

Senate Amendment 5543

Amendment Text

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1 1 Amend [House File 2494](#), as amended, passed, and
1 2 reprinted by the House, as follows:
1 3 #1. By striking everything after the enacting
1 4 clause and inserting the following:
1 5 "Section 1. NEW SECTION. 7D.10A ALLOCATION TO
1 6 MANURE STORAGE INDEMNITY FUND.
1 7 If moneys are not sufficient to support the manure
1 8 storage indemnity fund as provided in chapter 204, the
1 9 executive council may allocate from moneys in the
1 10 general fund of the state, which are not otherwise
1 11 obligated or encumbered, an amount to the manure
1 12 storage indemnity fund as provided under section
1 13 204.2. However, not more than a total of one million
1 14 dollars shall be allocated to the manure storage
1 15 indemnity fund at any time.
1 16 Sec. 2. Section [204.1](#), subsections 4, 8, and 9,
1 17 Code 1997, are amended to read as follows:
1 18 4. "Department" means the department of
1 19

~~agriculture and land stewardship~~
~~natural resources.~~

1 20 8. "Manure storage structure" means

~~a structure~~

1 21

~~used to store manure as part of a confinement feeding~~

1 22

~~operation subject to a construction permit issued by~~

1 23

~~the department of natural resources pursuant to~~

1 24

~~section 455B.173. A manure storage structure~~

1 25

~~includes, but is not limited to, an anaerobic lagoon,~~

1 26

~~formed manure storage structure, or earthen manure~~

1 27

~~storage basin,~~

~~the same as defined in section~~

~~455B.161~~

1 28 455B.171.

1 29 9. "Permittee" means a person who, pursuant to
1 30 section 455B.200A, obtains a permit for the
1 31 construction of a manure storage structure, or a
1 32 confinement feeding operation, if a manure storage
1 33 structure is connected to the confinement feeding
1 34 operation.

1 35 Sec. 3. Section 204.2, subsections 2, 3, and 5,
1 36 Code 1997, are amended to read as follows:

1 37 2. The fund consists of moneys from indemnity fees
1 38 remitted by permittees to the department

~~of natural~~

1 39

~~resources and transferred to the department of~~

1 40

~~agriculture and land stewardship~~

~~as provided in~~

1 41 section 204.3; moneys from indemnity fees remitted by
1 42 persons required to submit manure management plans to
1 43 the department pursuant to section 204.3A; sums
1 44 collected on behalf of the fund by the department
1 45 through legal action or settlement; moneys required to
1 46 be repaid to the department by a county pursuant to
1 47 this chapter; civil penalties assessed and collected
1 48 by the department

~~of natural resources~~

~~or the attorney~~

1 49 general pursuant to chapter 455B, against

~~permittees~~

1 50 animal feeding operations; moneys paid as a settlement
2 1 involving an enforcement action for a civil penalty
2 2 subject to assessment and collection against
2 3 permittees by the department

~~of natural resources~~

~~or~~

2 4 the attorney general pursuant to chapter 455B;
2 5 interest, property, and securities acquired through
2 6 the use of moneys in the fund; or moneys contributed
2 7 to the fund from other sources.
2 8 3. The moneys collected under this section

~~and~~

2 9 shall be deposited in the fund and shall be
2 10 appropriated to the department for the exclusive
2 11 purpose of

~~indemnifying a county for expenses related~~

2 12

~~to cleaning up the site of the confinement feeding~~

2 13

~~operation, including removing and disposing of manure~~

2 14

~~from a manure storage structure~~

~~providing moneys for~~

2 15 cleanup of abandoned facilities as provided in section
2 16 204.4, and to pay the department for costs related to
2 17 administering the provisions of this chapter. For
2 18 each fiscal year, the department shall not use more
2 19 than one percent of the total amount which is
2 20 available in the fund or ten thousand dollars,
2 21 whichever is less, to pay for the costs of
2 22 administration. Moneys in the fund shall not be
2 23 subject to appropriation or expenditure for any other
2 24 purpose than provided in this section.

2 25 5. The following shall apply to moneys in the
2 26 fund:

2 27 a. On August 31 following the close of each fiscal
2 28 year, moneys in the fund which are not obligated or
2 29 encumbered on June 30 of the past fiscal year,

~~less~~

2 30 not counting the department's estimate of the cost to
2 31 the fund for pending or unsettled claims and any
2 32 amount required to be credited to the general fund of
2 33 the state under this subsection,

~~and which are~~

~~in~~

2 34 excess of

~~one~~

~~three million dollars~~

~~shall be~~

2 35 deposited in the organic nutrient management fund as
2 36 created in section 161C.5 for purposes of supporting
2 37 the organic nutrient management program.

2 38 b. The executive council may allocate moneys from
2 39 the general fund of the state as provided in section
2 40 7D.10A in an amount necessary to support the fund,
2 41 including payment of claims as provided in section
2 42 204.4. However, an allocation of moneys from the
2 43 general fund of the state shall be made only if the
2 44 amount of moneys in the fund, which are not obligated
2 45 or encumbered, and not counting the department's
2 46 estimate of the cost to the fund for pending or
2 47 unsettled claims and any amount required to be
2 48 credited to the general fund of the state under this
2 49 subsection, is less than one million dollars.

2 50 c. The department shall credit an amount to the
3 1 general fund of the state which is equal to an amount
3 2 allocated to the fund by the executive council under
3 3 paragraph "b". The department shall credit the moneys
3 4 to the general fund of the state, if the moneys in the
3 5 fund which are not obligated or encumbered, and not
3 6 counting the department's estimate of the cost to the
3 7 fund for pending or unsettled claims and any amount
3 8 required to be transferred to the general fund under
3 9 this paragraph, are in excess of two million five
3 10 hundred thousand dollars. The department is not
3 11 required to credit the total amount to the general
3 12 fund of the state during any one fiscal year.

3 13 Sec. 4. Section 204.3, Code 1997, is amended to
3 14 read as follows:

3 15 204.3 FEES.

3 16 An indemnity fee shall be assessed upon permittees

3 17 which shall be paid to and collected by the department
3 18

~~of natural resources~~

- , prior to issuing a permit for

3 19 the construction of a confinement feeding operation as
3 20 provided in section

~~455B.173~~

- 455B.200A. The amount of

3 21 the fees shall be based on the following:

3 22 1. If the confinement feeding operation has an
3 23 animal weight capacity of less than six hundred
3 24 twenty-five thousand pounds, the following shall
3 25 apply:

3 26 a. For all animals other than poultry, the amount
3 27 of the fee shall be

~~five~~

- ten cents per animal unit of

3 28 capacity for confinement feeding operations.

3 29 b. For poultry, the amount of the fee shall be

~~two~~

- four cents per animal unit of capacity for confinement
3 30 feeding operations.

3 31
3 32 2. If the confinement feeding operation has an
3 33 animal weight capacity of six hundred twenty-five
3 34 thousand or more pounds but less than one million two
3 35 hundred fifty thousand pounds, the following shall
3 36 apply:

3 37 a. For all animals other than poultry, the amount
3 38 of the fee shall be

~~seven and one half~~

- fifteen cents

3 39 per animal unit of capacity for confinement feeding
3 40 operations.

3 41 b. For poultry, the amount of the fee shall be
3 42

~~three~~

- six cents per animal unit of capacity for

3 43 confinement feeding operations.

3 44 3. If the confinement feeding operation has an
3 45 animal weight capacity of one million two hundred
3 46 fifty thousand or more pounds, the following shall
3 47 apply:

3 48 a. For all animals other than poultry, the amount
3 49 of the fee shall be

~~ten~~

- twenty cents per animal unit

3 50 of capacity for confinement feeding operations.

4 1 b. For poultry, the amount of the fee shall be
4 2

~~four~~

- eight cents per animal unit of capacity for

4 3 confinement feeding operations.

4 4 The department

~~of natural resources~~

- shall deposit

4 5 moneys collected from the fees into the fund according
4 6 to procedures adopted by the department

~~of agriculture~~

4 7

~~and land stewardship~~

4 8 Sec. 5. NEW SECTION. 204.3A MANURE MANAGEMENT
4 9 PLAN INDEMNITY FEE REQUIRED.

4 10 An indemnity fee shall be assessed upon persons
4 11 required to submit a manure management plan as
4 12 provided in section 455B.203, but not required to
4 13 obtain a construction permit pursuant to section
4 14 455B.200A. The amount of the fees shall be ten cents
4 15 per animal unit of capacity for confinement feeding
4 16 operations.

4 17 Sec. 6. Section 204.4, subsections 1 and 2, Code
4 18 1997, is amended to read as follows:

4 19 1. A county that has acquired real estate
4 20 containing a manure storage structure following
4 21 nonpayment of taxes pursuant to section 446.19, may
4 22 make a claim against the fund to pay

~~the costs of~~

4 23

~~cleaning up the site of the confinement feeding~~

4 24

~~operation, including the costs of removing and~~

4 25

~~disposing of the manure from a manure storage~~

4 26

~~structure~~

~~cleanup costs incurred by the county as~~

4 27 provided in section 204.5. Each claim shall include a
4 28 bid by a qualified person, other than a governmental
4 29 entity, to remove and dispose of the manure for a
4 30 fixed amount specified in the bid.

4 31 2.

~~The~~

~~If a county provides cleanup under section~~

4 32 204.5 after acquiring real estate following nonpayment
4 33 of taxes, the department shall determine if a claim is
4 34 eligible to be satisfied under this

~~section~~

4 35 subsection, and do one of the following:

4 36 a. Pay the amount of the claim required in this
4 37 section, based on the fixed amount specified in the
4 38 bid submitted by the county upon completion of the
4 39 work.

4 40 b. Obtain a lower fixed amount bid for the work
4 41 from another qualified person, other than a
4 42 governmental entity, and pay the amount of the claim
4 43 required in this section, based on the fixed amount in
4 44 this bid upon completion of the work. The department
4 45 is not required to comply with section 18.6 in
4 46 implementing this section.

4 47 2A. If a county provides cleanup of a condition
4 48 causing a clear, present, and impending danger to the
4 49 public health or environment, as provided in section
4 50 204.5, the county may make a claim against the fund to
5 1 pay cleanup costs incurred by the county, according to
5 2 procedures and requirements established by rules
5 3 adopted by the department. The department shall
5 4 determine if a claim is eligible to be satisfied under
5 5 this subsection, and pay the amount of the claim
5 6 required in this section.

5 7 Sec. 7. NEW SECTION. 204.4A USE OF FUND FOR
5 8 EMERGENCY CLEANUP.

5 9 If the department provides cleanup of a condition
5 10 caused by a confinement feeding operation as provided
5 11 in section 204.5, the department may use moneys in the
5 12 fund for purposes of supporting the cleanup. The
5 13 department shall reimburse the fund from moneys
5 14 recovered by the department as reimbursement for the
5 15 cleanup as provided in section 204.5.

