feeding operation maintaining animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation, five thousand three hundred thirty-three or more animal units.

b. For a confinement feeding operation maintaining swine as part of a farrowing and gestating operation, two thousand five hundred or more animal units.

c. For a confinement feeding operation maintaining swine as part of a swine farrow-to-finish operation, five thousand four hundred or more animal units.

d. For a confinement feeding operation maintaining cattle, eight thousand five hundred or more animal units.

42. "*Religious institution*" means a building in which an active congregation is devoted to worship.

43. "*Restricted spray irrigation equipment*" means spray irrigation equipment which disperses manure through an orifice at a maximum pressure of eighty pounds per square inch or more.

44. "*Small animal feeding operation*" means an animal feeding operation which has an animal unit capacity of five hundred or fewer animal units.

45. "*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.

46. "*Swine farrow-to-finish operation*" means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle are conducted at one confinement feeding operation. Phases of the production cycle include, but are not limited to, gestation, farrowing, growing, and finishing.

47. "*Unformed manure storage structure*" means a covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

48. "*Water of the state*" means the same as defined in section 455B.171.

49. "*Water source*" means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

95 Acts, ch 195, §15

CS95, §455B.161

98 Acts, ch 1209, § 12, 13, 53; 2002 Acts, ch 1137, §7, 8, 32, 68, 71; 2002 Acts, ch 1138, §13, 5; 2002 Acts, 2nd Ex, ch 1003, §248, 260, 262

C2003, §459.102

2003 Acts, ch 44, §71, 72; 2003 Acts, ch 52, §1, 6; 2003 Acts, ch 108, §82; 2003 Acts, ch 138, §1, 2; 2003 Acts, ch 163, §1, 2, 23; 2004 Acts, ch 1086, §77; 2005 Acts, ch 136, §34, 35

459.103 General authority commission and department.

1. 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.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to animal feeding operations also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to licenses, certifications, permits, or manure management plans required under subchapter III. However, for purposes of approving or disapproving an application for a construction permit as provided in section 459.304, conditions for the approval of an application based on results produced by a master matrix are not requirements of this chapter until the department approves or disapproves an application based on those results.

3. The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I, unless otherwise provided in this chapter.

98 Acts, ch 1209, §25

C99, §455B.200

2002 Acts, ch 1137, §27, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §250, 259, 260, 262

C2003, §459.103

2003 Acts, ch 163, §3, 23

459.201 Special terms.

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

1. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. For purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on or after March 21, 1996.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) (a) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than one thousand two hundred fifty animal units for swine maintained as part of a farrowing and gestating operation, less than two thousand seven hundred animal units for swine maintained as part of a farrow-to-finish operation, or less than four thousand animal units for cattle maintained as part of a cattle operation.

(2) (a) One thousand five hundred feet for a confinement feeding operation having an animal unit capacity of three thousand or more but less than five thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand five hundred feet for a confinement feeding operation having an animal unit capacity of one thousand two hundred fifty or more but less than two thousand animal units for swine maintained as part of a swine farrowing and gestating operation, two thousand seven hundred or more but less than five thousand four hundred animal units for swine maintained as part of a farrow-to-finish operation, or four thousand or more but less than six thousand five hundred animal units for cattle maintained as part of a cattle operation.

(3) (a) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of five thousand or more animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of two thousand or more animal units for swine maintained as part of a swine farrowing and gestating operation, five thousand four hundred animal units or more for swine maintained as part of a farrow-to-finish operation, or six thousand five hundred or more animal units for cattle maintained as part of a cattle operation.

2. A confinement feeding operation structure is "*constructed*" when any of the following occurs:

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

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

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

3. In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned.

4. A confinement feeding operation structure is abandoned if the confinement feeding operation structure has been razed, removed from the site of a confinement feeding operation, filled in with earth, or converted to uses other than a confinement feeding operation structure so that it cannot be used as a confinement feeding operation structure without significant reconstruction.

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

C99, §455B.161A

2002 Acts, ch 1137, §9, 10, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.201

95 Acts, ch 195, §16

CS95, §455B.162

98 Acts, ch 1209, § 1517, 53; 99 Acts, ch 114, § 58, 59; 2002 Acts, ch 1137, §1117, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.202

459.203 Separation distance requirements for confinement feeding operations expansion of prior constructed operations.

A confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under section 459.202 and which does not comply with the section's distance requirement may continue to operate regardless of the distance requirement. The confinement feeding operation may be expanded if any of the following applies:

1. *a.* For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 1 and 3.

b. For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 2 and 3.

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 4 and 5.

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

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required under section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

(a) May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

(b) January 1, 1999, for a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

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

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

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) One thousand animal units.

3. The confinement feeding operation includes a confinement feeding operation structure that is constructed prior to March 1, 2003, 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 or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement 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 confinement 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 459.202 than any other confinement feeding operation structure which is part of the operation.

95 Acts, ch 195, §17

CS95, §455B.163

98 Acts, ch 1209, § 18, 53; 99 Acts, ch 114, § 58, 59; 2002 Acts, ch 1137, §1820, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.203

459.204 Liquid manure application separation distance.

Except as provided in section 459.205, 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.

C2001, §455B.162(5)

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.204

459.205 Separation distance requirements exemptions.

A separation distance requirement provided in this subchapter shall not apply to the following:

1. A confinement feeding operation structure, 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.
2.
 - a.* A confinement 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 a confinement feeding operation structure is constructed or expanded within the separation distance required between a confinement feeding operation structure and a public thoroughfare as required pursuant to section 459.202, the state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the distance separation requirement may execute a written waiver with the titleholder of the land where the structure is located. The confinement feeding operation structure shall be constructed or expanded under such terms and conditions that the parties negotiate.
 - b.* 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 section 459.202 as it relates to a distance requirement between the confinement feeding operation structure and the location or object benefiting from the separation distance requirement.
3. A confinement feeding operation structure which is 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 confinement feeding operation was established. The date the confinement feeding operation was established is the date on which the confinement feeding operation commenced operating. A change in ownership or expansion of the confinement feeding operation shall not change the established date of operation.
4. 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 459.204, 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 maximum pressure 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.

5. The distance between a confinement feeding operation structure and a cemetery, if any of the following applies:

a. The confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

b. The construction or expansion of the confinement feeding operation structure began prior to January 1, 1999.

95 Acts, ch 195, §19

CS95, §455B.165

98 Acts, ch 1209, §20, 21, 53; 2000 Acts, ch 1154, §31; 2002 Acts, ch 1137, §21, 22, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.205

459.206 Qualified confinement feeding operations manure storage structures.

1. Except as provided in subsection 2, a qualified confinement feeding operation storing manure in a manure storage structure shall only use a manure storage structure that employs bacterial action which is maintained by the utilization of air or oxygen, and which shall include aeration equipment. The type and degree of treatment technology required to be installed shall be based on the size of the confinement feeding operation, according to rules adopted by the department. The equipment shall be installed, operated, and maintained in accordance with the manufacturer's instructions and requirements of rules adopted pursuant to this section.

2. The requirements of subsection 1 do not apply to any of the following:

a. A qualified confinement feeding operation which includes a confinement feeding operation structure constructed prior to May 31, 1995.

b. A qualified confinement feeding operation that stores manure on a dry matter basis.

C2001, §455B.162(6)

2002 Acts, ch 1137, §16, 17, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.206

459.207 Animal feeding operations airborne pollutants control.

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

a. "*Airborne pollutant*" means hydrogen sulfide, ammonia, or odor.

b. "*Separated location*" means a location or object from which a separation distance is required under section 459.202 or 459.204, other than a public thoroughfare.

