



OFFICE OF THE GOVERNOR

THOMAS J. VILSACK
GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

May 23, 2005

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

House File 805, an Act relating to agricultural production including animal feeding operations, by providing for the regulation of open feedlot operations, and agricultural production liens, and providing for penalties.

House File 879, an Act relating to the regulation of snowmobiles and establishing fees.

The above House Files are hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Vilsack".

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





HOUSE FILE 805

AN ACT

RELATING TO AGRICULTURAL PRODUCTION INCLUDING ANIMAL FEEDING OPERATIONS, BY PROVIDING FOR THE REGULATION OF OPEN FEEDLOT OPERATIONS, AND AGRICULTURAL PRODUCTION LIENS, AND PROVIDING FOR PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

OPEN FEEDLOT OPERATIONS

SUBCHAPTER I

GENERAL PROVISIONS

Section 1. NEW SECTION. 459A.101 TITLE.

This chapter shall be known and may be cited as the "Animal Agriculture Compliance Act for Open Feedlot Operations".

Sec. 2. NEW SECTION. 459A.102 DEFINITIONS.

1. "Alternative technology system" or "alternative system" means a system for open feedlot effluent control as provided in section 459A.303.

2. "Animal" means the same as defined in section 459.102.

3. "Animal feeding operation" means the same as defined in section 459.102.

4. "Animal unit" means the same as defined in section 459.102.

5. "Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation.

6. "ASTM international" means the American society for testing and materials international.

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

8. "Department" means the department of natural resources.

9. "Document" means any form required to be processed by the department under this chapter, including but not limited to applications for permits or related materials as provided in section 459A.205, soils and hydrogeologic reports as provided in section 459A.206, construction certifications as provided in section 459A.207, nutrient management plans as provided in section 459A.208, and notices required under this chapter.

10. "Nutrient management plan" or "plan" means a plan which provides for the management of open feedlot effluent, including the application of effluent as provided in section 459A.208.

11. "Open feedlot" means a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation.

12. "Open feedlot effluent" or "effluent" means a combination of manure, precipitation-induced runoff, or other runoff from an open feedlot before its settleable solids have been removed.

13. "Open feedlot operation" or "operation" means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue cover is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation.

14. "Open feedlot operation structure" means an open feedlot, settled open feedlot effluent basin, a solids settling facility, or an alternative technology system. "Open feedlot operation structure" does not include a manure storage structure as defined in section 459.102.

15. "Operating permit" means a permit which regulates the operation of an open feedlot operation as issued by the department or the United States environmental protection agency, including as provided in state law or pursuant to the federal Water Pollution Control Act, Title 33, U.S.C., ch. 126, as amended, and 40 C.F.R., pt. 124.

16. "Research college" means an accredited public or private college or university, including but not limited to a university under the control of the state board of regents as provided in chapter 262, or a community college under the

jurisdiction of a board of directors for a merged area as provided in chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

17. "Settled open feedlot effluent" or "settled effluent" means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed.

18. "Settleable solids" or "solids" means that portion of open feedlot effluent that meets all of the following requirements:

- a. The solids do not flow perceptibly under pressure.
- b. The solids are not capable of being transported through a mechanical pumping device designed to move a liquid.
- c. The constituent molecules of the solids do not flow freely among themselves but do show the tendency to separate under stress.

19. "Settled open feedlot effluent basin" or "basin" means an impoundment which is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent.

20. "Solids settling facility" means a basin, terrace, diversion, or other structure or solids removal method which is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A "solids settling facility" does not include a basin, terrace, diversion, or other structure or solids removal method which retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

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

22. "Waters of the United States" means the same as defined in 40 C.F.R., pt. 122, § 2, as that section exists on the effective date of this Act.

Sec. 3. NEW SECTION. 459A.103 SPECIAL TERMS.

