

567—65.103(455B,459A) Departmental evaluation; CAFO designation; remedial actions.

65.103(1) The department may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:

- a.* The size of the operation and the amount of manure or process wastewater reaching waters of the United States;
- b.* The location of the operation relative to waters of the United States;
- c.* The means of conveyance of manure or process wastewater to waters of the United States;
- d.* The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and
- e.* Other relevant factors.

65.103(2) No animal feeding operation with an animal capacity less than that specified for a medium CAFO shall be designated as a CAFO unless manure or process wastewater from the operation is discharged into a water of the United States:

- a.* Through a man-made ditch, flushing system, or other similar man-made device; or
- b.* Which originates outside of and passes over, across or through the facility or otherwise comes into direct contact with animals confined in the operation.

65.103(3) The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation.

65.103(4) If departmental evaluation determines that any of the conditions listed in paragraph 65.103(4) “*a*,” “*b*,” or “*c*” exist, the open feedlot operation shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions.

- a.* Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in rule 65.101(459A);
- b.* Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the state; or
- c.* Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause a violation of state water quality standards.

65.103(5) The department may evaluate any proposed open feedlot operation or proposed expansion of an open feedlot operation that requires a construction permit with respect to its potential adverse impacts on natural resources or the environment. For the purpose of this subrule, open feedlot effluent includes manure, process wastewater, settled open feedlot effluent and settleable solids.

- a.* In conducting the evaluation, the department shall consider the following factors:
 - (1) The likelihood open feedlot effluent will be applied to frozen or snow-covered cropland.
 - (2) The proximity of the open feedlot operation structures or open feedlot effluent application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.

- (3)* Topography, slope, vegetation, potential means or routes of conveyance of open feedlot effluent spilled or land-applied. This factor includes but is not limited to whether the open feedlot effluent application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether open feedlot effluent for land application is hauled or otherwise transported more than five miles.

- (4)* Whether the operation or open feedlot effluent application area is or will be located in a two-year capture zone for a public water supply.

- b.* In addition to the requirements in rules 65.105(459A), 65.109(459A) and 65.112(459A), the department may deny a construction permit, disapprove a nutrient management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:

- (1) Open feedlot effluent from the operation will cause pollution of a water of the state.
- (2) Open feedlot effluent from the operation will cause a violation of state water quality standards.
- (3) An adverse effect on natural resources or the environment will occur in a specific area due to the current concentration of animal feeding operations or the associated open feedlot effluent application areas.

c. The department also may establish permit conditions or require amendments to the nutrient management plan in addition to the minimum requirements established for such operations, on the location of structures or open feedlot effluent application, or other operational conditions necessary to avoid or minimize the adverse impacts.

d. A construction permit denial or condition, a nutrient management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be appealed according to the contested case procedures set forth in 561—Chapter 7.

¹ Objection to 65.103(5) filed by the Administrative Rules Review Committee October 10, 2006. See text of Objection at end of Chapter 65.