5 16 Sec. 8. Section 204.5, Code 1997, is amended to
5 17 read as follows:

5 18 204.5

~~SITE~~

~~CLEANUP.~~

5 19 1. a. A county

~~which~~

~~that has acquired real~~

5 20 estate

~~containing~~

~~on which there is located a~~

5 21 confinement feeding operation

~~structure, as defined in~~

~~-~~

5 22

~~section 455B.161~~

~~-, following the nonpayment of taxes~~

5 23 pursuant to section 446.19, may

~~clean up the site~~

~~-~~

5 24 provide for cleanup, including removing and disposing
5 25 of manure at any time, remediating contamination which
5 26 originates from the confinement feeding operation, or
5 27 demolishing and disposing of structures relating to
5 28 the confinement feeding operation. The county may
5 29 seek reimbursement including by bringing an action for
5 30 the costs of the

~~removal and disposal~~

~~cleanup from the~~

5 31 person abandoning the real estate.

5 32 b. If the confinement feeding operation has caused
5 33 a clear, present, and impending danger to the public
5 34 health or the environment, the department may clean up
5 35 the confinement feeding operation and remediate
5 36 contamination which originates from the confinement
5 37 feeding operation, pursuant to sections 455B.381
5 38 through 455B.399. If the department fails to provide
5 39 cleanup within twenty-four hours after being notified
5 40 of a condition requiring cleanup, the county may
5 41 provide for the cleanup as provided in this paragraph.
5 42 The department or county may seek reimbursement

5 43 including by bringing an action for the costs of the
5 44 cleanup from a person liable for causing the
5 45 condition.

5 46 2. A person cleaning up a

~~site~~

- confinement feeding

5 47 operation located on real estate acquired by a county
5 48 may demolish or dispose of any building or equipment
5 49

~~used in~~

- of the confinement feeding operation located

5 50 on the land according to rules adopted by the
6 1 department

~~of natural resources~~

- pursuant to chapter

6 2 17A, which apply to the disposal of farm buildings or
6 3 equipment by an individual or business organization.

6 4 Sec. 9. NEW SECTION. 331.304A LIMITATIONS ON
6 5 COUNTY LEGISLATION.

6 6 1. As used in this section:

6 7 a. "Aerobic structure", "animal", "animal feeding
6 8 operation", "animal feeding operation structure", and
6 9 "manure" mean the same as defined in section 455B.161.

6 10 b. "County legislation" means any ordinance,
6 11 motion, resolution, or amendment adopted by a county
6 12 pursuant to section 331.302.

6 13 2. A county shall not adopt or enforce county
6 14 legislation regulating a condition or activity
6 15 occurring on land used for the production, care,
6 16 feeding, or housing of animals unless the regulation
6 17 of the production, care, feeding, or housing of
6 18 animals is expressly authorized by state law. County
6 19 legislation adopted in violation of this section is
6 20 void and unenforceable and any enforcement activity
6 21 conducted in violation of this section is void. A
6 22 condition or activity occurring on land used for the
6 23 production, care, feeding, or housing of animals
6 24 includes but is not limited to the construction,
6 25 operation, or management of an animal feeding
6 26 operation, an animal feeding operation structure, or
6 27 aerobic structure, and to the storage, handling, or
6 28 application of manure or egg washwater.

6 29 Sec. 10. Section 455B.104, Code 1997, is amended
6 30 to read as follows:

6 31 455B.104 DEPARTMENTAL DUTIES PERMITS

6 32 REQUIREMENTS AND ASSISTANCE.

6 33 1. The department shall either approve or deny a
6 34 permit to a person applying for a permit under this
6 35 chapter, within six months from the date that the
6 36 department receives a completed application for the
6 37 permit. An application which is not approved or
6 38 denied within the six-month period shall be approved
6 39 by default. The department shall issue a permit to
6 40 the applicant within ten days following the date of
6 41 default approval. However, this

~~section~~

- subsection

6 42 shall not apply to applications for permits which are
6 43 issued under division II

- or division IV, parts 2

6 44 through 7.

6 45 2. The department shall not issue a new permit to
6 46 and may revoke or refuse to renew an existing permit
6 47 held by a person under this chapter during a period of
6 48 five years after the date of the last violation
6 49 committed by the person or by a confinement feeding
6 50 operation in which the person holds a controlling
7 1 interest during the period for which the person or
7 2 operation was classified as a habitual violator under
7 3 section 455B.191.

7 4 3. The department shall assist persons applying
7 5 for assistance to establish and operate renewable fuel
7 6 production facilities pursuant to the value-added
7 7 agricultural products and processes financial
7 8 assistance program established in section 15E.111.

7 9 Sec. 11. Section 455B.110, Code 1997, is amended
7 10 to read as follows:

7 11 455B.110 ANIMAL FEEDING OPERATIONS

~~COMMISSION~~

7 12

~~APPROVAL OF~~

~~INVESTIGATIONS AND ENFORCEMENT ACTIONS.~~

7 13 1. A person may file a complaint alleging that an
7 14 animal feeding operation is in violation of this
7 15 chapter, including rules adopted by the department, or
7 16 environmental standards or regulations subject to
7 17 federal law and enforced by the department.

7 18 a. The complaint may be filed with the department
7 19 according to procedures required by the department or
7 20 with the county board of supervisors in the county
7 21 where the violation is alleged to have occurred.
7 22 according to procedures required by the board. The
7 23 county auditor may accept the complaint on behalf of
7 24 the board.

7 25 b. If the county board of supervisors receives a
7 26 complaint, it shall conduct a review to determine if
7 27 the allegation contained in the complaint constitutes
7 28 a violation, without investigating whether the facts
7 29 supporting the allegation are true or untrue.

7 30 (1) If the county board of supervisors determines
7 31 that the allegation does not constitute a violation,
7 32 it shall notify the complainant, the animal feeding
7 33 operation which is the subject of the complaint, and
7 34 the department, according to rules adopted by the
7 35 department.

7 36 (2) If the county board of supervisors determines
7 37 that the allegation constitutes a violation, it shall
7 38 forward the complaint to the department which shall
7 39 investigate the complaint.

7 40 c. If the department receives a complaint from a
7 41 complainant or a county forwarding a complaint, the
7 42 department shall conduct an investigation of the
7 43 complaint. The department shall receive a complaint
7 44 filed by a complainant, regardless of whether the
7 45 complainant has filed a complaint with a county board
7 46 of supervisors.

7 47 (1) The department in its discretion shall
7 48 determine the urgency of the investigation, and the
7 49 time and resources required to complete the
7 50 investigation, based upon the circumstances of the
8 1 case, including the severity of a threat to the
8 2 quality of surface or subsurface water.

8 3 (2) The department shall notify the county board
8 4 of supervisors in the county where the violation is
8 5 alleged to occur prior to investigating the premises

8 6 of the alleged violation. However, the department is
8 7 not required to provide notice if the department
8 8 determines that a clear, present, and impending danger
8 9 to the public health or environment requires immediate
8 10 action.

8 11 (3) The county board of supervisors may designate
8 12 a county employee to accompany a departmental official
8 13 during the investigation of the premises of a
8 14 confinement feeding operation. The county designee
8 15 shall have the same right of access to the premises as
8 16 the departmental official conducting the inspection
8 17 during the period that the county accompanies the
8 18 departmental official.

8 19 (4) Upon the completion of an investigation, the
8 20 department shall notify the complainant of the results
8 21 of the investigation, including any anticipated,
8 22 pending, or completed enforcement action arising from
8 23 the investigation. The department shall deliver a
8 24 copy of the notice to the animal feeding operation
8 25 that is the subject of the complaint and the board of
8 26 supervisors of the county where the violation is
8 27 alleged to have occurred.

8 28 d. A county board of supervisors or the department
8 29 is not required to divulge information regarding the
8 30 identity of the complainant.

8 31 2. When entering the premises of an animal feeding
8 32 operation, a person who is a departmental official, an
8 33 agent of the department, or a person accompanying the
8 34 departmental official or agent shall comply with
8 35 section 455B.103. The person shall also comply with
8 36 standard biosecurity requirements customarily required
8 37 by the animal feeding operation which are necessary in
8 38 order to control the spread of disease among an animal
8 39 population.

8 40 3. The department shall not initiate an
8 41 enforcement action in response to a violation by an
8 42 animal feeding operation as provided in this chapter
8 43 or a rule adopted pursuant to this chapter, or request
8 44 the commencement of legal action by the attorney
8 45 general pursuant to section 455B.141, unless the
8 46 commission has approved the intended action. This
8 47

~~section~~

- subsection shall not apply to an enforcement
8 48 action in which the department enforces a civil
8 49 penalty of three thousand dollars or less. This
8 50

~~section~~

- subsection shall also not apply to an order to
9 1 terminate an emergency issued by the director pursuant
9 2 to section 455B.175.

9 3 Sec. 12. Section [455B.161](#), Code 1997, is amended
9 4 by adding the following new subsections:

9 5 **NEW SUBSECTION.** 0A. "Aerobic structure" means an
9 6 animal feeding operation structure other than an egg
9 7 washwater storage structure which employs bacterial
9 8 action which is maintained by the utilization of air
9 9 or oxygen and which includes aeration equipment.

9 10 **NEW SUBSECTION.** 21. "Unformed manure storage
9 11 structure" means a covered or uncovered animal feeding
9 12 operation structure in which manure is stored, other
9 13 than a formed manure storage structure, which is an
9 14 anaerobic lagoon, aerobic structure, or earthen manure
9 15 storage basin.

9 16 Sec. 13. **NEW SECTION.** 455B.161A CONFINEMENT

9 17 FEEDING OPERATIONS SPECIAL TERMS.

9 18 For purposes of this part, all of the following
9 19 shall apply:

9 20 1. Two or more confinement feeding operations are
9 21 adjacent if all of the following apply:

9 22 a. An animal feeding operation structure which is
9 23 part of one confinement feeding operation is located
9 24 within the following distance from an animal feeding
9 25 operation structure which is part of the other
9 26 confinement feeding operation:

9 27 (1) One thousand two hundred fifty feet for all of
9 28 the following:

9 29 (a) Confinement feeding operations having an
9 30 animal weight capacity of less than one million two
9 31 hundred fifty thousand pounds for animals other than
9 32 bovine.

9 33 (b) Confinement feeding operations having an
9 34 animal weight capacity of less than four million
9 35 pounds for bovine.

9 36 (2) One thousand five hundred feet for all of the
9 37 following:

9 38 (a) Confinement feeding operations having an
9 39 animal weight capacity of one million two hundred
9 40 fifty thousand pounds or more but less than two
9 41 million pounds for animals other than swine kept in a
9 42 farrow-to-finish operation or bovine.