2. The department shall conduct a comprehensive field study to monitor the level of airborne pollutants

emitted from animal feeding operations in this state, including but not limited to each type of confinement feeding operation structure.

3. *a.* After the completion of the field study, the department may develop comprehensive plans and programs for the abatement, control, and prevention of airborne pollutants originating from animal feeding operations in accordance with this section. The comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect. The department may adopt any comprehensive plans or programs in accordance with chapter 17A prior to implementation or enforcement of an air quality standard but in no event shall the plans and programs provide for the enforcement of an air quality standard prior to December 1, 2004.

b. Any air quality standard established by the department for animal feeding operations shall be based on and enforced at distances measured from a confinement feeding operation structure to a separated location. In providing for the enforcement of the standards, the department shall take all initial measurements at the separated location. If the department determines that a violation of the standards exists, the department may conduct an investigation to trace the source of the airborne pollutant. This section does not prohibit the department from entering the premises of an animal feeding operation in compliance with section 455B.103. The department shall 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.

c. The department shall establish recommended best management practices, mechanisms, processes, or infrastructure under the comprehensive plans and programs in order to reduce the airborne pollutants emitted from an animal feeding operation.

d. The department shall provide a procedure for the approval and monitoring of alternative or experimental practices, mechanisms, processes, or infrastructure to reduce the airborne pollutants emitted from an animal feeding operation, which may be incorporated as part of the comprehensive plans and programs developed under this section.

2002 Acts, ch 1137, §23, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262

459.301 Special terms.

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

1. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. In addition, for purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on or after May 21, 1998.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) One thousand two hundred fifty feet for confinement feeding operations having a combined animal unit capacity of less than one thousand animal units.

(2) Two thousand five hundred feet for confinement feeding operations having a combined animal unit capacity of one thousand animal units or more.

2. A confinement feeding operation structure is "*constructed*" in the same manner as provided in section 459.201.

3. In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned as provided in section 459.201.

4. All distances between locations or objects provided in this subchapter shall be measured in feet from their closest points.

5. *a.* The department shall designate by rule each one hundred year floodplain in this state according to the location of the one hundred year floodplain. A person shall not be prohibited from constructing a confinement feeding operation structure on a one hundred year floodplain unless the one hundred year floodplain is designated by rule in accordance with this subsection.

b. (1) Until the effective date of rules adopted by the department to designate the location of each one hundred year floodplain in this state, a person shall not construct a confinement feeding operation structure on land that contains a soil type classified as alluvial unless one of the following applies:

(a) If the person does not apply for a construction permit as provided in section 459.303, the person must petition the department for a declaratory order pursuant to section 17A.9 to determine whether the location of the proposed confinement feeding operation structure is located on a one hundred year floodplain. The department shall issue a declaratory order in response to the petition, notwithstanding any other provision provided in section 17A.9 to the contrary, within thirty days from the date that the petition is filed with the department.

(b) If the person does apply for a construction permit as provided in section 459.303, the person must identify that the land contains a soil type classified as alluvial. The department shall determine whether the land is located on a one hundred year floodplain.

(2) The department shall provide in its declaratory order or its approval or disapproval of a construction permit application a determination regarding whether the confinement feeding operation structure is to be located on a one hundred year floodplain, whether the confinement feeding operation structure may be constructed at the location, and any conditions for the construction.

(3) This paragraph "*b*" is repealed on the effective date that rules are adopted by the department pursuant to paragraph "*a*". The department shall provide a caption on the adopted rule as published in the Iowa administrative bulletin as provided in section 17A.4, stating that this paragraph is repealed as provided in this subparagraph. The director of the department shall deliver a copy of the adopted rule to the Iowa Code editor.

98 Acts, ch 1209, §27, 53

C99, §455B.200B

2002 Acts, ch 1137, §3032, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §252, 259, 260, 262

C2003, §459.301

2003 Acts, ch 44, §73

459.302 Document processing requirements.

1. The department shall adopt and promulgate forms required to be completed in order to comply with this subchapter including forms for documents that the department shall make available on the internet.

2. *a.* The department shall provide for procedures for the receipt, filing, processing, and return of documents in an electronic format, including but not limited to the transmission of documents by the internet. The department shall provide for authentication of the documents that may include electronic signatures as provided in chapter 554D.

b. The department shall to every extent feasible provide for the processing of permits and manure management plans required under this subchapter using electronic systems, including programming, necessary to ensure the completeness and accuracy of the documents in accordance with the requirements of this subchapter.

2002 Acts, ch 1137, §34, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262

459.303 Confinement feeding operations permit requirements.

1. The department shall approve or disapprove applications for permits for the construction, including the expansion, of confinement feeding operation structures, as provided by rules adopted pursuant to this chapter. The department's decision to approve or disapprove a permit for the construction of a confinement feeding operation structure shall be based on whether the application is submitted according to procedures required by the department and the application meets standards established by the department. A person shall not begin construction of a confinement feeding operation structure requiring a permit under this section, unless the department first approves the person's application and issues to the person a construction permit. The department shall provide conditions for requiring when a person must obtain a construction permit.

a. Except as provided in paragraph "*b*", a person must obtain a permit to construct any of the following:

(1) A confinement feeding operation structure if after construction its confinement feeding operation would have an animal unit capacity of at least one thousand animal units.

(2) The confinement feeding operation structure is an unformed manure storage structure.

b. A person is not required to obtain a permit to construct a confinement feeding operation structure if any of the following apply:

(1) The confinement feeding operation structure, if constructed, would be part of a small animal feeding operation. However, the person must obtain a permit under this section if the confinement feeding operation structure is an unformed manure storage structure.

(2) The confinement feeding operation structure is part of a confinement feeding operation which is owned by a research college conducting research activities as provided in section 459.318.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application if the application is submitted to the county board of supervisors in the county where the proposed confinement feeding operation structure is to be located as required pursuant to section 459.304, and the application meets the requirements of this chapter. If a county submits an approved recommendation pursuant to a construction evaluation resolution filed with the department, the application must also achieve a satisfactory rating produced by the master matrix used by the board or department under section 459.304. The department shall approve the application regardless of whether the applicant is required to be issued a construction permit.

3. The department shall not approve an application for a construction permit unless the applicant submits all

of the following:

a. An indemnity fee as provided in section 459.502 that the department shall deposit into the manure storage indemnity fund created in section 459.501.

b. A manure management plan as provided in section 459.312 and manure management plan filing fee as provided in section 459.400.

c. A construction permit application fee as provided in section 459.400.

4. The applicant may submit a master matrix as completed by the applicant.

5. *a.* A confinement feeding operation meets threshold requirements under this subsection if the confinement feeding operation after construction of a proposed confinement feeding operation structure would have a minimum animal unit capacity of the following:

(1) Three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation or cattle maintained as part of a cattle operation.

(2) One thousand two hundred fifty animal units for swine maintained as part of a swine farrowing and gestating operation.

(3) Two thousand seven hundred fifty animal units for swine maintained as part of a farrow-to-finish operation.

(4) Four thousand animal units for cattle maintained as part of a cattle operation.

b. The department shall not approve an application for a construction permit unless the following apply:

(1) If the application is for a permit to construct an unformed manure storage structure, the application must include a statement approved by a professional engineer certifying that the construction of the unformed manure storage structure complies with the construction design standards required in this subchapter.