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

1. a. Two or more open feedlot operations under common ownership or common management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal.

b. For purposes of determining whether two or more open feedlot operations are adjacent, all of the following shall apply:

(1) At least one open feedlot operation structure must be constructed on or after July 17, 2002.

(2) An open feedlot operation structure which is part of one open feedlot operation is separated by less than one thousand two hundred fifty feet from an open feedlot operation structure which is part of the other open feedlot operation.

c. For purposes of determining whether two or more open feedlot operations are under common ownership, a person must hold an interest in each of the open feedlot operations as any of the following:

(1) A sole proprietor.

(2) A joint tenant or tenant in common.

(3) A holder of a majority equity interest in a business association as defined in section 202B.102, including but not limited to as a shareholder, partner, member, or beneficiary.

An interest in the open feedlot operation under subparagraph (2) or (3) which is held directly or indirectly by the person's spouse or dependent child shall be attributed to the person.

d. For purposes of determining whether two or more open feedlot operations are under common management, a person must have significant control of the management of the day-to-day operations of each of the open feedlot operations. Common management does not include control over a contract livestock facility by a contractor, as defined in section 202.1.

2. An open feedlot operation structure is "constructed" when any of the following occurs:

a. Excavation commences for a proposed open feedlot operation structure or proposed expansion of an existing open feedlot operation structure.

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

c. Piping for the movement of open feedlot effluent is installed within or between open feedlot operation structures as proposed or proposed to be expanded.

3. In calculating the animal unit capacity of an open feedlot operation, the animal unit capacity shall not include

the animal unit capacity of any confinement feeding operation building as defined in section 459.102, which is part of the open feedlot operation.

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

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

6. The regulation of open feedlot effluent shall be construed as also regulating settled open feedlot effluent and solids.

7. "Seasonal high-water table" means the seasonal high-water table as determined by a professional engineer pursuant to the following requirements:

a. The seasonal high-water table shall be determined by evaluating soil profile characteristics such as color and mottling from soil corings, soil test pits, or other soil profile evaluation methods, water level data from soil corings or other sources, and other pertinent information.

b. If a drainage tile line to artificially lower the seasonal high-water table is installed as required by this section, the level to which the seasonal high-water table will be lowered will be the seasonal high-water table.

Sec. 4. NEW SECTION. 459A.104 GENERAL AUTHORITY -- COMMISSION AND DEPARTMENT -- PURPOSE -- COMPLIANCE.

1. The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of open feedlot operations, including related open feedlot operation structures.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to open feedlot operations also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to licenses, certifications, permits, or nutrient management plans required under this chapter.

3. The purpose of this chapter is to provide requirements relating to the construction, including the expansion, and operation of open feedlot operations, and the control of open feedlot effluent, which shall be construed to supplement applicable provisions of chapter 459. If there is a conflict between the provisions of this chapter and chapter 459, the provisions of this chapter shall prevail.

Sec. 5. NEW SECTION. 459A.105 EXCEPTION TO REGULATION.

1. Except as provided in subsection 2, the requirements of this chapter which regulate open feedlot operations, including rules adopted by the department pursuant to section 459A.104, shall not apply to research activities and experiments performed under the authority and regulations of a research college, if the research activities and experiments relate to an open feedlot operation structure or the disposal or treatment of effluent originating from an open feedlot operation.

2. The requirements of section 459A.410, including rules adopted by the department under that section, apply to research activities and experiments performed under the authority and regulations of a research college.

SUBCHAPTER II

DOCUMENTATION

Sec. 6. NEW SECTION. 459A.201 DOCUMENT PROCESSING REQUIREMENTS.

1. The department shall adopt and promulgate forms required to be completed in order to comply with this chapter, including forms for documents that the department shall make available on the internet in the same manner as provided in section 459.302.

2. a. The department shall provide for procedures for the receipt, filing, processing, and return of documents in an electronic format in the same manner as provided in section 459.302. The department shall provide for authentication of the documents that may include electronic signatures as provided in chapter 554D.

b. The department shall to every extent feasible provide for the processing of documents required under this subchapter using electronic systems in the same manner as required in section 459.302.