9 43 (b) Confinement feeding operations having an
9 44 animal weight capacity of one million two hundred
9 45 fifty thousand pounds or more but less than two
9 46 million five hundred thousand pounds for swine kept in
9 47 a farrow-to-finish operation.

9 48 (c) Confinement feeding operations having an
9 49 animal weight capacity of four million or more pounds
9 50 but less than six million pounds for bovine.

10 1 (3) Two thousand five hundred feet for all of the
10 2 following:

10 3 (a) Confinement feeding operations having an
10 4 animal weight capacity of two million pounds or more
10 5 for animals other than swine kept in a farrow-to-
10 6 finish operation or bovine.

10 7 (b) Confinement feeding operations having an
10 8 animal weight capacity of two million five hundred
10 9 thousand pounds for swine kept in a farrow-to-finish
10 10 operation.

10 11 (c) Confinement feeding operations having an
10 12 animal weight capacity of six million or more pounds
10 13 for bovine.

10 14 b. An animal feeding operation structure subject
10 15 to the distance requirements of this subsection is
10 16 constructed after March 20, 1996.

10 17 2. An animal feeding operation structure is
10 18 "constructed" when any of the following occurs:

10 19 a. Excavation for a proposed animal feeding
10 20 operation structure or proposed expansion of an
10 21 existing animal feeding operation structure, including
10 22 excavation for the footings of the animal feeding
10 23 operation structure.

10 24 b. Forms for concrete are installed for a proposed
10 25 animal feeding operation structure or the proposed
10 26 expansion of an existing animal feeding operation
10 27 structure.

10 28 c. Piping for the movement of manure is installed
10 29 within or between animal feeding operation structures
10 30 as proposed or proposed to be expanded.

10 31 Sec. 14. Section [455B.162](#), unnumbered paragraph 1,
10 32 Code 1997, is amended to read as follows:

10 33 The following shall apply to animal feeding

10 34 operation structures:
10 35 1. Except as provided in subsection 2, and
10 36 sections 455B.163 and 455B.165, this subsection
10 37 applies to animal feeding operation structures
10 38 constructed on or after May 31, 1995, but prior to the
10 39 effective date of this section; and to the expansion
10 40 of structures constructed

~~on or after May 31, 1995;~~

10 41

~~or, except as provided in section 455B.163, to the~~

10 42

~~expansion of structures constructed~~

~~prior to~~

~~May 31,~~

10 43

~~1995.~~

~~the effective date of this section.~~

10 44 Sec. 15. Section 455B.162, subsection 1, Code
10 45 1997, is amended to read as follows:

10 46

~~1. Except as provided in subsection 2, the~~

10 47

~~following table shall apply to animal feeding~~

10 48

~~operation structures:~~

10 49

~~a.~~

The following table represents the minimum

10 50 separation distance in feet required between an animal

11 1 feeding operation structure and a residence not owned

11 2 by the owner of the animal feeding operation, or a

11 3 commercial enterprise, bona fide religious

11 4 institution, or an educational institution:

11 5 Minimum

11 6 separation

11 7 distance in

11 8 feet for

11 9 operations

11 10 having an

11 11 separation animal

11 12 distance in weight Minimum

11 13 feet for capacity of separation

11 14 operations 625,000 or feet for

11 15 having an more pounds operations

11 16 animal but less than having an

11 17 weight 1,250,000 animal

11 18 capacity of pounds for weight

11 19 less than animals other capacity of

11 20 625,000 than bovine, 1,250,000 or

11 21 pounds for or 1,600,000 more pounds

11 22 animals other or more for animals

11 23 than bovine, pounds but other than

11 24		or less than	less than	bovine, or
11 25		1,600,000	4,000,000	4,000,000 or
11 26		pounds for	pounds for	more pounds
11 27	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>	<u>for bovine</u>
11 28	Anaerobic			
11 29	lagoon	1,250	1,875	2,500
11 30	Uncovered earthen			
11 31	manure storage			
11 32	basin	1,250	1,875	2,500
11 33	Uncovered formed			
11 34	manure storage			
11 35	structure	1,000	1,500	2,000
11 36	Covered earthen			
11 37	manure storage			
11 38	basin	750	1,000	1,500
11 39	Covered formed			
11 40	manure storage			
11 41	structure	750	1,000	1,500
11 42	Confinement			
11 43	building	750	1,000	1,500
11 44	Egg washwater			
11 45	storage structure	750	1,000	1,500
11 46	<u>1A. Except as provided in subsection 2, and</u>			
11 47	<u>sections 455B.163 and 455B.165, this subsection</u>			
11 48	<u>applies to animal feeding operation structures</u>			
11 49	<u>constructed on or after the effective date of this</u>			
11 50	<u>section and to the expansion of structures constructed</u>			
12 1	<u>on or after the effective date of this section. The</u>			
12 2	<u>following table represents the minimum separation</u>			
12 3	<u>distance in feet required between an animal feeding</u>			
12 4	<u>operation structure and a residence not owned by the</u>			
12 5	<u>owner of the animal feeding operation, or a commercial</u>			
12 6	<u>enterprise, bona fide religious institution, or an</u>			
12 7	<u>educational institution:</u>			
12 8			<u>Minimum</u>	
12 9			<u>separation</u>	
12 10			<u>distance in</u>	
12 11			<u>feet for</u>	
12 12			<u>operations</u>	
12 13	<u>Minimum</u>		<u>having an</u>	
12 14	<u>separation</u>	<u>animal</u>	<u>Minimum</u>	
12 15	<u>distance in</u>	<u>weight</u>	<u>separation</u>	
12 16	<u>feet for</u>	<u>capacity of</u>	<u>distance in</u>	
12 17	<u>operations</u>	<u>625,000 or</u>	<u>feet for</u>	
12 18	<u>having an</u>	<u>more pounds</u>	<u>operations</u>	
12 19	<u>animal</u>	<u>but less than</u>	<u>having an</u>	
12 20	<u>weight</u>	<u>1,250,000</u>	<u>animal</u>	
12 21	<u>capacity of</u>	<u>pounds for</u>	<u>weight</u>	
12 22	<u>less than</u>	<u>animals other</u>	<u>capacity of</u>	
12 23	<u>625,000</u>	<u>than bovine,</u>	<u>1,250,000 or</u>	
12 24	<u>pounds for</u>	<u>or 1,600,000</u>	<u>more pounds</u>	
12 25	<u>animals other</u>	<u>or more</u>	<u>for animals</u>	
12 26	<u>than bovine,</u>	<u>pounds but</u>	<u>other than</u>	
12 27	<u>or less than</u>	<u>less than</u>	<u>bovine, or</u>	
12 28	<u>1,600,000</u>	<u>4,000,000</u>	<u>4,000,000 or</u>	
12 29	<u>pounds for</u>	<u>pounds for</u>	<u>more pounds</u>	
12 30	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>	<u>for bovine</u>
12 31	<u>Anaerobic</u>			
12 32	<u>lagoon</u>	<u>1,250</u>	<u>1,875</u>	<u>2,500</u>
12 33	<u>Uncovered earthen</u>			
12 34	<u>manure storage</u>			
12 35	<u>basin</u>	<u>1,250</u>	<u>1,875</u>	<u>2,500</u>
12 36	<u>Uncovered formed</u>			
12 37	<u>manure storage</u>			
12 38	<u>structure</u>	<u>1,250</u>	<u>1,500</u>	<u>2,000</u>
12 39	<u>Covered earthen</u>			
12 40	<u>manure storage</u>			

12 41	basin	1,000	1,250	1,875
12 42	<u>Covered formed</u>			
12 43	<u>manure storage</u>			
12 44	structure	1,000	1,250	1,875
12 45	<u>Confinement</u>			
12 46	building	1,000	1,250	1,875
12 47	<u>Egg washwater</u>			
12 48	<u>storage</u>			
12 49	structure	750	1,000	1,500
12 50				

b.

1B. Except as provided in subsection 2, and

13 1 sections 455B.163 and 455B.165, this subsection
13 2 applies to animal feeding operation structures
13 3 constructed on or after May 31, 1995; to the expansion
13 4 of structures constructed on or after May 31, 1995;
13 5 and to the expansion of structures constructed prior
13 6 to May 31, 1995. The following table represents the
13 7 minimum separation distance in feet required between
13 8 animal feeding operation structures and a public use
13 9 area or a residence not owned by the owner of the
13 10 animal feeding operation, a commercial enterprise, a
13 11 bona fide religious institution, or an educational
13 12 institution located within the corporate limits of a
13 13 city:

	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds other than bovine, or 4,000,000 or more pounds for bovine
13 14			
13 15			
13 16			
13 17			
13 18			
13 19	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds other than bovine, or 4,000,000 or more pounds for bovine
13 20			
13 21			
13 22			
13 23			
13 24			
13 25			
13 26			
13 27			
13 28			
13 29			
13 30			
13 31			
13 32			
13 33			
13 34			
13 35			
13 36	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>

13 37	Animal feeding operation structure	1,250	1,875	2,500
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13 40 1C. Except as provided in section 455B.165, on and
13 41 after the effective date of this section an animal
13 42 feeding operation structure shall not be constructed
13 43 or expanded within one hundred feet from a
13 44 thoroughfare, including a road, street, or bridge
13 45 which is constructed or maintained by the state or a
13 46 political subdivision.

13 47 1D. Except as provided in section 455B.165, a
13 48 person shall not apply liquid manure from a
13 49 confinement feeding operation on land located within
13 50 seven hundred fifty feet from a residence not owned by
14 1 the titleholder of the land, a commercial enterprise,
14 2 a bona fide religious institution, an educational
14 3 institution, or a public use area.

14 4 Sec. 16. Section [455B.162](#), subsection 2, paragraph

14 5 a, Code 1997, is amended to read as follows:
14 6 a. As used in this subsection, a "qualified
14 7 confinement feeding operation" means a confinement
14 8 feeding operation having an animal weight capacity of
14 9 two million or more pounds for animals other than
14 10 animals kept in a swine farrow-to-finish operation or
14 11 bovine kept in a confinement feeding operation; a
14 12 swine farrow-to-finish operation having an animal
14 13 weight capacity of two million five hundred thousand
14 14 or more pounds; or a confinement feeding operation
14 15 having an animal weight capacity of

~~—six~~

- eight million

14 16 or more pounds for bovine.

14 17 Sec. 17. Section 455B.163, Code 1997, is amended
14 18 to read as follows:

14 19 455B.163 SEPARATION DISTANCE REQUIREMENTS FOR
14 20 ANIMAL FEEDING OPERATIONS EXPANSION OF

~~—STRUCTURES~~

-

14 21

~~—CONSTRUCTED PRIOR TO MAY 31, 1995~~

- PRIOR CONSTRUCTED

14 22 OPERATIONS.