(2) If the application is for a permit to construct three or more confinement feeding operation structures, the application must include a statement providing that the construction of the confinement feeding operation structures will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction. For a confinement feeding operation that meets threshold requirements, the statement must be approved by a professional engineer. Otherwise, if the application is for a permit to construct a formed manure storage structure, the statement must be part of the construction design statement as provided in section 459.306.

(3) If the application is for a permit to construct a formed manure storage structure, other than for a confinement feeding operation meeting threshold requirements, the applicant must include a construction design statement as provided in section 459.306. An application for a permit to construct a formed manure storage structure as part of a confinement feeding operation that meets threshold requirements must include a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the requirements of this subchapter.

(4) The department may only require that an application for a permit to construct a formed manure storage structure or egg washwater storage structure that is part of a confinement feeding operation meeting threshold requirements include an engineering report, construction plans, or specifications prepared by a licensed professional engineer or the natural resources conservation service of the United States department of agriculture.

6. As a condition to approving an application for a construction permit, the department may require any of the following:

a. The installation of a related pollution control device or practice, including but not limited to the installation and operation of a water pollution monitoring system for an unformed manure storage structure.

b. The department's approval of the installation of any proposed system to permanently lower the groundwater table at a site as part of the construction of an unformed manure storage structure, as is necessary to ensure that the unformed manure storage structure does not pollute groundwater sources, including providing for standards as provided in section 459.308.

7. *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 459.317.

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 459.604.

98 Acts, ch 1209, §26, 53

C99, §455B.200A

2002 Acts, ch 1137, §28, 29, 68, 70, 71; 2002 Acts, 2nd Ex, ch 1003, §251, 259262

C2003, §459.303

2003 Acts, ch 44, §74; 2003 Acts, ch 108, §83

459.304 Construction permit application procedure county participation comments master matrix.

1. *a.* The department shall deliver a copy or require the applicant to deliver a copy of the application for a permit to construct, including expanding, a confinement feeding operation structure pursuant to section 459.303, including supporting documents, to the county board of supervisors in the county where the confinement feeding operation structure subject to the permit is proposed to be constructed.

b. The county auditor or other county officer designated by the county board of supervisors 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 board shall notify the department that the board has received the application according to procedures required by the department.

2. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the county may provide comment to the department on a construction permit application for a confinement feeding operation structure.

a. The board shall provide for comment as follows:

(1) The board shall publish a notice that the board has received the application in a newspaper having a general circulation in the county.

(2) 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 structure is to be constructed.
- (c) Each type of confinement feeding operation structure proposed to be constructed.
- (d) The animal unit capacity of the confinement feeding operation if the construction permit were to be 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 as provided by the board.

b. The board may hold a public hearing to receive public comments regarding the application. 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:

- (1) The existence of an object or location not included in the application that benefits from a separation distance requirement as provided in section 459.202 or 459.204 or 459.310.
- (2) The suitability of soils and the hydrology of the site where construction of a confinement feeding operation structure is proposed.
- (3) The availability of land for the application of manure originating from the confinement feeding operation.
- (4) Whether the construction of a proposed confinement 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.

3. A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the department for filing. If the board has submitted such resolution to the department, the board may evaluate the construction permit application and submit an adopted recommendation to the department to approve or disapprove a construction permit application as provided in this subsection. The board must make its decision to recommend approval or disapproval of the permit application as provided in this subsection.

a. For the expansion of a confinement feeding operation that includes a confinement feeding operation structure constructed prior to April 1, 2002, the board shall not evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if after the expansion of the confinement feeding operation, its animal unit capacity is one thousand six hundred sixty-six animal units or less.

b. The board must conduct an evaluation of the application using the master matrix as provided in section 459.305. The board's recommendation may be based on the master matrix or may be based on comments under this section regardless of the results of the master matrix.

c. In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria which is part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into a manure management plan as provided in section 459.312.

d. The board's adopted recommendation to the department shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

4. The department must receive the county board of supervisor's comments or evaluation for approval or disapproval of an application for a construction permit not later than thirty days following the applicant's delivery of the application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must approve or disapprove an application for a construction permit within sixty days following the applicant's delivery of the application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may provide that an application is terminated if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days. However, the department shall not provide for more than one continuance.

5. *a.* The department shall approve an application for a construction permit if the board of supervisors which has filed a county construction evaluation resolution submits an adopted recommendation to approve the construction permit application which may be based on a satisfactory rating produced by the master matrix to the department and the department determines that the application meets the requirements of this chapter. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of the adopted recommendation of the board. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

b. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter as provided in section 459.103. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter, the department shall conduct an independent evaluation of the application using the master matrix. The department shall approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

c. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter as provided in section 459.103.

6. The department may conduct an inspection of the site on which the construction is proposed after providing at a minimum twenty-four hours' notice or upon receiving consent from the construction permit applicant. The county board of supervisors that has adopted a construction evaluation resolution may designate a county employee to accompany a departmental official during the site inspection. The county employee 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 employee accompanies the departmental official. The departmental official and the county employee shall comply with standard biosecurity requirements customarily required by the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

7. Upon written request by a county resident, the county board of supervisors shall forward to the county resident a copy of the board's adopted recommendation, any county comments to the department on the

permit application, and the department's responses, as provided in chapter 22.

8. *a.* The department shall deliver a notice to the applicant within three days of the department's decision to approve or disapprove an application for a construction permit. If the board of supervisors has submitted an adopted recommendation to the department for the approval or disapproval of a construction permit application as provided in this section, the department shall notify the board of the department's decision to approve or disapprove the application at the same time.

b. (1) The applicant may contest the department's decision by requesting a hearing and may elect to have the hearing conducted before an administrative law judge pursuant to chapter 17A or before the commission. If the applicant and a board of supervisors are both contesting the department's decision, the applicant may request that the commission conduct the hearing on a consolidated basis. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The department, upon petition by the applicant, shall deliver to the administrative law judge or the commission a copy of the board of supervisors' recommendation together with the results produced by its master matrix and any supporting data or documents submitted with the results, comments submitted by the board to the department, and the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. If the commission hears the case, its decision shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the applicant or board files a demand for a hearing.

(2) A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's decision by requesting a hearing before the commission. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The board may request that the department submit a copy of the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. The decision by the commission shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the board initiates the proceeding.

c. Judicial review of the decision of either the department or the commission may be sought in accordance with the terms of chapter 17A.

9. An applicant for a construction permit may withdraw the permit application from consideration by the department at any time by filing a written request with the department. The filing of the request shall not prejudice the right of the applicant to resubmit the application.

2002 Acts, ch 1137, §35, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §255, 259, 260, 262

459.305 Master matrix.

1. The department shall adopt rules for the development and use of a master matrix. The purpose of the master matrix is to provide a comprehensive assessment mechanism in order to produce a statistically verifiable basis for determining whether to approve or disapprove an application for the construction, including expansion, of a confinement feeding operation structure requiring a permit pursuant to section 459.303.

a. The master matrix shall be used to establish conditions for the construction of a confinement feeding operation structure and for the implementation of manure management practices, which conditions shall be included in the approval of the construction permit or the original manure management plan as applicable. The master matrix shall be used to determine all of the following:

(1) The appropriate location to construct a confinement feeding operation structure, including the proximity and orientation of a proposed confinement feeding operation structure to objects or locations for which separation distances are required pursuant to sections 459.202 or 459.204 and 459.310.