3. a. The department shall approve or disapprove an application for a construction permit as provided in section 459A.205 within sixty days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may provide that an application is terminated if no action is required by the department for one year following delivery of the application to the department. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days. However, the department shall not provide for more than one continuance.

b. A nutrient management plan as provided in section 459A.208 shall be approved or disapproved as part of a construction permit application pursuant to section 459A.205. If the nutrient management plan is not part of an application for a construction permit, the nutrient management plan shall be approved or disapproved within sixty days from the date that the department receives the nutrient management plan.

Sec. 7. NEW SECTION. 459A.205 PERMIT REQUIREMENTS -- SETTLED OPEN FEEDLOT EFFLUENT BASINS AND ALTERNATIVE TECHNOLOGY SYSTEMS.

1. The department shall approve or disapprove applications for permits for the construction, including the expansion, of settled open feedlot effluent basins and alternative technology systems, as provided in this chapter. The department's decision to approve or disapprove a permit for the construction of a basin or alternative system shall be based on whether the application is submitted according to procedures and standards required by this chapter. A person shall not begin construction of a basin or alternative system requiring a permit under this section, unless the department first approves the person's application and issues to the person a construction permit.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application regardless of whether the applicant is required to be issued a construction permit.

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

a. For an open feedlot operation submitting an application for a construction permit on or after September 30, 2006, a nutrient management plan as provided in section 459A.208.

b. An engineering report, construction plans, and specifications prepared by a licensed professional engineer or the natural resources conservation service of the United States department of agriculture certifying that the construction of the settled open feedlot effluent basin or alternative technology system complies with the construction design standards required in this chapter.

4. An open feedlot operation must be issued a construction permit prior to any of the following:

a. The construction, including expansion, of a settled open feedlot effluent basin or alternative technology system if the open feedlot operation is required to be issued an operating permit.

b. The department has previously issued the open feedlot operation a construction permit and any of the following applies:

(1) The animal unit capacity of the open feedlot operation will be increased to more than the animal unit capacity approved by the department in the previous construction permit.

(2) The volume of open feedlot effluent stored at the open feedlot operation would be more than the volume approved by the department in the previous construction permit.

(3) The open feedlot operation was discontinued for twenty-four months or more and the animal unit capacity would be one thousand animal units or more.

5. Prior to submitting an application for a construction permit the applicant may submit a conceptual design and site investigation report to the department for review and comment.

6. The application for the construction permit shall include all of the following:

a. The name of the owner of the open feedlot operation and the name of the open feedlot operation, including a mailing address and telephone number for the owner and the operation.

b. The name of the contact person for the open feedlot operation, including the person's mailing address and telephone number.

c. The location of the open feedlot operation.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of a settled open feedlot effluent basin or alternative technology system for an existing open feedlot operation which is not expanding.

(2) The construction or expansion of a settled open feedlot effluent basin or alternative technology system for an existing open feedlot operation which is expanding.

(3) The construction of a settled open feedlot effluent basin or alternative technology system for a proposed new open feedlot operation.

e. The animal unit capacity for each animal species in the open feedlot operation before and after the proposed construction.

f. An engineering report, construction plans, and specifications prepared by a licensed professional engineer or by the United States natural resource conservation service, for the settled open feedlot operation effluent basin or alternative technology system.

g. A soils and hydrogeologic report of the site, as required in section 459A.206.

h. Information, including but not limited to maps, drawings, and aerial photos that clearly show the location of all of the following:

(1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or alternative technology systems, clean water diversions, and other pertinent features or structures.

(2) Any other open feedlot operation under common ownership or common management and located within one thousand two hundred fifty feet of the open feedlot operation.