14 23 An animal feeding operation constructed or expanded
14 24 prior to the date that a distance requirement became
14 25 effective under section 455B.162 and which does not
14 26 comply with the section's distance

~~—requirements of~~

-

14 27

~~—section 455B.162 on May 31, 1995,~~

- requirement may

14 28 continue to operate regardless of

~~—those separation~~

-

14 29

~~—distances~~

- the distance requirement. The animal
14 30 feeding operation may be expanded

~~—on or after May 31,~~

-

14 31

~~—1995, regardless of those separation distances,~~

- if

14 32

~~—either~~

- any of the following applies:

14 33 1. a.

~~—The~~

- An animal feeding operation structure

14 34 as constructed or expanded prior to the effective date
14 35 of this section, complies with the distance

14 36 requirements

~~—of~~

- applying to that structure as provided

14 37 in section 455B.162.

14 38 b. An animal feeding operation structure as
14 39 constructed or expanded on or after the effective date
14 40 of this section complies with the distance
14 41 requirements applying to that structure as provided in
14 42 section 455B.162.

14 43 2. All of the following apply to the expansion of
14 44 the animal feeding operation:

14 45 a. No portion of the animal feeding operation
14 46 after expansion is closer than before expansion to a
14 47 location or object for which separation is required
14 48 under section 455B.162.

14 49 b. The animal weight capacity of the animal
14 50 feeding operation as expanded is not more than the
15 1 lesser of the following:

15 2 (1) Double its capacity on May 31, 1995, for an
15 3 animal feeding operation structure constructed prior
15 4 to the effective date of this section, or on the
15 5 effective date of this section, for an animal feeding
15 6 operation structure constructed on or after the
15 7 effective date of this section.

15 8 (2) Either of the following:

15 9 (a) Six hundred twenty-five thousand pounds animal
15 10 weight capacity for animals other than bovine.

15 11 (b) One million six hundred thousand pounds animal
15 12 weight capacity for bovine.

15 13 3. The animal feeding operation was constructed
15 14 prior to the effective date of this section and is
15 15 expanded by replacing one or more unformed manure
15 16 storage structures with one or more formed manure
15 17 storage structures, if all of the following apply:

15 18 a. The animal weight capacity is not increased for
15 19 that portion of the animal feeding operation that
15 20 utilizes all replacement formed manure storage
15 21 structures.

15 22 b. Use of each replaced unformed manure storage
15 23 structure is discontinued within one year after the
15 24 construction of the replacement formed manure storage
15 25 structure.

15 26 c. The capacity of all replacement formed manure
15 27 storage structures does not exceed the amount required
15 28 to store manure produced by that portion of the animal
15 29 feeding operation utilizing the formed manure storage
15 30 structures during any fourteen-month period.

15 31 d. No portion of the replacement formed manure
15 32 storage structure is closer to an object or location
15 33 for which separation is required under section
15 34 455B.162 than any other animal feeding operation
15 35 structure which is part of the operation.

15 36 Sec. 18. Section 455B.164, Code 1997, is amended
15 37 to read as follows:

15 38 455B.164 DISTANCE MEASUREMENTS.

15 39 All distances between locations or objects provided
15 40 in this part shall be measured from their closest
15 41 points, as provided by rules adopted by the
15 42 department. However, a distance between a
15 43 thoroughfare and an animal feeding operation structure
15 44 shall be measured from the portion of the right-of-way
15 45 which is closest to the animal feeding operation
15 46 structure.

15 47 Sec. 19. Section 455B.165, subsections 2, 3, and
15 48 5, Code 1997, are amended to read as follows:

15 49 2. A confinement feeding operation structure,
15 50

~~other than an earthen manure storage basin,~~

- if the

16 1 structure is part of a confinement feeding operation
16 2 which qualifies as a small animal feeding operation.
16 3 However, this subsection shall not apply if the
16 4 confinement feeding operation structure is an unformed
16 5 manure storage structure.

16 6 3. a. An animal feeding operation structure which
16 7 is constructed or expanded, if the titleholder of the
16 8 land benefiting from the distance separation
16 9 requirement executes a written waiver with the
16 10 titleholder of the land where the structure is
16 11 located

~~16 12~~ If an animal feeding operation structure is
16 12 constructed or expanded within the separation distance
16 13 required between an animal feeding operation structure
16 14 and a thoroughfare as required pursuant to section
16 15 455B.162, the state or a political subdivision
16 16 constructing or maintaining the thoroughfare
16 17 benefiting from the distance separation requirement
16 18 may execute a written waiver with the titleholder of
16 19 the land where the structure is located. The animal
16 20 feeding operation structure shall be constructed or
16 21 expanded under such terms and conditions that the
16 22 parties negotiate.
16 23 b.

~~The~~

- A written waiver under this subsection
16 24 becomes effective only upon the recording of the
16 25 waiver in the office of the recorder of deeds of the
16 26 county in which the benefited land is located. The
16 27 filed waiver shall preclude enforcement by the state
16 28 of

~~this part~~

- section 455B.162 as it relates to a
16 29 distance requirement between the animal feeding
16 30 operation structure and the location or object
16 31 benefiting from the separation distance requirement.
16 32 5. An animal feeding operation structure which is
16 33

~~located~~

- constructed or expanded within any distance
16 34 from a residence, educational institution, commercial
16 35 enterprise, bona fide religious institution, city, or
16 36 public use area, if the residence, educational
16 37 institution, commercial enterprise, or bona fide
16 38 religious institution was constructed or expanded, or
16 39 the boundaries of the city or public use area were
16 40 expanded, after the date that the animal feeding
16 41 operation was established. The date the animal
16 42 feeding operation was established is the date on which
16 43 the animal feeding operation commenced operating. A
16 44 change in ownership or expansion of the animal feeding
16 45 operation shall not change the established date of
16 46 operation.

16 47 Sec. 20. Section 455B.165, Code 1997, is amended
16 48 by adding the following new subsections:

16 49 NEW SUBSECTION. 3A. An animal feeding operation
16 50 structure which is constructed or expanded within a
17 1 separation distance required between an animal feeding
17 2 operation structure and a thoroughfare as required
17 3 pursuant to section 455B.162, if permanent vegetation
17 4 stands between the animal feeding operation structure

17 5 and that part of the right-of-way from which the
17 6 separation distance is measured as provided in section
17 7 455B.164. The permanent vegetation must stand along
17 8 the full length of the animal feeding operation
17 9 structure. The permanent vegetation must be at least
17 10 seedlings and have a mature predicted height of at
17 11 least twenty feet. The department shall adopt rules
17 12 to carry out this subsection.

17 13 NEW SUBSECTION. 6. The application of liquid
17 14 manure on land within a separation distance required
17 15 between the applied manure and an object or location
17 16 for which separation is required under section
17 17 455B.162, if any of the following apply:

17 18 a. The liquid manure is injected into the soil or
17 19 incorporated within the soil not later than twenty-
17 20 four hours from the original application, as provided
17 21 by rules adopted by the commission.

17 22 b. The titleholder of the land benefiting from the
17 23 separation distance requirement executes a written
17 24 waiver with the titleholder of the land where the
17 25 manure is applied.

17 26 Sec. 21. Section [455B.171](#), Code Supplement 1997,
17 27 is amended by adding the following new subsections:

17 28 NEW SUBSECTION. 0A. "Aerobic structure" means the
17 29 same as defined in section 455B.161.

17 30 NEW SUBSECTION. 1A. "Anaerobic lagoon" means the
17 31 same as defined in section 455B.161.

17 32 NEW SUBSECTION. 2A. "Animal feeding operation
17 33 structure" means the same as defined in section
17 34 455B.161.

17 35 NEW SUBSECTION. 3A. "Commercial manure
17 36 applicator" means a person who engages in the business
17 37 of and charges a fee for applying manure on the land
17 38 of another person.

17 39 NEW SUBSECTION. 7A. "Earthen manure storage
17 40 basin" means the same as defined in section 455B.161.

17 41 NEW SUBSECTION. 12A. "Manure storage structure"
17 42 means an animal feeding operation structure used to
17 43 store manure as part of a confinement feeding
17 44 operation, including but not limited to a formed or
17 45 unformed manure storage structure.

17 46 NEW SUBSECTION. 23A. "Restricted spray irrigation
17 47 equipment" means spray irrigation equipment which
17 48 disperses manure through an orifice at a rate of
17 49 eighty pounds per square inch or more.

17 50 NEW SUBSECTION. 31A. "Spray irrigation equipment"
18 1 means mechanical equipment used for the aerial
18 2 application of manure, if the equipment receives
18 3 manure from a manure storage structure during
18 4 application via a pipe or hose connected to the
18 5 structure, and includes a type of equipment
18 6 customarily used for the aerial application of water
18 7 to aid the growing of general farm crops.

18 8 NEW SUBSECTION. 32A. "Unformed manure storage
18 9 structure" means the same as defined in section
18 10 455B.161.

18 11 Sec. 22. Section [455B.173](#), subsection 13, Code
18 12 1997, is amended by striking the subsection and
18 13 inserting in lieu thereof the following:

18 14 13. Adopt, modify, or repeal rules relating to the
18 15 construction or operation of animal feeding
18 16 operations, as provided in sections relating to animal
18 17 feeding operations provided in this part.

18 18 Sec. 23. Section [455B.191](#), subsection 7,
18 19 unnumbered paragraph 2, Code 1997, is amended to read
18 20 as follows:

18 21 This subsection shall not apply unless the

18 22 department of natural resources has previously
18 23 notified the person of the person's classification as
18 24 a habitual violator

~~as provided in section 455B.173~~

18 25 The department shall notify persons classified as
18 26 habitual violators of their classification, additional
18 27 restrictions imposed upon the persons pursuant to
18 28 their classification, and special civil penalties that
18 29 may be imposed upon the persons. The notice shall be
18 30 sent to the persons by certified mail.

18 31 Sec. 24. NEW SECTION. 455B.200 GENERAL.

18 32 The commission shall establish by rule adopted
18 33 pursuant to chapter 17A, requirements relating to the
18 34 construction, including expansion, or operation of
18 35 animal feeding operations, including related animal
18 36 feeding operation structures. The requirements shall
18 37 include but are not limited to minimum manure control,
18 38 the issuance of permits, and departmental
18 39 investigations, inspections, and testing.

18 40 Sec. 25. NEW SECTION. 455B.200A PERMIT

18 41 REQUIREMENTS.