(2) The appropriate type of a confinement feeding operation structure required to be constructed, including the type and size of the manure storage structure, or the installation of a related pollution-control device.

b. The master matrix shall be designed to produce quantifiable results based on the scoring of objective criteria according to an established value scale. Each criterion shall be assigned points corresponding to the value scale. The master matrix shall consider risks and factors mitigating risks if the confinement feeding operation structure were constructed according to the application.

c. The master matrix may be a computer model. However, the master matrix must be a practical tool for use by persons when completing applications and by persons when scoring applications. To every extent feasible, the master matrix shall include criteria presented in the form of questions that may be readily scored according to ascertainable data and upon which reasonable persons familiar with the location of a proposed construction site would not ordinarily disagree.

2. The master matrix shall include criteria valuing environmental and community impacts for use by county boards of supervisors and the department. The master matrix shall include definite point selections for all criteria provided in the master matrix. The master matrix shall provide only for scoring of positive points and shall not provide for deduction of points. The master matrix shall provide for a minimum threshold score required to receive a satisfactory rating. The master matrix shall be structured to ensure that it feasibly provides for a satisfactory rating. Criteria valuing environmental impacts shall account for animal agriculture's relationship to quality of the environment and the conservation of natural resources, and may include factors that refer to all of the following:

a. Topography.

b. Surface water drainage characteristics.

c. The suitability of the soils and the hydrology or hydrogeology of the site.

d. The proximity to public use areas and critical public areas.

e. The proximity to water sources, including high-quality water resources.

2002 Acts, ch 1137, §36, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262

459.306 Construction design statement formed manure storage structures.

1. *a.* Except as provided in paragraph "*b*", a person shall not construct a formed manure storage structure, unless the person submits a construction design statement for filing with the department.

b. The following persons are not required to submit a construction design statement with the department:

(1) A person who constructs a formed manure storage structure as part of a small animal feeding operation.

(2) A person who submits a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the construction design standards required in this subchapter, including a person required to submit such a statement as part of an application for a construction permit pursuant to section 459.303.

2. The construction design statement must include all of the following:

a. A summary description of the type of formed manure storage structure proposed to be constructed, including whether such formed manure storage structure is to be constructed of concrete.

b. (1) If the formed manure storage structure is to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that such person will construct the formed manure storage structure in accordance with the construction design standards required in this subchapter.

(2) If the formed manure storage structure is not to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that such person will construct the formed manure storage structure in accordance with the construction design standards required in this subchapter.

c. If a construction permit is required pursuant to section 459.303 for the construction of three or more confinement feeding operation structures that include a formed manure storage structure, the person responsible for constructing the formed manure storage structure must provide that the construction of the formed manure storage structure will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction.

d. A manure management plan as required in section 459.312 which may be submitted as part of an application for a construction permit as provided in section 459.303.

3. Unless the construction design statement is part of a construction permit application as provided in section 459.303, the department shall file the construction design statement. Otherwise, the department shall approve or disapprove the construction design statement as part of the construction permit application. The construction design statement shall be considered filed on the date that it is first received by the department. The department may request information from the person submitting the construction design statement if the department determines that it is incorrect or incomplete. Within thirty days after filing the construction design statement, the department shall notify the person that the construction design statement is filed and request any additional information.

2002 Acts, ch 1137, §33, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §254, 259, 260, 262

459.307 Construction design standards formed manure storage structures.

The department shall adopt rules establishing construction design standards for formed manure storage structures that are part of confinement feeding operations other than small animal feeding operations. However, the construction design standards shall apply to a formed manure storage structure that is part of a small animal feeding operation as provided in section 459.310.

1. The department may provide for different standards based on criteria developed by the department, which may include any of the following:

a. The animal unit capacity of the manure storage structure's confinement feeding operation or the manure storage structure's manure volume capacity.

b. Whether the manure storage structure stores manure in an exclusively dry form.

c. Whether the manure storage structure is part of a confinement feeding operation building.

- d.* The use of concrete, including its use for the structure's footings, walls, or floor.
2. The construction design standards shall be based, to every extent possible, on uniform standards such as available standards promulgated by ASTM (American society for testing and materials) international. The department may require that all or any part of a formed manure storage structure be constructed of concrete.
3. The construction design standards for concrete shall provide for all of the following:
 - a.* The concrete's minimum compressive strength calculated on a pounds-per-square-inch basis.
 - b.* The use of reinforcement, including but not limited to the grade, amount, and location of steel rebar or fiberglass, wire mesh or fabric, or similar materials set in the concrete, or the use of exterior braces to support joints.
 - c.* The depth of footings.
 - d.* The thickness of the footings, the floor, and walls.
4. A person shall only construct a formed manure storage structure on karst terrain or an area which drains into a known sinkhole pursuant to upgraded construction design standards necessary to ensure that the structure does not pollute groundwater sources.

2002 Acts, ch 1137, §50, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262; 2003 Acts, ch 84, §1, 6; 2004 Acts, ch 1086, §106

459.308 Unformed manure storage structures construction standards inspections.

1. The department shall adopt rules requiring construction design standards for unformed manure storage structures required to be constructed pursuant to a construction permit issued pursuant to section 459.303.
2. The construction design standards for unformed manure storage structures established by the department shall account for special design characteristics of confinement 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 person shall not construct an unformed manure storage structure on karst terrain or on an area that drains

into a known sinkhole. However, a person may construct an unformed manure storage structure, if there is a twenty-five-foot vertical separation distance between the bottom of the unformed manure storage structure and underlying limestone, dolomite, or other soluble rock.

4. *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 a confinement feeding operation which is not routine.

98 Acts, ch 1209, §36

C99, §455B.205

2002 Acts, ch 1137, §4749, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259261

C2003, §459.308

2003 Acts, ch 84, §2, 6

459.309 Settled open feedlot effluent basins construction design standards. Repealed by 2005 Acts, ch 136, § 37. See § 459A.301.

459.310 Distance requirements.

1. Except as provided in subsections 3 and 4, the following shall apply:

a. A confinement feeding operation structure shall not be constructed closer than five hundred feet away from the surface intake of an agricultural drainage well. A confinement feeding operation structure shall not be constructed closer than one thousand feet from a wellhead, cistern of an agricultural drainage well, or known sinkhole. However, the department may adopt rules requiring an increased separation distance under this paragraph in order to protect the integrity of a water of the state. The increased separation distance shall not be more than two thousand feet. If the department exercises its discretion to increase the separation distance requirement, the department shall not approve an application for the construction of a confinement feeding operation structure within that separation distance as provided in section 459.303.

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

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

(2) One thousand feet away from a major water source.

(3) Two thousand five hundred feet away from a designated wetland.

c. (1) A water source, other than 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 away from a confinement feeding operation structure.

(2) A major water source shall not be constructed, expanded, or diverted, if the major water source as constructed, expanded, or diverted is closer than one thousand feet from a confinement feeding operation structure.

(3) A designated wetland shall not be established, if the designated wetland is closer than two thousand five hundred feet away from a confinement feeding operation structure.

2. Except as provided in subsection 4, a confinement feeding operation structure shall not be constructed on land that is part of a one hundred year floodplain as designated by rules adopted by the department pursuant to section 459.301.

3. A separation distance required in subsection 1 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 confinement feeding operation building, an egg washwater storage structure, or 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 construction design standards.

4. A separation distance required in subsection 1 or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subsection 2 shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any eighteen-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subsection 1 than any other confinement feeding operation structure which is part of the operation.