(3) A public water supply system as defined in section 455B.171 or a drinking water well which is located within a distance from the operation as prescribed by rules adopted by the department.

i. For an open feedlot operation implementing an alternative technology system as provided in section 459A.303, the applicant shall submit all of the following:

(1) Information showing that the proposed open feedlot operation meets criteria for siting as established by rules adopted by the department. However, if the site does not meet the criteria, the information shall show substantially equivalent alternatives to meeting such criteria.

(2) The results of predictive computer modeling for the proposed alternative technology system to determine suitability of the proposed site for the system and to predict performance of the alternative technology system as compared to the use of a settled open feedlot effluent basin.

(3) A conceptual design of the proposed alternative technology system, as developed by a licensed engineer.

7. a. Except as provided in paragraph "b", a construction permit for an open feedlot operation expires as follows:

(1) If construction does not begin within one year after the date the construction permit is issued.

(2) If construction is not completed within three years after the date the construction permit is issued.

b. If requested, the department may grant an extension of time to begin or complete construction upon a showing of just cause by the construction permit applicant.

8. The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or disapprove a request to extend the time to begin or complete construction as provided in this section, if it determines that the operation of the open feedlot operation constitutes a clear, present, and impending danger to public health or the environment.

9. This section does not require a person to be issued a permit to construct a settled open feedlot effluent basin or alternative technology system if the basin or system is part of an open feedlot operation which is owned by a research college conducting research activities as provided in section 459A.105.

Sec. 8. NEW SECTION. 459A.206 SETTLED OPEN FEEDLOT EFFLUENT BASINS -- SOILS AND HYDROGEOLOGIC REPORT.

A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant

to section 459A.205 shall meet design standards as required by a soils and hydrogeologic report.

The report shall be submitted with the construction permit application as provided in section 459A.205. The report shall include all of the following:

1. A description of the steps to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

2. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D-2487-92 or D-2488-90.

3. The results of at least three soil corings reflecting the continuous soil profile taken for each basin. The soil corings shall be taken and used in determining subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for construction. The soil corings shall be taken as follows:

a. By a qualified person ordinarily engaged in the practice of taking soil cores and in performing soil testing.

b. At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soil corings shall be taken to a minimum depth of ten feet below the bottom elevation of the basin.

c. By a method such as hollow stem auger or other method that identifies the continuous soil profile and does not result in the mixing of soil layers.

Sec. 9. NEW SECTION. 459A.207 CONSTRUCTION CERTIFICATION.

1. The owner of an open feedlot operation who is issued a construction permit for a settled open feedlot effluent basin as provided in section 459A.205 after the effective date of this Act shall submit to the department a construction certification from a licensed professional engineer certifying all of the following:

a. The basin was constructed in accordance with the design plans submitted to the department as part of an application

for a construction permit pursuant to section 459A.205. If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of this section.

b. The basin was inspected by the licensed professional engineer after completion of construction and before commencement of operation.

2. A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subchapter III, shall be submitted as part of the construction certification.

Sec. 10. NEW SECTION. 459A.208 NUTRIENT MANAGEMENT PLAN -- REQUIREMENTS.

1. The owner of an open feedlot operation which has an animal unit capacity of one thousand animal units or more or which is required to be issued an operating permit shall develop and implement a nutrient management plan meeting the requirements of this section by December 31, 2006.

2. Not more than one open feedlot operation shall be covered by a single nutrient management plan.

3. A person shall not remove open feedlot effluent from an open feedlot operation structure which is part of an open feedlot operation for which a nutrient management plan is required under this section, unless the department approves a nutrient management plan as required in this section. The department may adopt rules allowing a person to remove open feedlot effluent from an open feedlot operation structure until the nutrient management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department.

4. The department shall not approve an application for a permit to construct a settled open feedlot effluent basin unless the owner of the open feedlot operation applying for approval submits a nutrient management plan together with the application for the construction permit as provided in section 459A.205. The owner shall also submit proof that the owner has published a notice for public comment as provided in this section. The department shall approve or disapprove the nutrient management plan as provided in section 459A.201. A nutrient management plan using an alternative technology

system shall not include requirements for settled effluent that enters the alternative technology system.