18 42 1. The department shall issue permits for the
18 43 construction, including the expansion, of animal
18 44 feeding operation structures, including structures
18 45 which are part of confinement feeding operations, as
18 46 provided by rules adopted pursuant to section
18 47 455B.200. The department shall issue a permit to an
18 48 animal feeding operation if an application is
18 49 submitted according to procedures required by the
18 50 department and the application meets standards
19 1 established by the department, regardless of whether
19 2 the animal feeding operation is required to obtain
19 3 such a permit. The department shall not require that
19 4 a person obtain a permit for the construction of an
19 5 animal feeding operation structure if the structure is
19 6 part of a small animal feeding operation. For
19 7 purposes of this section, an animal feeding operation
19 8 structure includes a manure storage structure.

19 9 2. The department shall not issue a permit for the
19 10 construction of an animal feeding operation structure
19 11 which is part of a confinement feeding operation
19 12 unless the person submits all of the following:

19 13 a. An indemnity fee as provided in section 204.3
19 14 which the department shall deposit into the manure
19 15 storage indemnity fund created in section 204.2.

19 16 b. A manure management plan as provided in section
19 17 455B.203.

19 18 3. The department shall not issue a permit for the
19 19 construction of three or more animal feeding operation
19 20 structures unless the applicant files a statement
19 21 approved by a professional engineer registered
19 22 pursuant to chapter 542B certifying that the
19 23 construction of the animal feeding operation
19 24 structures will not impede the drainage through
19 25 established drainage tile lines which cross property
19 26 boundary lines unless measures are taken to
19 27 reestablish the drainage prior to completion of
19 28 construction.

19 29 4. Prior to issuing a permit to a person for the
19 30 construction of an animal feeding operation, the
19 31 department may require the installation and operation
19 32 of a hydrological monitoring system for an exclusively
19 33 earthen manure storage structure according to rules
19 34 which shall be adopted by the department.

19 35 5. An applicant for a construction permit shall

19 36 not begin construction at the location of a site
19 37 planned for the construction of an animal feeding
19 38 operation structure until the person has been granted
19 39 a permit for the construction of the animal feeding
19 40 operation structure by the department.

19 41 6. The department shall make a determination
19 42 regarding the approval or denial of a permit within
19 43 sixty days from the date that the department receives
19 44 a completed application for a permit.

19 45 7. The department shall deliver a copy or require
19 46 the applicant to deliver a copy of the application for
19 47 a construction permit for the construction of a
19 48 confinement feeding operation or related animal
19 49 feeding operation structure, including supporting
19 50 documents, to the county board of supervisors in the
20 1 county where the confinement feeding operation or
20 2 related animal feeding operation structure subject to
20 3 the permit is proposed to be constructed.

20 4 The county auditor may accept the application on
20 5 behalf of the board. If the department requires the
20 6 applicant to deliver a copy of the application to the
20 7 county board of supervisors, the county shall notify
20 8 the department that it has received the application
20 9 according to procedures required by the department.

20 10 a. The county board of supervisors shall provide
20 11 for comment as follows:

20 12 (1) The board shall publish a notice that it has
20 13 received the application in a newspaper having a
20 14 general circulation in the county. The notice shall
20 15 include all of the following:

20 16 (a) The name of the person applying to receive the
20 17 construction permit.

20 18 (b) The name of the township where the confinement
20 19 feeding operation or animal feeding operation is to be
20 20 constructed or expanded.

20 21 (c) Each type of animal feeding operation proposed
20 22 to be constructed or expanded.

20 23 (d) The animal weight capacity of the confinement
20 24 feeding operation if the construction permit is
20 25 approved.

20 26 (e) The time when and the place where the
20 27 application may be examined as provided in section
20 28 22.2.

20 29 (f) Procedures for providing public comments to
20 30 the board of supervisors, as provided by the board.

20 31 (2) The board may hold a public hearing to receive
20 32 public comments regarding the application for the
20 33 construction permit. The county board of supervisors
20 34 may submit comments by the board and the public to the
20 35 department as provided in this section, including but
20 36 not limited to all of the following:

20 37 (a) The existence of an object or location not
20 38 included in the construction permit application which
20 39 benefits from a separation distance requirement as
20 40 provided in section 455B.162 or 455B.204.

20 41 (b) The suitability of soils and the hydrology of
20 42 the site where construction or expansion of a
20 43 confinement feeding operation or related animal
20 44 feeding operation structure is proposed.

20 45 (c) The availability of land for the application
20 46 of manure originating from the confinement feeding
20 47 operation.

20 48 (d) Whether the construction or expansion of a
20 49 proposed animal feeding operation structure will
20 50 impede drainage through established tile lines,
21 1 laterals, or other improvements which are constructed
21 2 to facilitate the drainage of land not owned by the

21 3 person applying for the construction permit.
21 4 b. The department shall notify the county board of
21 5 supervisors at least three days prior to conducting an
21 6 inspection of the site that the construction is
21 7 proposed in the permit application. The county board
21 8 of supervisors may designate a county employee to
21 9 accompany a departmental official during the site
21 10 inspection. The county designee shall have the same
21 11 right to access to the site as the departmental
21 12 official conducting the inspection during the period
21 13 that the county designee accompanies the departmental
21 14 official.

21 15 c. The department shall not approve the
21 16 application until thirty days following delivery of
21 17 the application to the county board of supervisors.

21 18 d. The department shall consider and respond to
21 19 comments submitted by the county board of supervisors
21 20 regarding compliance by the applicant with the legal
21 21 requirements for approving the construction permit as
21 22 provided in this chapter, including rules adopted by
21 23 the department pursuant to section 455B.200, if the
21 24 comments are delivered to the department within thirty
21 25 days after receipt of the application by the county
21 26 board of supervisors. Upon written request by a
21 27 county resident, the county board of supervisors shall
21 28 forward a copy of the board's comments and the
21 29 department's responses to the county resident as
21 30 provided in chapter 22.

21 31 8. The department shall notify the county board of
21 32 supervisors of the county where a confinement feeding
21 33 operation or related animal feeding operation
21 34 structure subject to a construction permit is proposed
21 35 to be constructed. The notice shall state the
21 36 department's decision to approve or disapprove an
21 37 application for the construction permit. The notice
21 38 shall be delivered to the county within three days
21 39 following the department's decision. The county board
21 40 of supervisors may contest the decision by filing a
21 41 demand for a hearing before the commission as provided
21 42 by rules adopted by the department in conformance with
21 43 chapter 17A. In contesting the decision, the county
21 44 shall submit a statement to the department, providing
21 45 all reasons why the application should be approved or
21 46 disapproved according to legal requirements provided
21 47 in this chapter.

21 48 a. The county board of supervisors must contest
21 49 the decision within fourteen days following receipt of
21 50 the department's notice to approve or disapprove the
22 1 application.

22 2 b. The contested decision shall be heard by the
22 3 commission according to procedures adopted by the
22 4 commission. The commission may hear the case as a
22 5 contested case proceeding under chapter 17A. The
22 6 commission shall render a decision within thirty days
22 7 from the date that the county board of supervisors
22 8 files a demand for a hearing. The decision of the
22 9 commission shall be final agency action under chapter
22 10 17A.

22 11 9. a. The department shall not issue a permit to
22 12 a person under this section if an enforcement action
22 13 by the department, relating to a violation of this
22 14 chapter concerning a confinement feeding operation in
22 15 which the person has an interest, is pending, as
22 16 provided in section 455B.202.

22 17 b. The department shall not issue a permit to a
22 18 person under this section for five years after the
22 19 date of the last violation committed by a person or

22 20 confinement feeding operation in which the person
22 21 holds a controlling interest during which the person
22 22 or operation was classified as a habitual violator
22 23 under section 455B.191.
22 24 Sec. 26. NEW SECTION. 455B.200B CONFINEMENT
22 25 FEEDING OPERATIONS SPECIAL TERMS.
22 26 For purposes of this part, all of the following
22 27 shall apply:
22 28 1. Two or more confinement feeding operations are
22 29 adjacent if any of the following apply:
22 30 a. All of the following apply:
22 31 (1) An animal feeding operation structure which is
22 32 part of one confinement feeding operation is located
22 33 within one thousand two hundred fifty feet from an
22 34 animal feeding operation structure which is part of
22 35 the other confinement feeding operation.
22 36 (2) The confinement feeding operations have a
22 37 combined animal weight capacity of the following:
22 38 (a) For animals other than bovine, less than six
22 39 hundred twenty-five thousand pounds.
22 40 (b) For bovine, less than one million six hundred
22 41 thousand pounds.
22 42 (3) An animal feeding operation structure subject
22 43 to the distance requirements of this paragraph must be
22 44 constructed or expanded on or after the effective date
22 45 of this section.
22 46 b. All of the following apply:
22 47 (1) An animal feeding operation structure which is
22 48 part of one confinement feeding operation is located
22 49 within two thousand five hundred feet from an animal
22 50 feeding operation structure which is part of the other
23 1 confinement feeding operation.
23 2 (2) The confinement feeding operations have a
23 3 combined animal weight capacity of the following:
23 4 (a) For animals other than bovine, six hundred
23 5 twenty-five thousand pounds or more.
23 6 (b) For bovine, one million six hundred thousand
23 7 pounds or more.
23 8 (3) An animal feeding operation structure subject
23 9 to the distance requirements of this paragraph must be
23 10 constructed on or after the effective date of this
23 11 section.
23 12 2. An animal feeding operation structure is
23 13 "constructed" in the same manner as provided in
23 14 section 455B.161A.
23 15 Sec. 27. Section 445B.201, subsection 4, Code
23 16 1997, is amended by striking the subsection.
23 17 Sec. 28. Section 455B.202, Code Supplement 1997,
23 18 is amended to read as follows:
23 19 455B.202 CONFINEMENT FEEDING OPERATIONS PENDING
23 20 ACTIONS AND HABITUAL VIOLATORS.
23 21 1. As used in this section,

~~"construction" means~~

~~-~~
23 22

~~the same as defined by rules adopted by the department~~

~~-~~
23 23

~~applicable to the construction of animal feeding~~

~~-~~
23 24

~~operation structures as provided in this part~~

~~- unless~~

23 25 the context otherwise requires:

23 26 a. "Habitual violator" means a person classified
23 27 as a habitual violator pursuant to section 455B.191.
23 28 b. "Operation of law" means a transfer by
23 29 inheritance, devise or bequest, court order,
23 30 dissolution decree, order in bankruptcy, insolvency,
23 31 replevin, foreclosure, execution sale, the execution
23 32 of a judgment, the foreclosure of a real estate
23 33 mortgage, the forfeiture of a real estate contract, or
23 34 a transfer resulting from a decree for specific
23 35 performance.
23 36 c. "Suspect site" means a confinement feeding
23 37 operation or land where a confinement feeding
23 38 operation could be constructed, if the site is subject
23 39 to a suspect transaction.
23 40 d. "Suspect transaction" means a transaction in
23 41 which a habitual violator does any of the following:
23 42 (1) Transfers a controlling interest in a suspect
23 43 site to any of the following:
23 44 (a) An employee of the habitual violator or
23 45 business in which the person holds a controlling
23 46 interest.
23 47 (b) A person who holds an interest in a business,
23 48 including a confinement feeding operation, in which
23 49 the habitual violator holds a controlling interest.
23 50 (c) A person related to the habitual violator as
24 1 spouse, parent, grandparent, lineal ascendant of a
24 2 grandparent or spouse and any other lineal descendant
24 3 of the grandparent or spouse, or a person acting in a
24 4 fiduciary capacity for a related person. This
24 5 paragraph does not apply to a transaction completed by
24 6 an operation of law.
24 7 (2) Provides financing for the construction or
24 8 operation of a confinement feeding operation to any
24 9 person, by providing a contribution or loan to the
24 10 person, or providing cash or other tangible collateral
24 11 for a contribution or loan made by a third person.
24 12 e. "Transaction" includes a transfer in any manner
24 13 or by any means, including any of the following:
24 14 (1) Delivery and acceptance between two parties,
24 15 including by contract or agreement with or without
24 16 consideration, including by sale, exchange, barter, or
24 17 gift.
24 18 (2) An operation of law.
24 19 2. a. A person shall not construct or expand an
24 20 animal feeding operation structure which is part of a
24 21 confinement feeding operation, if the person is

a
- any

24 22 of the following:
24 23 (1) A party to a pending action for a violation of
24 24 this chapter concerning a confinement feeding
24 25 operation in which the person has a controlling
24 26 interest and the action is commenced in district court
24 27 by the attorney general.
24 28 (2) A habitual violator.
24 29 b. A person shall not construct or expand an
24 30 animal feeding operation structure which is part of a
24 31 confinement feeding operation for five years after the
24 32 date of the last violation committed by a person or
24 33 confinement feeding operation in which the person
24 34 holds a controlling interest during which the person
24 35 or operation was classified as a habitual violator

~~under section 455B.191~~

~~3.~~

~~c.~~ This

~~section~~

~~subsection~~ shall not prohibit a

24 38 person from completing the construction or expansion
24 39 of an animal feeding operation structure, if any of
24 40 the following apply:
24 41

~~a.~~

~~(1)~~ The person has an unexpired permit for the
24 42 construction or expansion of the animal feeding
24 43 operation structure.
24 44

~~b.~~

~~(2)~~ The person is not required to obtain a
24 45 permit for the construction or expansion of the animal
24 46 feeding operation structure.

24 47 d. For purposes of this subsection, "construct" or
24 48 "expand" includes financing and contracting to build
24 49 an animal feeding operation structure regardless of
24 50 whether the person subsequently leases, owns, or
25 1 operates the animal feeding operation structure.

25 2 3. A person who receives a controlling interest in
25 3 a suspect site pursuant to a suspect transaction must
25 4 submit a notice of the transaction to the department
25 5 within thirty days. If, after notice and opportunity
25 6 to be heard, pursuant to the contested case provisions
25 7 of chapter 17A, the department finds that one purpose
25 8 of the transaction was to avoid the conditions and
25 9 enhanced penalties imposed upon a habitual violator,
25 10 the person shall be subject to the same conditions and
25 11 enhanced penalties as applied to the habitual violator
25 12 at the time of the transaction.

25 13 4. The department shall conduct an annual review
25 14 of each confinement feeding operation which is a
25 15 habitual violator and each confinement feeding
25 16 operation in which a habitual violator holds a
25 17 controlling interest.

25 18 Sec. 29. Section [455B.203](#), subsection 1, Code
25 19 1997, is amended to read as follows:

25 20 1.

~~In order to receive~~

~~The following persons shall~~

25 21 submit a manure management plan to the department:

25 22 a. The owner of a confinement feeding operation,
25 23 other than a small animal feeding operation, if the
25 24 animal feeding operation was constructed after May 31,
25 25 1985, regardless of whether the confinement feeding
25 26 operation was required to be constructed pursuant to a
25 27 construction permit approved by rules adopted by the
25 28 department.

25 29 b. The owner of a confinement feeding operation,
25 30 if the confinement feeding operation is required to be
25 31 constructed pursuant to a permit issued by the
25 32 department pursuant to section 455B.200A.

25 33 c. A person who applies manure from a confinement
25 34 feeding operation, other than a small animal feeding

25 35 operation, which is located in another state, if the
25 36 manure is applied on land located in this state.
25 37 1A. A person shall not remove manure from a manure
25 38 storage structure which is part of a confinement
25 39 feeding operation for which a manure management plan
25 40 is required under this section, unless the department
25 41 approves a manure management plan submitted by the
25 42 owner of the confinement feeding operation as provided
25 43 by the department on forms prescribed by the
25 44 department. The department may adopt rules allowing a
25 45 person to remove manure from a manure storage
25 46 structure until the manure management plan is approved
25 47 or disapproved by the department according to terms
25 48 and conditions required by rules adopted by the
25 49 department. The department shall approve or
25 50 disapprove a manure management plan within sixty days
26 1 of the date that the department receives a completed
26 2 plan. The department shall not issue a permit for the
26 3 construction of a confinement feeding operation or a
26 4 related animal feeding operation structure unless the
26 5 applicant submits a manure management plan together
26 6 with an application as provided in section

~~455B.173, a~~

~~26 7~~

~~person shall submit a manure management plan to the~~

~~26 8~~

~~department together with the application for a~~

~~26 9~~

~~construction permit~~

~~455B.200A.~~

26 10 Sec. 30. Section [455B.203](#), subsection 4,
26 11 unnumbered paragraph 1, Code 1997, is amended to read
26 12 as follows:
26 13 A person

~~receiving a permit for the construction of~~

~~26 14~~

~~a confinement feeding operation~~

~~required to submit a~~

26 15 manure management plan to the department shall
26 16 maintain a current manure management plan and maintain
26 17 records sufficient to demonstrate compliance with the
26 18 manure management plan. Chapter 22 shall not apply to
26 19 the records which shall be kept confidential by the
26 20 department and its agents and employees. The contents
26 21 of the records are not subject to disclosure except as
26 22 follows:

26 23 Sec. 31. Section [455B.203](#), subsection 5, Code
26 24 1997, is amended to read as follows:

26 25 5. The department may inspect the confinement
26 26 feeding operation at any time during normal working
26 27 hours, and may inspect records required to be
26 28 maintained as part of the manure management plan. The
26 29 department shall regularly inspect a confinement
26 30 feeding operation if the operation or a person holding
26 31 a controlling interest in the operation is classified
26 32 as a habitual violator pursuant to section 455B.191.
26 33 The department shall assess and the confinement

26 34 feeding operation shall pay the actual costs of the
26 35 inspection.

~~However, in order to access the~~

26 36

~~operation, the departmental inspector must comply with~~

26 37

~~standard disease control restrictions customarily~~

26 38

~~required by the operation. The department shall~~

26 39

~~comply with section 455B.103 in conducting an~~

26 40

~~investigation of the premises where the animals are~~

26 41

~~kept.~~

26 42 Sec. 32. NEW SECTION. 455B.203A MANURE

26 43 APPLICATORS CERTIFICATION.

26 44 1. As used in this section, unless the context
26 45 otherwise requires:

26 46 a. "Commercial manure applicator" means the same
26 47 as defined in section 455B.171.

26 48 b. "Confinement site" means a site where there is
26 49 located a manure storage structure which is part of a
26 50 confinement feeding operation, other than a small
27 1 animal feeding operation.

27 2 c. "Confinement site manure applicator" means a
27 3 person who applies manure stored at a confinement site
27 4 other than a commercial manure applicator.

27 5 2. a. A commercial manure applicator shall not
27 6 apply manure to land, unless the person is certified
27 7 pursuant this section.

27 8 b. A confinement site manure applicator shall not
27 9 apply manure to land, unless the person is certified
27 10 pursuant to this section.

27 11 3. a. A person required to be certified as a
27 12 commercial manure applicator must be certified by the
27 13 department each year. The person shall be certified
27 14 after completing an educational program which shall
27 15 consist of an examination required to be passed by the
27 16 person or three hours of continuing instructional
27 17 courses which the person must attend each year in lieu
27 18 of passing the examination.

27 19 b. A person required to be certified as a
27 20 confinement site manure applicator must be certified
27 21 by the department each three years. The person shall
27 22 be certified after completing an educational program
27 23 which shall consist of an examination required to be
27 24 passed by the person or two hours of continuing
27 25 instructional courses which the person must attend
27 26 each year in lieu of passing the examination.

27 27 4. The department shall adopt, by rule,
27 28 requirements for the certification, including
27 29 educational program requirements. The department may

27 30 establish different educational programs designed for
27 31 commercial manure applicators and confinement site
27 32 manure applicators. The department shall adopt rules
27 33 necessary to administer this section, including
27 34 establishing certification standards, which shall at
27 35 least include standards for the handling, application,
27 36 and storage of manure, the potential effects of manure
27 37 upon surface water and groundwater, and procedures to
27 38 remediate the potential effects on surface water or
27 39 groundwater.

27 40 a. The department shall adopt by rule criteria for
27 41 allowing a person required to be certified to complete
27 42 either a written or oral examination.

27 43 b. The department shall administer the continuing
27 44 instructional courses, by either teaching the courses
27 45 or selecting persons to teach the courses, according
27 46 to criteria as provided by rules adopted by the
27 47 department. The department shall, to the extent
27 48 possible, select persons to teach the continuing
27 49 instructional courses. The department is not required
27 50 to compensate persons to teach the continuing
28 1 instructional courses. In selecting persons, the
28 2 department shall consult with organizations interested
28 3 in the application of manure, including associations
28 4 representing manure applicators and associations
28 5 representing agricultural producers. The Iowa
28 6 cooperative extension service in agriculture and home
28 7 economics of Iowa state university of science and
28 8 technology shall cooperate with the department in
28 9 administering the continuing instructional courses.
28 10 The Iowa cooperative extension service may teach
28 11 continuing instructional courses, train persons
28 12 selected to teach courses, or distribute informational
28 13 materials to persons teaching the courses.

28 14 c. The department, in administering the
28 15 certification program under this section, and the
28 16 department of agriculture and land stewardship in
28 17 administering the certification program for pesticide
28 18 applicators may cooperate together.

28 19 5. a. This section shall not require a person to
28 20 be certified as a commercial manure applicator if any
28 21 of the following applies:

28 22 (1) The person is any of the following:

28 23 (a) Actively engaged in farming who trades work
28 24 with another such person.

28 25 (b) Employed by a person actively engaged in
28 26 farming not solely as a manure applicator who applies
28 27 manure as an incidental part of the person's general
28 28 duties.

28 29 (c) Engaged in applying manure as an incidental
28 30 part of a custom farming operation.

28 31 (d) Engaged in applying manure as an incidental
28 32 part of a person's duties as provided by rules adopted
28 33 by the department providing for an exemption.