(5) The formed manure storage structure meets or exceeds the requirements of section 459.307.

b. A formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a variance granted by the department. In granting the variance, the department shall make a finding of all of the following:

(1) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure complies with standards adopted pursuant to section 459.307.

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities.

If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the variance, require that the replaced manure storage structure be properly closed.

5. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 460.205.

95 Acts, ch 195, §26

CS95, §455B.204

98 Acts, ch 1209, §35, 53; 2002 Acts, ch 1137, § 44, 45, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.310

2003 Acts, ch 84, §36; 2003 Acts, ch 108, §84, 85

459.311 Minimum requirements for manure control.

1. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state.

2. Manure from an animal feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, guidelines adopted pursuant to this chapter, and section 459.314, shall be deemed as compliance with this requirement.

3. The department may require that the owner of a confinement feeding operation install and operate a water pollution monitoring system as part of an unformed manure storage structure.

4. The owner of the confinement feeding operation which discontinues the use of the operation shall remove all manure from related confinement feeding operation structures used to store manure, by a date specified in an order issued to the operation by the department, or six months following the date that the confinement feeding operation is discontinued, whichever is earlier.

95 Acts, ch 195, §24

CS95, §455B.201

98 Acts, ch 1209, §28; 99 Acts, ch 114, § 57; 2002 Acts, ch 1137, § 37, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.311

459.312 Manure management plan requirements.

1. The following persons shall submit a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation, if any of the following apply:

(1) The confinement feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation structure was required to be constructed pursuant to a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to section 459.303 or whether the person has submitted a prior manure management plan.

b. 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.

2. Not more than one confinement feeding operation shall be covered by a single manure management plan.

3. The owner of a confinement feeding operation who is required to submit a manure management plan under this section shall submit an updated manure management plan to the department on an annual basis. The department shall provide for a date that each updated manure management plan is required to be submitted to the department. The department may provide for staggering the dates on which updated manure management plans are due. To satisfy the requirements of an updated manure management plan, an owner of a confinement feeding operation may, in lieu of submitting a complete plan, file a document stating that the manure management plan has not changed, or state all of the changes made since the original manure management plan or a previous updated manure management plan was submitted and approved.

4. The department shall deliver a copy of the manure management plan or require the person submitting the manure management plan to deliver a copy of the manure management plan to all of the following:

a. The county board of supervisors in the county where the manure storage structure owned by the person is located.

b. The county board of supervisors in the county where the manure storage structure is proposed to be constructed. If the person is required to be issued a permit for the construction of the manure storage structure as provided in section 459.303, the manure management plan shall accompany the application for the construction permit as provided in section 459.303.

c. The county board of supervisors in the county where the manure is to be applied.

The manure management plan shall be filed with the county board of supervisors. The county auditor or other county officer may accept the manure management plan on behalf of the board.

5. 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, including an original manure management plan and an updated manure

management plan, as required in this section. The manure management plan shall be submitted by the owner of the confinement feeding operation as provided by the department in accordance with section 459.302. The owner of a confinement feeding operation required to submit a manure management plan for the construction of a manure storage structure may remove manure from another manure storage structure that is constructed, if the department has approved a manure management plan covering that manure storage structure. 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.

6. The department shall not approve an original manure management plan unless the plan is accompanied by a manure management plan filing fee required pursuant to section 459.400. The department shall not approve an updated manure management plan unless the updated manure management plan is accompanied by an annual compliance fee required pursuant to section 459.400.

7. *a.* The department shall not approve an application for a permit to construct a confinement feeding operation structure unless the owner of the confinement feeding operation applying for approval submits an original manure management plan together with the application for the construction permit as provided in section 459.303.

b. The department shall not file a construction design statement as provided in section 459.306 unless the owner of the confinement feeding operation structure submits an original manure management plan together with the construction design statement. The construction design statement and manure management plan may be submitted as part of an application for a construction permit as provided in section 459.303.

8. A manure management plan must be authenticated by the person required to submit the manure management plan as required by the department in accordance with section 459.302.

9. The department shall approve or disapprove a manure management plan according to procedures established by the department:

a. For an original manure management plan submitted due to the construction of a confinement feeding operation structure, the department shall approve or disapprove the manure management plan as follows:

(1) If the confinement feeding operation structure is constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved as part of the construction permit application.

(2) If the confinement feeding operation structure is not constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved within sixty days from the date that the department receives the manure management plan.

b. For an original manure management plan submitted for a reason other than the construction of a confinement feeding operation structure, the manure management plan shall be approved within sixty days from the date that the department receives the manure management plan.

c. For an updated manure management plan, the manure management plan shall be approved within thirty days from the date that the department receives the updated manure management plan.

10. A manure management plan shall include all of the following:

a. Restrictions on the application of manure based on all of the following:

(1) Calculations necessary to determine the land area required for the application of manure from a

confinement feeding operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the manure management plan, and according to requirements adopted by the department.

(2) (a) A phosphorus index. The department shall establish a phosphorus index by rule in order to determine the manner and timing of the application to a land area of manure originating from a confinement feeding operation. The phosphorus index shall provide for the application of manure on a field basis. The phosphorus index shall be used to determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices. The phosphorus index shall be based on the field office technical guide for Iowa as published by the United States department of agriculture, natural resources conservation service, which sets forth nutrient management standards.

(b) The department shall develop a state comprehensive nutrient management strategy. Prior to developing the state comprehensive nutrient management strategy, the department shall complete all of the following:

(i) The development of a comprehensive state nutrient budget for the maximum volume, frequency, and concentration of nutrients for each watershed that addresses all significant sources of nutrients in a water of the state on a watershed basis.

(ii) The assessment of the available nutrient control technologies required to identify and assess their effectiveness.

(iii) The development and adoption of administrative rules pursuant to chapter 17A required to establish a numeric water quality standard for phosphorus.

(c) Regardless of the development of the state comprehensive nutrient management strategy as provided in subparagraph subdivision (b), the department shall adopt rules required to establish a phosphorus index. The department shall cooperate with the United States department of agriculture natural resource conservation service technical committee for Iowa to refine and calibrate the phosphorus index in adopting the rules. Rules adopted by the department pursuant to this subparagraph shall become effective on July 1, 2003.

(d) The department shall conduct a study that considers the effects on waters of this state from phosphorus originating from municipal and industrial sources and from farm and lawn and garden use. The department shall report the results of its study to the general assembly by January 1, 2004.

(e) A person submitting a manure management plan shall include a phosphorus index as part of the manure management plan as follows:

(i) A person who has submitted an original manure management plan prior to April 1, 2002, shall not be required to submit a manure management plan update which includes a phosphorus index until on and after the four-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(ii) A person required to submit an original manure management plan on and after April 1, 2002, but prior to the date that is sixty days after the department's rules adopted to implement the phosphorus index become effective, shall not be required to submit a manure management plan update that includes a phosphorus index until on and after the two-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(iii) A person required to submit an original manure management plan on and after the date that is sixty days after the department's rules adopted to implement the phosphorus index become effective shall include the phosphorus index as part of the original manure management plan and updated manure management plans.