5. Prior to approving or disapproving a nutrient management plan as required in this section, the department may receive comments exclusively to determine whether the nutrient management plan is submitted according to procedures required by the department and that the nutrient management plan complies with the provisions of this chapter.

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where open feedlot effluent, which originates from the open feedlot operation, may be applied under the terms and conditions of the nutrient management plan.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the nutrient management plan.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the nutrient management plan may be examined as provided in section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subsection. If such a request is received, the public hearing must be conducted within thirty days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subsection by accessing the department's internet website. The notice for public comment shall include the address of the department's internet website as required by the department.

c. The department shall maintain an internet website where persons may access information relevant to making comments under this subsection. The department may include an electronic version of the nutrient management plan as provided in section 459A.201. The department shall include information regarding the time when, the place where, and the manner in which persons may participate in a public hearing as provided in this subsection.

6. A nutrient management plan must be authenticated by the owner of the animal feeding operation as required by the department in accordance with section 459A.201.

7. A nutrient management plan shall include all of the following:

a. Restrictions on the application of open feedlot effluent based on all of the following:

(1) Calculations necessary to determine the land area required for the application of open feedlot effluent from an open feedlot operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements adopted by the department.

(2) A phosphorus index established pursuant to section 459.312.

b. Information relating to the application of the open feedlot effluent, including all of the following:

(1) Nutrient levels of the open feedlot effluent.

(2) Application methods, the timing of the application, and the location of the land where the application occurs.

c. If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the open feedlot effluent may be applied.

d. An estimate of the open feedlot effluent volume or weight produced by the open feedlot operation.

e. Information which shows all of the following:

(1) There is adequate storage for open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) The proper management of animal mortalities to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on-site are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

8. If an open feedlot operation uses an alternative technology system as provided in section 459A.303, the nutrient management plan is not required to provide for settled effluent that enters the alternative technology system.

9. The owner of an open feedlot operation who is required to develop and implement a nutrient management plan shall maintain a current nutrient management plan and maintain records sufficient to demonstrate compliance with the nutrient management plan.

SUBCHAPTER III

DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN FEEDLOT EFFLUENT BASINS -- CONSTRUCTION DESIGN STANDARDS -- RULES.

If the department requires that a settled open feedlot effluent basin be constructed according to construction design standards, regardless of whether the department requires the owner to be issued a construction permit under section 459A.205, any construction design standards for the basin shall be established by rules as provided in chapter 17A that exclusively account for special design characteristics of open feedlot operations and related basins, including but not limited to the dilute composition of settled open feedlot effluent as collected and stored in the basins.

Sec. 12. NEW SECTION. 459A.302 SETTLED OPEN FEEDLOT EFFLUENT BASINS -- CONSTRUCTION REQUIREMENTS.

A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant

to section 459A.205 shall meet all of the following requirements:

1. a. Prior to constructing a settled open feedlot effluent basin, the site for the basin shall be investigated for a drainage tile line by the owner of the open feedlot operation. The investigation shall be made by digging a core trench to a depth of at least six feet deep from ground level at the projected center of the berm of the basin. If a drainage tile line is discovered, one of the following solutions shall be implemented:

(1) The drainage tile line shall be rerouted around the perimeter of the basin at a distance of least twenty-five feet horizontally separated from the outside edge of the berm of the basin. For an area of the basin where there is not a berm, the drainage tile line shall be rerouted at least fifty feet horizontally separated from the edge of the basin.

(2) The drainage tile line shall be replaced with a nonperforated tile line under the basin floor. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet between the nonperforated tile line and the basin floor.

b. A written record of the investigation shall be submitted as part of the construction certification required under section 459A.207.

