

567—65.5(455B) Departmental evaluation.

65.5(1) The department may evaluate any animal feeding operation to determine if any of the following conditions exist:

a. Manure from the operation 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 subrule 65.2(1), 65.2(2), or 65.2(3);

b. Manure from the operation is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Manure from the operation is causing or may reasonably be expected to cause a violation of state water quality standards.

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

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

- (1) 300 beef cattle.
- (2) 200 dairy cattle.
- (3) 750 butcher and breeding swine (over 55 lbs.).
- (4) 3000 sheep or lambs.
- (5) 16,500 turkeys.
- (6) 30,000 broiler or layer chickens.
- (7) 150 horses.
- (8) 300 animal units.

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

65.5(3) The department may evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan with respect to its potential adverse impacts on natural resources or the environment.

a. In conducting the evaluation, the department shall consider the following factors:

(1) The likelihood manure will be applied to frozen or snow-covered cropland.

(2) The proximity of the structures or manure 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 manure spilled or land-applied. This factor includes but is not limited to whether the manure 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 manure for land application is hauled or otherwise transported more than five miles.

(4) Whether the operation or manure 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 65.9(455B), 65.10(455B), 65.11(455B), 65.15(455B) and 65.17(459), the department may deny a construction permit, disapprove a manure 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) Manure from the operation will cause pollution of a water of the state.
- (2) Manure 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 manure application areas.

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

d. A construction permit denial or condition, a manure 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 65.5(3) filed by the Administrative Rules Review Committee October 10, 2006. See text of Objection at end of Chapter 65.