Subparagraph subdivisions (b) through (e) and this paragraph are repealed on the date that any person who has submitted an original manure management plan prior to April 1, 2002, is required to submit a manure management plan update which includes a phosphorus index as provided in subparagraph subdivision (e), subparagraph subdivision part (i). The department shall publish a notice in the Iowa administrative bulletin published immediately prior to that date, and the director of the department shall deliver a copy of the notice to the Iowa Code editor.

b. Manure nutrient levels as determined by either manure testing or accepted standard manure nutrient values.

c. Manure application methods, timing of manure application, and the location of the manure application.

d. If the location of the application is on land other than land owned by the person applying for the construction permit, the plan shall include a copy of each written agreement executed between the person and the landowner where the manure will be applied.

e. An estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation.

f. Methods, structures, or practices to prevent or diminish soil loss and potential surface water pollution.

g. Methods or practices to minimize potential odors caused by the application of manure by the use of spray irrigation equipment.

11. A confinement feeding operation classified as a habitual violator as provided in section 459.604 shall submit a manure management plan to the department on an annual basis, which must be approved by the department for the following year of operation. The manure management plan shall be a replacement original manure management plan rather than a manure management plan update. However, the habitual violator required to submit a replacement original manure management plan must submit an annual compliance fee in the same manner as if the habitual violator were submitting an updated manure management plan.

12. A person 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:

a. Upon waiver by the person receiving the permit.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

13. 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 459.604. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection.

14. A person required to authenticate a manure management plan submitted to the department who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than the assessment of a civil penalty pursuant to section 459.603.

95 Acts, ch 195, §25

CS95, § 455B.203

98 Acts, ch 1209, §3032, 53; 2002 Acts, ch 1137, § 3841, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §256, 257, 259, 260, 262

C2003, §459.312

2003 Acts, ch 108, §86

459.313 Manure application rules.

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.

98 Acts, ch 1209, §34, 53

C99, §455B.203B

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.313

459.314 Application of manure within designated areas.

1. The department shall adopt rules relating to the application of manure in close proximity to a designated area.

2. Except as otherwise provided in this subsection, a person shall not apply manure on land located within two hundred feet from a designated area, unless one of the following applies:

a. The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

b. An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for fifty 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. The department adopts rules requiring an increased separation distance for the application of manure located in proximity to a high-quality water resource in order to protect the integrity of the high-quality water resource. However, the department shall not provide for an increased separation distance requirement that is more than four times the separation distance requirement otherwise applicable under this section.

As used in this section, "*designated area*" means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface inlet, drinking water well, designated wetland, or water source. However, a "*designated area*" does not include a terrace tile inlet.

95 Acts, ch 195, § 3

CS95, §159.27

98 Acts, ch 1209, §50

C99, §455B.204A

2002 Acts, ch 1137, §46, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.314

459.314A Licensure commercial manure service.

A person shall not engage in the business of a commercial manure service unless the department issues the person a commercial manure service license under this section.

1. The department shall not issue a license to a commercial manure service unless each manager of the commercial manure service is certified as a commercial manure service representative pursuant to section 459.315.
2. The department shall not issue a license to a commercial manure service if the license for the commercial manure service has been revoked within the previous three years or a person who holds a controlling interest in the commercial manure service held a controlling interest in another commercial service which has been revoked within the previous three years.
3. The department may impose conditions or limitations upon the license. However, the issuance of a license shall not be conditioned upon providing a bond or maintaining a certain financial condition. A commercial manure service shall be issued a single license regardless of the number of sites where the commercial manure service operates offices.
4. A license application must be submitted to the department on a form furnished by the department according to procedures required by the department. The license shall expire on March 1 of each year.
5. A commercial manure service shall be charged a license fee as provided in section 459.400.

2003 Acts, ch 163, §4, 23

459.314B Disciplinary action commercial manure service.

The department may issue an order to suspend or revoke the license of a commercial manure service as provided in chapter 17A, including an order to immediately suspend or revoke the license pursuant to section 17A.18A. The department may suspend or revoke the license of a commercial manure service for an applicable violation of this chapter. In addition, the department may suspend or revoke a commercial manure service's license for any of the following:

1. Committing a fraudulent act, including but not limited to engaging in a deceptive act or practice, deliberately misrepresenting or omitting a material fact in the license application, or submitting a statement verifying that an employee may be substituted for certification without paying a fee as provided in section

459.400.

2. Knowingly assisting a person in evading the provisions of this chapter.
3. Knowingly employing or executing a contract with a person who acts as a commercial manure service representative who is not certified pursuant to section 459.315.

2003 Acts, ch 163, §5, 23

459.315 Certification and education requirements.

1. *a.* A person shall not act as a commercial manure service representative unless the person is certified pursuant to an educational program as provided in this section.
b. A person shall not act as a confinement site manure applicator unless the person is certified pursuant to an educational program as provided in this section.
2. *a.* A person required to be certified as a commercial manure service representative 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 every three years. However, if the person is exempt from paying the certification fee because a family member has paid a certification fee as provided in section 459.400, the person's certification shall expire on the same date that the paid family member's certification expires. A 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.
3. 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 service representatives 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 transporting, handling, storing, and applying 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 transporting, handling, storing, or applying manure, including the Iowa commercial nutrient applicators association 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.

4. This section shall not require a person to be certified as a confinement site manure applicator if the person applies manure which originates from a manure storage structure which is part of a small animal feeding operation.

5. *a.* This section shall not require a person to be certified as a commercial manure service representative 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 transports, handles, stores, or applies manure for a period of thirty days from the date of initial employment as a commercial manure service representative and all of the following apply:

(a) The person is actively seeking certification under this section.

(b) The person is transporting, handling, storing, or applying manure under the instructions and control of a certified commercial manure service representative. The commercial manure service representative must be physically present at the site where the manure is located. The commercial manure service representative must also be in sight or immediate communication 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 or family member of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified confinement site 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. The department may charge a fee for certifying a person under this section as provided in section 459.400.

98 Acts, ch 1209, §33, 47, 53

C99, §455B.203A

99 Acts, ch 114, §30; 2000 Acts, ch 1107, §14; 2002 Acts, ch 1137, §42, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.315

2003 Acts, ch 163, §611, 23; 2003 Acts, 1st Ex, ch 2, §27, 209

459.315A Disciplinary action commercial manure service representatives.

The department may issue an order to suspend or revoke the certification of a commercial manure service representative for a violation of this chapter. The department shall issue an order for the suspension or revocation of a certificate as provided in chapter 17A. The department may issue an order to immediately suspend or revoke the certification notwithstanding section 17A.18.

2003 Acts, ch 163, §12, 23

459.316 Compliance fees. Transferred to § 459.400; 2003 Acts, ch 163, § 22, 23.

459.317 Habitual violators pending actions restrictions on construction.

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

a. "Habitual violator" means a person classified as a habitual violator pursuant to section 459.604.

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:

(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 a confinement feeding operation structure if the person is 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 a confinement feeding operation structure for five years after the date of the last violation, committed by the 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.

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

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

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

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

97 Acts, ch 150, §1

CS97, §455B.202

98 Acts, ch 1209, §29, 53; 99 Acts, ch 114, §29; 2002 Acts, ch 1137, §67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.317

*This section was enacted in chapter 455B and transferred to this chapter in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137; reference to chapter 455B may also be intended

459.318 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 subchapter which regulate animal feeding operations, including rules adopted by the department pursuant to section 459.103, 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 459.311, including rules adopted by the department under that section.

b. Section 459.310, including rules adopted by the department under that section.