28 34 (2) The person applies manure for a period of
28 35 thirty days from the date of initial employment as a
28 36 commercial manure applicator if the person applying
28 37 the manure is acting under the instructions and
28 38 control of a certified commercial manure applicator
28 39 who is both of the following:

28 40 (a) Physically present at the site where the
28 41 manure is located.

28 42 (b) In sight or hearing distance of the supervised
28 43 person.

28 44 b. This section shall not require a person to be
28 45 certified as a confinement site manure applicator if
28 46 all of the following apply:

28 47 (1) The person is a part-time employee of a
28 48 confinement site manure applicator.
28 49 (2) The person is acting under the instructions
28 50 and control of a certified commercial manure
29 1 applicator who is both of the following:
29 2 (a) Physically present at the site where the
29 3 manure is located.
29 4 (b) In sight or hearing distance of the supervised
29 5 person.
29 6 6. a. The department may charge a fee for
29 7 certifying persons under this section. The fee for
29 8 certification shall be based on the costs of
29 9 administering and enforcing this section and paying
29 10 the expenses of the department relating to
29 11 certification.
29 12 b. All moneys received by the department under the
29 13 provisions of this chapter shall be handled in the
29 14 same manner as repayment receipts, as defined in
29 15 section 8.2, and shall be used solely for the
29 16 administration and enforcement of this chapter.
29 17 Sec. 33. NEW SECTION. 455B.203B APPLICATION
29 18 REQUIREMENTS.
29 19 1. The department shall adopt rules governing the
29 20 application of manure originating from an anaerobic
29 21 lagoon or aerobic structure which is part of a
29 22 confinement feeding operation. The rules shall
29 23 establish application rates and practices to minimize
29 24 groundwater or surface water pollution resulting from
29 25 application, including pollution caused by runoff or
29 26 other manure flow resulting from precipitation events.
29 27 The rules shall establish different application rates
29 28 and practices based on the water holding capacity of
29 29 the soil at the time of application.
29 30 2. A person shall not apply manure by spray
29 31 irrigation equipment, except as provided by rules
29 32 adopted by the department pursuant to chapter 17A.
29 33 However, a person shall not use restricted spray
29 34 irrigation equipment to apply manure originating from
29 35 a confinement feeding operation, unless the manure has
29 36 been diluted as provided by rules adopted by the
29 37 department, including diluted by use of an anaerobic
29 38 lagoon.
29 39 Sec. 34. Section [455B.204](#), Code 1997, is amended
29 40 to read as follows:
29 41 455B.204 DISTANCE REQUIREMENTS.
29 42 1.

~~An animal feeding operation structure shall be~~

29 43

~~located at least five hundred feet away from the~~

29 44

~~surface intake of an agricultural drainage well or~~

29 45

~~known sinkhole, and at least two hundred feet away~~

29 46

~~from~~

~~As used in this section, unless the context~~

29 47 otherwise requires:

29 48 a. "Major water source" means a lake, reservoir,

29 49 river, or stream located within the territorial limits
29 50 of the state, any marginal river area adjacent to the
30 1 state, which can support a floating vessel capable of
30 2 carrying one or more persons during a total of a six-
30 3 month period in one out of ten years, excluding
30 4 periods of flooding which has been identified by rules
30 5 adopted by the commission.

30 6 b. "Watercourse" means any lake, river, creek,
30 7 ditch, or other body of water or channel having
30 8 definite banks and bed with water flow or the
30 9 occurrence of water, except lakes or ponds without
30 10 outlet to which only one landowner is riparian.

30 11 2. Except as provided in subsection 3, the
30 12 following shall apply:

30 13 a. An animal feeding operation structure shall not
30 14 be constructed closer than five hundred feet away from
30 15 a surface intake, wellhead, or cistern of an
30 16 agricultural drainage well or known sinkhole.

30 17 b. An animal feeding operation structure shall not
30 18 be constructed if the animal feeding operation
30 19 structure as constructed is closer than any of the
30 20 following:

30 21 (1) Two hundred feet away from a watercourse other
30 22 than a major water source.

30 23 (2) Five hundred feet away from a major water
30 24 source.

30 25 c. A watercourse, other than a major water source,
30 26 shall not be constructed, expanded, or diverted, if
30 27 the watercourse as constructed, expanded, or diverted
30 28 is closer than two hundred feet away from an animal
30 29 feeding operation structure.

30 30 d. A major water source shall not be constructed,
30 31 expanded, or diverted, if the water source as
30 32 constructed, expanded, or diverted is closer than five
30 33 hundred feet from an animal feeding operation
30 34 structure.

30 35 3.

~~However, no distance~~

~~A separation~~

~~is~~

~~distance~~

30 36 required

~~between a~~

~~in this section shall not apply to~~

30 37 any of the following:

30 38 a. A location or object and a farm pond or
30 39 privately owned lake, as defined in section 462A.2.

30 40 b. A manure storage structure constructed with a
30 41 secondary containment barrier. The department shall
30 42 adopt rules providing for the construction and use of
30 43 a secondary containment barrier, including design
30 44 standards.

30 45 4. All distances between locations or objects
30 46 shall be measured from their closest points, as
30 47 provided by rules adopted by the department.

30 48

~~2. A person shall not dispose of manure closer to~~

30 49

~~a designated area than provided in section 159.27.~~

30 50 5. A person shall not construct or expand an

31 1 unformed manure storage structure within an
31 2 agricultural drainage well area as provided in section
31 3 455I.5.

31 4 Sec. 35. NEW SECTION. 455B.205 MANURE STORAGE
31 5 STRUCTURES CONSTRUCTION STANDARDS INSPECTIONS.

31 6 1. The department shall establish by rule
31 7 engineering standards for the construction of manure
31 8 storage structures required to be constructed pursuant
31 9 to a permit issued under section 455B.200A.

31 10 2. The design standards for unformed manure
31 11 storage structures established by the department shall
31 12 account for special design characteristics of animal
31 13 feeding operations, including all of the following:

31 14 a. The lining of the structure shall be
31 15 constructed with materials deemed suitable by the
31 16 department in order to minimize seepage loss through
31 17 the lining's seal.

31 18 b. The structure shall be constructed with
31 19 materials deemed suitable by the department in order
31 20 to control erosion on the structure's berm, side
31 21 slopes, and base.

31 22 c. The structure shall be constructed to minimize
31 23 seepage into near-surface water sources.

31 24 d. The top of the floor of the structure's liner
31 25 must be above the groundwater table as determined by
31 26 the department. If the groundwater table is less than
31 27 two feet below the top of the liner's floor, the
31 28 structure shall be installed with a synthetic liner.
31 29 If the department allows an unformed manure storage
31 30 structure to be located at a site by permanently
31 31 lowering the groundwater table, the department shall
31 32 confirm that the proposed system meets standards
31 33 necessary to ensure that the structure does not
31 34 pollute groundwater sources. If the department allows
31 35 drain tile installed to lower a groundwater table to
31 36 remain where located, the department shall require
31 37 that a device be installed to allow monitoring of the
31 38 water in the drain tile line. The department shall
31 39 also require the installation of a device to allow
31 40 shutoff of the drain tile lines, if the drain tile
31 41 lines do not have a surface outlet accessible on the
31 42 property where the structure is located.

31 43 3. The department shall inspect each unformed
31 44 manure storage structure at least once each year. An
31 45 inspection conducted pursuant to this subsection shall
31 46 be limited to a visual inspection of the site where
31 47 the unformed manure storage structure is located. The
31 48 department shall inspect the site at a reasonable time
31 49 after providing at least twenty-four hours' notice to
31 50 the person owning or managing the confinement feeding
32 1 operation. The visual inspection shall include, but
32 2 not be limited to, determining whether any of the
32 3 following exists:

32 4 a. An adequate freeboard level.

32 5 b. The seepage of manure from the unformed manure
32 6 storage structure.

32 7 c. Erosion.

32 8 d. Inadequate vegetation cover.

32 9 e. The presence of an opening allowing manure to
32 10 drain from the unformed manure storage structure.

32 11 Sec. 36. NEW SECTION. 455B.206 EXCEPTION TO
32 12 REGULATION.

32 13 1. As used in this section, "research college"
32 14 means an accredited public or private college or
32 15 university, including but not limited to a university
32 16 under the control of the state board of regents as
32 17 provided in chapter 262, or a community college under

32 18 the jurisdiction of a board of directors for a merged
32 19 area as provided in chapter 260C, if the college or
32 20 university performs research or experimental
32 21 activities regarding animal agriculture or agronomy.
32 22 2. The requirements of this part which regulate
32 23 animal feeding operations, including rules adopted by
32 24 the department pursuant to section 455B.200, shall not
32 25 apply to research activities and experiments performed
32 26 under the authority and regulations of a research
32 27 college, if the research activities and experiments
32 28 relate to animal feeding operations, including but not
32 29 limited to the confinement of animals and the storage
32 30 and disposal of manure originating from animal feeding
32 31 operations.
32 32 3. This section shall not apply to requirements
32 33 provided in any of the following:
32 34 a. Section 455B.201, including rules adopted by
32 35 the department under that section.
32 36 b. Section 455B.204, including rules adopted by
32 37 the department under that section.
32 38 Sec. 37. Section [657.11](#), subsections 2, 3, 5, 6,
32 39 7, and 8, Code 1997, are amended to read as follows:
32 40 2.

~~If a person has received all permits required~~

32 41

~~pursuant to chapter 455B for an animal feeding~~

32 42

~~operation, as defined in section 455B.161, there shall~~

32 43

~~be a rebuttable presumption that an~~

~~An animal feeding~~

32 44 operation

~~is~~

~~, as defined in section 455B.161, shall~~

32 45 not be found to be a public or private nuisance under

32 46 this chapter or under principles of common law, and

32 47

~~that~~

~~the animal feeding operation~~

~~does~~

~~shall not~~

32 48

~~unreasonably and continuously~~

~~be found to interfere~~

32 49 with another person's comfortable use and enjoyment of

32 50 the person's life or property under any other cause of

33 1 action.

~~The rebuttable presumption also applies to~~

33 2

~~persons who are not required to obtain a permit~~

33 3

~~pursuant to chapter 455B for an animal feeding~~

33 4

~~operation as defined in section 455B.161. The~~

33 5

~~rebuttable presumption~~

~~However, this section shall not~~

33 6 apply if the person bringing the action proves that an

33 7 injury to

~~a~~

~~the person or damage to the person's~~

33 8 property is proximately caused by

~~a~~

~~either of the~~

33 9 following:

33 10 a. The failure to comply with a federal statute or

33 11 regulation or a state statute or rule which applies to

33 12 the animal feeding operation.

33 13 b.

