

**567—65.101 (459A) Minimum open feedlot effluent control requirements and reporting of releases.** An open feedlot operation shall provide for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, scraped solids, and open feedlot effluent by using an open feedlot control method as provided in subrules 65.101(1) to 65.101(8). A release shall be reported to the department as provided in subrule 65.101(9).

**65.101(1)** All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

*a.* The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

*b.* The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than 0.5 feet per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility which receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

**65.101(2)** This subrule shall apply to an open feedlot operation which has obtained an NPDES permit pursuant to 567—65.102(455B,459A) or 567—65.103(455B,459A).

*a.* An open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States due to a precipitation event, if the open feedlot operation is designed, constructed, operated, and maintained to comply with the requirements of 567—subrule 62.4(12) and 40 CFR Part 412.

*b.* If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of 567—subrule 62.4(12) and in accordance with any of the manure control alternatives listed in Appendix A of these rules or the AT system requirements in rule 567—65.110(459A), the operation shall be considered to be in compliance with this rule, unless a discharge from the operation causes a violation of state water quality standards. If water quality standards violations occur, the department may impose additional open feedlot effluent control requirements upon the operation, as specified in subrule 65.101(3).

**65.101(3)** An open feedlot operation which has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation which is a large CAFO, or a medium CAFO, or a designated CAFO, shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The control of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, AT system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Settleable solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or AT system.

**65.101(4)** Alternative control practices. If, because of topography or other factors related to the site of an open feedlot operation, it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in subrule 65.101(2), the department shall allow an open feedlot operation covered by the NPDES permit application requirements of 567—65.102(455B,459A) or 567—65.103(455B,459A) to use other open feedlot effluent control practices, provided the open feedlot operation satisfactorily demonstrates by appropriate methods that

those practices will provide an equivalent level of open feedlot effluent control that would be achieved by using an open feedlot control method as provided in 65.101(2).

**65.101(5)** No direct discharge of open feedlot effluent shall be allowed from an open feedlot operation into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

**65.101(6)** Land application.

*a. General requirements.* Open feedlot effluent shall be land-applied in a manner which will not cause pollution of surface water or groundwater. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

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

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

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

*c. CAFOs.*

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

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

**65.101(7)** The owner of an open feedlot operation who discontinues the use of the operation shall remove and land-apply in accordance with state law all manure, process wastewater and open feedlot effluent from the open feedlot operation structures as soon as practical but not later than six months following the date the open feedlot operation is discontinued. The owner of a CAFO shall maintain compliance with all requirements in the CAFO's NPDES permit until all manure, process wastewater and open feedlot effluent has been removed and land-applied pursuant to the CAFO's NMP.

**65.101(8)** Stockpiling of scraped solids and settleable solids. Stockpiles of solids scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements.

*a.* Stockpiles must be land-applied in accordance with subrule 65.101(6) as soon as possible but not later than six months after they are established.

*b.* Stockpiles shall not be located within 400 feet from a designated area or, in the case of a high-quality water resource, within 800 feet.

*c.* Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

*d.* Stockpiles shall not be located within 200 feet of a terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the inlet or sinkhole.

*e.* Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

**65.101(9)** A release, as defined in rule 567—65.100(459A), shall be reported to the department as provided in this subrule. This subrule does not apply to the land application of manure, process wastewater, open feedlot effluent, settled open feedlot effluent, scraped solids, or settleable solids in compliance with these rules, or to precipitation- or snowmelt-induced runoff from open feedlots in compliance with the minimum control requirements set forth in this rule.

*a. Notification.* A person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent, scraped solids, or settleable solids from an open feedlot operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department's spill line. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period if the release involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in 65.101(9) "c."

*b. Verbal report.* The verbal report of such a release should provide information on as many items listed in 65.101(9) "c" as available information will allow.

*c. Written report.* The written report of a release shall be submitted at the request of the department within 30 days after the verbal report of the release and contain at a minimum the following information:

(1) The approximate location of the alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or was discovered).

(2) The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

(3) The time and date of the verbal report to the department of the release.

(4) The name, mailing address and telephone number of the person reporting the release.

(5) The name, mailing address and telephone number of any other person with knowledge of the event who can be contacted for further information.

(6) The source of the manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids allegedly released (e.g., settled open feedlot effluent basin).

(7) The estimated or known volume of manure, process wastewater, open feedlot effluent, settled open feedlot effluent, scraped solids, or settleable solids allegedly released.

(8) The weather conditions at the time of the onset or discovery of the release.

(9) If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

(10) The approximate location of the nearest stream or other water body which is or could be impacted by the alleged release, and the approximate location to the alleged release of any known tile intakes or tile lines which could be a direct conveyance to a surface water or groundwater.

(11) A description of any containment or remedial measures taken to minimize the impact of the release.

(12) Any information that may assist the department in evaluating the release.

*d. Reporting of subsequent findings.* All subsequent findings and laboratory results should be reported and submitted in writing to the department as soon as they become available.

*e. Waiver of notification requirement.* A waiver from the notification requirement of paragraph "a" of this subrule may be granted by the department for a release to a specific drainage tile line or intake if sufficient information is provided to demonstrate that the drainage tile line or intake will not result in a discharge to a water of the state.

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