98 Acts, ch 1209, §37

C99, §455B.206

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.318

459.400 Compliance fees.

1. The department shall establish, assess, and collect all of the following compliance fees:

a. A construction permit application fee that is required to accompany an application submitted to the department for approval to construct a confinement feeding operation structure as provided in section 459.303. The amount of the construction permit application fee shall not exceed two hundred fifty dollars.

b. A manure management plan filing fee that is required to accompany an original manure management plan submitted to the department for approval as provided in section 459.312. However, the manure management plan required to be filed as part of an application for a construction permit shall be paid together with the construction permit application fee. The amount of the manure management plan filing fee shall not exceed two hundred fifty dollars.

c. An annual compliance fee that is required to accompany an updated manure management plan submitted to the department for approval as provided in section 459.312. The amount of the annual compliance fee shall not exceed a rate of fifteen cents per animal unit based on the animal unit capacity of the confinement feeding operation covered by the manure management plan. If the person submitting the manure management plan is a contract producer, as provided in chapter 202, the active contractor shall be assessed the annual compliance fee.

d. Educational program fees paid by persons required by the department to be certified as commercial manure service representatives or confinement site manure applicators pursuant to section 459.315. The amount of the educational program fees together with commercial manure service licensing fees shall be adjusted annually by the department based on the costs of administering section 459.315 and paying the expenses of the department relating to certification.

(1) The fee for certification of a commercial manure service representative shall not be more than seventy-five dollars. A commercial manure service licensed pursuant to section 459.314A may pay for the annual certification of its employees. If a commercial manure service makes payment for an employee to be

certified as a commercial manure service representative and that employee leaves employment, the commercial manure service may substitute a new employee to be certified for the former employee. The department shall not charge for the certification of the substituted employee. The department may require that the commercial manure service provide the department with documentation that the substitution is valid. The department shall not charge the fee to a person who is a manager of a commercial manure service licensed pursuant to section 459.314A. The department may require that the commercial manure service provide documentation that a person is a manager.

(2) A person who is certified as a confinement site manure applicator as provided in section 459.315 is exempt from paying the certification fee if all of the following apply:

(a) The person is certified within one year from the date that a family member has been certified as a confinement site manure applicator.

(b) The family member has paid the fee for that family member's own certification.

e. Fees paid by persons required by the department to be licensed as a commercial manure service as provided in section 459.314A. The fee for a commercial manure service license shall not be more than two hundred dollars. The amount of the licensing fees together with educational program fees shall be adjusted annually by the department based on the costs of administering section 459.315 and paying the expenses of the department relating to certification.

2. Compliance fees collected by the department shall be deposited into the animal agriculture compliance fund created in section 459.401.

a. Except as provided in paragraph "b", moneys collected from all fees shall be deposited into the compliance fund's general account.

b. Moneys collected from the annual compliance fee shall be deposited into the compliance fund's assessment account. Moneys collected from commercial manure service license fees and educational program fees shall be deposited into the compliance fund's educational program account.

3. At the end of each fiscal year the department shall determine the balance of unencumbered and unobligated moneys in the assessment account and the educational program account of the animal agriculture compliance fund created pursuant to section 459.401.

a. If on June 30, the balance of unencumbered and unobligated moneys in the assessment account is one million dollars or more, the department shall adjust the rate of the annual compliance fee for the following fiscal year. The adjusted rate for the annual compliance fee shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not one million dollars or more.

b. If on June 30, the balance of unencumbered and unobligated moneys in the educational program account is twenty-five thousand dollars or more, the department shall adjust the rate of the commercial manure service license fee and the educational program fee for the following fiscal year. The adjusted rate for the fees shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not twenty-five thousand dollars or more.

2002 Acts, ch 1137, §43, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262

C2003, §459.316

459.401 Animal agriculture compliance fund.

1. An animal agriculture compliance fund is created in the state treasury under the control of the department. The compliance fund is separate from the general fund of the state.

2. The compliance fund is composed of three accounts, the general account, the assessment account, and the educational program account.

a. The general account is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the compliance fund. Unless otherwise specifically provided in statute, moneys required to be deposited in the compliance fund shall be deposited into the general account. The general account shall include moneys deposited into the account from all of the following:

(1) The construction permit application fee required pursuant to section 459.303.

(2) The manure management plan filing fee required pursuant to section 459.312.

(3) Educational program fees required to be paid by commercial manure service representatives or confinement site manure applicators pursuant to section 459.400.

(4) A commercial manure service license fee as provided in section 459.400.

(5) The collection of civil penalties assessed by the department and interest on civil penalties, arising out of violations involving animal feeding operations as provided in sections 459.602, 459.603, and 459A.502.

b. The assessment account is composed of moneys collected from the annual compliance fee required pursuant to section 459.400.

c. The educational program account is composed of moneys collected from the commercial manure service license fee and the educational program fee required pursuant to section 459.400.

3. Moneys in the compliance fund are appropriated to the department exclusively to pay the expenses of the department in administering and enforcing the provisions of subchapters II and III as necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. The department shall not transfer moneys from the compliance fund's assessment account to another fund or account, including but not limited to the fund's general account.

4. Moneys in the fund, which may be subject to warrants written by the director of the department of administrative services, shall be drawn upon the written requisition of the director of the department of natural resources or an authorized representative of the director.

5. Notwithstanding section 8.33, any unexpended balance in an account of the compliance fund at the end of the fiscal year shall be retained in that account. Notwithstanding section 12C.7, subsection 2, interest, earnings on investments, or time deposits of the moneys in an account of the compliance fund shall be credited to that account.

2002 Acts, ch 1137, §6, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §247, 259, 260, 262; 2003 Acts, ch 145, § 286; 2003 Acts, ch 163, § 1720, 23; 2003 Acts, ch 179, § 73; 2004 Acts, ch 1086, §78; 2005 Acts, ch 136, §36

Temporary transfer of manure storage indemnity fund moneys to the animal agriculture compliance fund; schedule for return of funds; 2002 Acts, ch 1137, §59, 71; 2003 Acts, ch 52, § 5, 6

459.402 Animal agriculture compliance fees delinquencies.

If a fee imposed under this chapter for deposit into the animal agriculture compliance fund is delinquent, the department may charge interest on any amount of the fee that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue pursuant to section 421.7. The interest amount shall be computed from the date that the fee is delinquent, unless the department designates a later date. The interest amount shall accrue for each month in which a delinquency is calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount shall become part of the amount of the fee due.

2002 Acts, ch 1137, §5, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262; 2003 Acts, ch 145, §286

459.403 County assessment of fees prohibited.

A county shall not assess or collect a fee under this chapter for the regulation of animal agriculture, including but not limited to any fee related to the filing, consideration, or evaluation of an application for a construction permit pursuant to section 459.303 or the filing of a manure management plan pursuant to section 459.312.

2002 Acts, ch 1137, §4, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262

459.501 Manure storage indemnity fund.

1. A manure storage indemnity fund is created as a separate fund in the state treasury under the control of the department. The general fund of the state is not liable for claims presented against the fund.
2. The fund consists of moneys from indemnity fees remitted by permittees to the department as provided in section 459.502; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 459.503; 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 subchapter; 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 shall be deposited in the fund and shall be appropriated to the department for the exclusive purpose of providing moneys for cleanup of abandoned facilities as provided in section 459.505, and to pay the department for costs related to administering the provisions of this subchapter. 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.
4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this subchapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of the department of administrative services pursuant to the order of the department. The fiscal year of the fund

begins July 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

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

a. 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 459.505. 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.

b. 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 "a". 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.