~~3. The rebuttable presumption may be overcome~~

33 14

~~by clear and convincing evidence of both~~

~~Both of the~~

33 15 following:

33 16

~~a.~~

~~(1) The animal feeding operation unreasonably~~

33 17 and

~~continuously~~

~~for substantial periods of time~~

33 18 interferes with

~~another~~

~~the person's comfortable use~~

33 19 and enjoyment of the person's life or property.

33 20

~~b.~~

~~(2) The~~

~~injury or damage is proximately caused~~

33 21

~~by the negligent operation of the~~

~~animal feeding~~

33 22 operation failed to use existing prudent generally

33 23 accepted management practices reasonable for the

33 24 operation.

33 25 5.

~~The rebuttable presumption created by this~~

~~This~~

33 26 section shall apply regardless of the established date

33 27 of operation or expansion of the animal feeding

33 28 operation.

~~The rebuttable presumption~~

~~A defense~~

33 29 against a cause of action provided in this section
33 30 includes, but is not limited to, a defense for actions
33 31 arising out of the care and feeding of animals; the
33 32 handling or transportation of animals; the treatment
33 33 or disposal of manure resulting from animals; the
33 34 transportation and application of animal manure; and
33 35 the creation of noise, odor, dust, or fumes arising
33 36 from an animal feeding operation.
33 37 6.

~~An animal feeding operation that complies with~~

33 38

~~the requirements in chapter 455B for animal feeding~~

33 39

~~operations shall be deemed to meet any common law~~

33 40

~~requirements regarding the standard of a normal person~~

33 41

~~living in the locality of the operation.~~

33 42

~~7. A~~

~~If a court determines that a claim is~~

33 43 frivolous, a person who brings the claim as part of a
33 44 losing cause of action against a person

~~for whom the~~

33 45

~~rebuttable presumption created~~

~~who may raise a defense~~

33 46 under this section

~~is not rebutted,~~

~~shall be liable to~~

33 47 the person against whom the action was brought for all
33 48 costs and expenses incurred in the defense of the
33 49 action

~~, if the court determines that a claim is~~

33 50

~~frivolous~~

34 1

~~8~~

~~7.~~

~~The rebuttable presumption created in this~~

34 2 This section does not apply to an injury to a person
34 3 or damages to property caused by the animal feeding
34 4 operation before

~~May 31, 1995~~

~~the effective date of~~

34 5 this Act.

34 6 Sec. 38. 1995 Iowa Acts, chapter 195, section 38,
34 7 is amended to read as follows:

34 8 SEC. 38. INDEMNITY FEES PRIOR PERMITTEES.

34 9 1. The indemnity fee imposed upon permittees
34 10 pursuant to section 204.3, as enacted in this Act,
34 11 shall be imposed upon all persons who have received a
34 12 permit by the department of natural resources for the
34 13 construction of a confinement feeding operation with a
34 14 manure storage structure as defined in section
34 15

~~455B.161~~

~~204.1~~, as enacted in this Act, prior to the
34 16 effective date of this Act. However, an indemnity fee
34 17 shall not be imposed upon

~~a person~~

~~the following~~

34 18 persons:

34 19 a. A person who has received a construction permit
34 20 more than ten years prior to the effective date of
34 21 this Act.

34 22 b. A person who has received a construction permit
34 23 within ten years prior to May 31, 1995, if the
34 24 confinement feeding operation was not constructed
34 25 under the permit and the permit has expired.

34 26 2. To every extent possible, the department of
34 27 natural resources shall notify all persons required to
34 28 pay the fee. The notice shall be in writing. The
34 29 department shall establish a date when the fees must
34 30 be paid to the department, which shall be not less
34 31 than three months after the delivery of the notice.
34 32 If a person is delinquent in paying the indemnity fee
34 33 when due, or if upon examination, an underpayment of
34 34 the fee is found by the department, the person is
34 35 subject to a penalty of ten dollars or an amount equal
34 36 to the amount of deficiency for each day of the
34 37 delinquency, whichever is less.

~~After the date~~

34 38

~~required for payment, the department shall transfer~~

34 39

~~all outstanding claims to the department of~~

34 40

~~agriculture and land stewardship.~~

34 41 3. The department of natural resources shall
34 42

~~deliver to~~

~~receive from~~ the department of agriculture
34 43 and land stewardship the most current available
34 44 information regarding the persons required to pay the
34 45 fee and any delinquency penalty

~~, including the names~~

34 46

~~and addresses of the persons, and the capacity of the~~

34 47

~~confinement feeding operations subject to the permit~~

34 48 The department of

~~agriculture and land stewardship~~

34 49 natural resources, in cooperation with the attorney
34 50 general, may bring a court action in order to collect
35 1 indemnity fees and delinquency penalties required to
35 2 be paid under this section.

35 3 Sec. 39. AMNESTY PERIOD. Notwithstanding 1995
35 4 Iowa Acts, chapter 195, section 38, a person who has
35 5 not paid an indemnity fee as required by that Act, as
35 6 amended by this Act, shall not be subject to a
35 7 delinquency penalty as provided in that Act, if the
35 8 person pays the full amount of the indemnity fee to
35 9 the department of agriculture and land stewardship on
35 10 or before December 31, 1998, as required by the
35 11 department.

35 12 Sec. 40. EFFECT OF THIS ACT REFUND. Nothing in
35 13 this Act requires the department of natural resources
35 14 or the department of agriculture and land stewardship
35 15 to refund an indemnity fee or delinquency penalty
35 16 payment paid by permittees pursuant to 1995 Iowa Acts,
35 17 chapter 195, section 38.

35 18 Sec. 41. INDEMNITY FEES PRIOR MANURE MANAGEMENT
35 19 PLAN SUBMITTEES.

35 20 1. The indemnity fee imposed upon persons required
35 21 to submit a manure management plan pursuant to section
35 22 204.3A, as enacted in this Act, shall be imposed upon
35 23 all persons who are required to submit a manure
35 24 management plan under section 455B.203 as amended in
35 25 this Act. However, a fee shall not be imposed upon a
35 26 person who was not required to submit a manure
35 27 management plan to the department of natural resources
35 28 pursuant to 1995 Iowa Acts, chapter 195, and 567 IAC
35 29 section 65.18(455B).

35 30 2. To every extent possible, the department shall
35 31 notify all persons required to pay the fee. The
35 32 notice shall be in writing. The department shall
35 33 establish a date when the fees must be paid to the
35 34 department, which shall be not less than three months
35 35 after the delivery of the notice. If a person is
35 36 delinquent in paying the indemnity fee when due, or if
35 37 upon examination, an underpayment of the fee is found
35 38 by the department, the person is subject to a penalty
35 39 of ten dollars or an amount equal to the amount of
35 40 deficiency for each day of the delinquency, whichever
35 41 is less.

35 42 Sec. 42. INDEMNITY FEES PRIOR CONSTRUCTION
35 43 PERMITTEES. The department of agriculture and land
35 44 stewardship shall deliver to the department of natural
35 45 resources the most current available information
35 46 regarding persons required to pay the indemnity fee
35 47 imposed pursuant to 1995 Iowa Acts, chapter 195,
35 48 section 38. The department of natural resources, in
35 49 cooperation with the attorney general, may bring a
35 50 court action in order to collect indemnity fees and
36 1 delinquency penalties as provided in that Act for
36 2 deposit into the manure storage indemnity fund as

36 3 created in section 204.2.

36 4 Sec. 43. MANURE MANAGEMENT PLAN SUBMISSIONS. All
36 5 persons required to submit a manure management plan
36 6 pursuant to section 455B.203 as amended by this Act
36 7 shall submit a manure management plan according to the
36 8 same requirements, as provided in that section or
36 9 rules adopted by the department pursuant to that
36 10 section. Persons who have submitted a manure
36 11 management plan that complies with those requirements
36 12 are not required to submit a new manure management
36 13 plan. Persons who have not submitted a manure
36 14 management plan that complies with those requirements
36 15 shall not be required to submit a new manure
36 16 management plan until July 1, 1999.

36 17 Sec. 44. ANIMAL AGRICULTURE CONSULTING
36 18 ORGANIZATION. The department of natural resources
36 19 shall consult with the members of the animal
36 20 agriculture consulting organization regarding this
36 21 Act, rules adopted pursuant to this Act, and the Act's
36 22 implementation, to the same extent and in the same
36 23 manner as required in 1995 Iowa Acts, chapter 195,
36 24 section 37.

36 25 Sec. 45. DIRECTION TO THE DEPARTMENT OF NATURAL
36 26 RESOURCES RULEMAKING. The department of natural
36 27 resources shall adopt all rules necessary to
36 28 administer and enforce this Act by January 1, 1999.
36 29 The department is required to adopt rules under this
36 30 Act, including adopting new rules or amending existing
36 31 rules, only to the extent that rules must be adopted
36 32 in order to comply with the requirements of this Act.
36 33 This section shall not be construed to limit the
36 34 authority of the department to adopt rules under this
36 35 Act or other statutory authority which the department
36 36 determines is necessary or advisable.

36 37 Sec. 46. DIRECTIONS TO IOWA CODE EDITOR.

36 38 1. The Iowa Code editor is directed to transfer
36 39 chapter 204, as amended by this Act, to a chapter
36 40 determined appropriate by the Iowa Code editor. The
36 41 Iowa Code editor shall correct internal references as
36 42 necessary.

36 43 2. The Iowa Code editor is directed to transfer
36 44 section 159.27 to or near section 455B.204A.

36 45 Sec. 47. TRANSFER OF PROVISIONS. The transfer of
36 46 provisions from one section to another section does
36 47 not affect the effect or applicability of rules
36 48 adopted by the department of natural resources, except
36 49 as required by the provisions of this Act.

36 50 Sec. 48. SEVERABILITY. If any provision of this
37 1 Act or the application of this Act to any person or
37 2 circumstance is held invalid, the invalidity shall not
37 3 affect other provisions or applications of this Act
37 4 which shall be given effect without the invalid
37 5 provision or application, and to this end the
37 6 provisions of this Act are severable.

37 7 Sec. 49. EFFECTIVE DATES.

37 8 1. Sections 9, 10, 13, 26, 28, 37 through 40, 44,
37 9 45, and this section, being deemed of immediate
37 10 importance, take effect upon enactment.

37 11 2. Sections 11, 14, 15, 17 through 20, 22, 25, 29,
37 12 30, and 32 through 34 take effect on January 1, 1999."

37 13 #2. Title page, line 1, by inserting after the
37 14 word "Act" the following: "providing for agricultural
37 15 production, including".

37 16 #3. Title page, line 2, by striking the words "an
37 17 effective date" and inserting the following:
37 18 "effective dates".

37 19

37 20

37 21

37 22 COMMITTEE ON [AGRICULTURE](#)

37 23 WILMER RENSINK, Chairperson

37 24 [HF 2494.2](#) 34 77

37 25 da/jl/28