95 Acts, ch 195, §5

CS95, §204.2

98 Acts, ch 1209, §3, 50

C99, §455J.2

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.501

2003 Acts, ch 44, §76; 2003 Acts, ch 52, §2, 3, 6; 2003 Acts, ch 145, §286

Temporary transfer of unencumbered and unobligated funds to the general fund of the animal agriculture compliance fund; schedule for return of funds; 2002 Acts, ch 1137, §59, 71; 2003 Acts, ch 52, §5, 6

459.502 Indemnity fees required construction permits.

An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department, prior to issuing a permit for the construction of a confinement feeding operation as provided in section 459.303. The amount of the fees shall be based on the following:

1. If the confinement feeding operation has an animal unit capacity of less than one thousand animal units, the following shall apply:

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

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

2. If the confinement feeding operation has an animal unit capacity of one thousand or more animal units but

less than three thousand animal units, the following shall apply:

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

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

3. If the confinement feeding operation has an animal unit capacity of three thousand or more animal units, the following shall apply:

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

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

The department shall deposit moneys collected from the fees into the fund according to procedures adopted by the department.

95 Acts, ch 195, §6

CS95, § 204.3

98 Acts, ch 1209, §4, 50

C99, §455J.3

2002 Acts, ch 1137, §5456, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.502

459.503 Indemnity fee required manure management plan.

An indemnity fee shall be assessed upon persons required to submit an original manure management plan as provided in section 459.312, but not required to obtain a construction permit pursuant to section 459.303. A person required to submit a replacement original manure management plan shall not be assessed an indemnity fee. The amount of the fee shall be ten cents per animal unit of capacity for the confinement feeding operation covered by the manure management plan.

98 Acts, ch 1209, § 5, 50

C99, §455J.4

2002 Acts, ch 1137, §57, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.503

459.503A Indemnity fee waiver and reinstatement.

The indemnity fee required under sections 459.502 and 459.503 shall be waived and the fee shall not be assessable or owing if, at the end of any three-month period, unobligated and unencumbered moneys in the manure storage indemnity fund, not counting the department's estimate of the cost to the fund for pending or

unsettled claims, exceed three million dollars. The department shall reinstate the indemnity fee under those sections if unobligated and unencumbered moneys in the fund, not counting the department's estimate of the cost to the fund for pending or unsettled claims, are less than two million dollars.

2003 Acts, ch 52, §4, 6

459.504 Use of fund for emergency cleanup.

If the department provides cleanup of a condition caused by a confinement feeding operation as provided in section 459.506, 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 459.506.

98 Acts, ch 1209, §7, 50

C99, §455J.6

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.504

459.505 Use of moneys by counties for cleanup.

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 cleanup costs incurred by the county as provided in section 459.506. 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. If a county provides cleanup under section 459.506 after acquiring real estate following nonpayment of taxes, the department shall determine if a claim is eligible to be satisfied under this 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 8A.311 in implementing this section.
3. 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 459.506, 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.
4. Upon a determination that the claim is eligible for payment, the department shall provide for payment of one hundred percent of the claim, as provided in this section. If at any time the department determines that there are insufficient moneys to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

5. In the event of payment of a claim under this section, the fund is subrogated to the extent of the amount of the payment to all rights, powers, privileges, and remedies of the county regarding the payment amount. The county shall render all necessary assistance to the department in securing the rights granted in this section. A case or proceeding initiated by a county which involves a claim submitted to the department shall not be compromised or settled without the consent of the department. A county shall not be eligible to submit a claim to the department if the county has compromised or settled a case or proceeding, without the consent of the department.

6. If upon disposition of the real estate the county realizes an amount which exceeds the total amount of the delinquent real estate taxes, the county shall forward to the fund any excess amount which is not more than the amount expended by the fund to pay the claim by the county.

95 Acts, ch 195, §7

CS95, §204.4

98 Acts, ch 1209, §6, 50

C99, §455J.5

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.505

2003 Acts, ch 145, §264

459.506 Cleanup.

1. *a.* A county that has acquired real estate on which there is located a confinement feeding operation following the nonpayment of taxes pursuant to section 446.19, may 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 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 confinement feeding operation located on real estate acquired by a county may demolish or dispose of any building or equipment of the confinement feeding operation located on the land according to rules adopted by the department pursuant to chapter 17A, which apply to the disposal of farm buildings or equipment by an individual or business organization.

95 Acts, ch 195, §8

CS95, § 204.5

98 Acts, ch 1209, § 8, 50

C99, § 455J.7

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.506

459.507 No state obligation.

This subchapter does not imply any guarantee or obligation on the part of this state, or any of its agencies, employees, or officials, either elective or appointive, with respect to any agreement or undertaking to which this subchapter relates.

95 Acts, ch 195, §9

CS95, § 204.6

98 Acts, ch 1209, §50

C99, § 455J.8

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.507

459.508 Departmental rules.

The department shall adopt administrative rules pursuant to chapter 17A necessary to administer this subchapter.

95 Acts, ch 195, §10

CS95, § 204.7

98 Acts, ch 1209, §50

C99, § 455J.9

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.508

459.601 Animal feeding operations 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 designee 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.

95 Acts, ch 195, §13

CS95, §455B.110

98 Acts, ch 1209, § 11, 53; 99 Acts, ch 96, §39; 2002 Acts, ch 1137, §3, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.601

*Section was transferred from chapter 455B in Code 2003 pursuant to legislative directive in 2002 Acts, ch

1137; chapter 455B may also be intended

459.602 Air quality violations civil penalty.

A person who violates subchapter II shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2002 Acts, ch 1137, §24, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262

459.603 Water quality violations civil penalty.

A person who violates subchapter III shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.191. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2002 Acts, ch 1137, §51, 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 259, 260, 262

459.604 Habitual violators classification penalties.

1. The department may impose a civil penalty upon a habitual violator which shall not exceed twenty-five thousand dollars for each day the violation continues. The increased penalty may be assessed for each violation committed subsequent to the violation which results in classifying the person as a habitual violator. A person shall be classified as a habitual violator if the person has committed three or more violations as described in this subsection. To be considered a violation that is applicable to a habitual violator determination, a violation must have been committed on or after January 1, 1995. In addition, each violation must have been referred to the attorney general for legal action under this chapter, and each violation must be subject to the assessment of a civil penalty or a court conviction, in the five years prior to the date of the latest violation provided in this subsection, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A person shall be removed from the classification of habitual violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. A violation must relate to one of the following:

a. The construction or operation of a confinement feeding operation structure, or the installation or use of a related pollution control device or practice, for which the person must obtain a permit, in violation of this chapter, or rules adopted by the department, including the terms or conditions of the permit.

b. Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for a confinement feeding operation structure, or the installation of a related pollution control device or practice for which the person must obtain a construction permit.

c. Failing to obtain a permit or approval by the department in violation of this chapter or departmental rule which requires a permit to construct or operate a confinement feeding operation or use a confinement feeding operation structure, anaerobic lagoon, or a pollution control device or practice which is part of a confinement feeding operation.

d. Operating a confinement feeding operation, including a confinement feeding operation structure, or a related pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which

resulted from an act of God.

e. Failing to submit a manure management plan as required pursuant to section 459.312, or operating a confinement feeding operation without having a manure management plan approved by the department.

This subsection shall not apply unless the department has previously notified the person of the person's classification as a habitual violator. 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.

2. Moneys assessed and collected in civil penalties and interest earned on civil penalties, arising out of a violation involving an animal feeding operation, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2003 Acts, ch 108, §87

459.605 Habitual violators permit restrictions.

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 459.604, all of the following shall apply:

1. The department may not issue a new permit under this chapter to the person or confinement feeding operation.
2. 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.

2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262