2. a. The settled open feedlot effluent basin shall be constructed with a minimum separation of two feet between the top of the liner of the basin and the seasonal high-water table.

b. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However the following shall apply:

(1) Except as provided in subparagraph (2), an open feedlot operation shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before the effective date of this Act, the operation may continue to

use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

3. Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin, if all of the following conditions are satisfied:

a. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the settled open feedlot effluent basin is located.

b. Drainage tile lines are installed horizontally at least twenty-five feet away from the settled open feedlot effluent basin. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table.

4. A settled open feedlot effluent basin shall be constructed with at least four feet between the bottom of the basin and a bedrock formation.

5. A settled open feedlot effluent basin constructed on a floodplain or within a floodway of a river or stream shall comply with rules of the department.

6. The liner of a settled open feedlot effluent basin shall comply with all of the following:

a. The liner shall comply with any of the following permeability standards:

(1) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin as determined by percolation tests conducted by the professional engineer. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of twelve inches or the minimum thickness necessary to comply with the percolation rate in this section, whichever is greater.

(2) The liner shall be constructed at optimum moisture content not less than ninety-five percent of the maximum density as determined by a standard five-point proctor test

performed at the site of the open feedlot operation by a professional engineer. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of twelve inches.

b. If a synthetic liner is used, the liner shall be installed to comply with the percolation rate required in this section.

7. The owner of an open feedlot operation using a settled open feedlot effluent basin shall inspect the berms of the basin at least semiannually for evidence of erosion. If the inspection reveals erosion which may impact the basin's structural stability or the integrity of the basin's liner, the owner shall repair the berms.

Sec. 13. NEW SECTION. 459A.303 ALTERNATIVE TECHNOLOGY SYSTEMS.

In lieu of using a settled open feedlot effluent basin as provided in section 459A.302 to meet the open feedlot effluent control requirements of section 459A.401, an open feedlot operation may use an alternative technology system for open feedlot effluent control.

1. The alternative technology system must provide an equivalent level of open feedlot effluent control as would be achieved by using a settled open feedlot effluent basin.

2. The department shall adopt rules establishing requirements for the construction and operation of alternative technology systems.

SUBCHAPTER IV

OPEN FEEDLOT EFFLUENT CONTROL

Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT EFFLUENT CONTROL METHODS.

An open feedlot operation shall provide for the management of open feedlot effluent by using an open feedlot effluent control method as follows:

1. All settleable solids from open feedlot effluent shall be removed prior to discharge into the waters of the state.

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

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

2. This subsection shall apply to an open feedlot operation which is required to be issued an operating permit.

a. An open feedlot operation may discharge open feedlot effluent into any waters of the United States due to a precipitation event, if any of the following apply:

(1) For an open feedlot operation that houses cattle, other than veal cattle, the operation is designed, constructed, operated, and maintained to not discharge open feedlot effluent resulting from a twenty-five-year, twenty-four-hour precipitation event into any waters of the United States.

(2) For an open feedlot operation that houses veal calves, swine, chickens, or turkeys, the operation is designed, constructed, operated, and maintained to not discharge open feedlot effluent resulting from a one-hundred-year, twenty-four-hour precipitation event into any waters of the United States.

b. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of an open feedlot effluent control system as provided in rules adopted by the department, the operation shall be deemed to be in compliance with this section, unless a discharge from the operation causes a violation of state water quality standards as provided in chapter 455B, division III.

3. The following shall apply to an open feedlot operation which has an animal unit capacity of one thousand animal units or more:

a. (1) The open feedlot operation shall not discharge open feedlot effluent from an open feedlot operation structure into any waters of the United States, unless the discharge is pursuant to an operating permit.

(2) The open feedlot operation shall not be required to be issued an operating permit if the operation does not discharge open feedlot effluent into any waters of the United States.

b. The control of open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, alternative technology system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or alternative technology system.

Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT EFFLUENT CONTROL -- ALTERNATIVE CONTROL PRACTICES.

If because of topography or other factors related to the site of an open feedlot operation it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in section 459A.401, the department shall allow the use of other open feedlot effluent control practices if those practices will provide an equivalent level of open feedlot effluent control that would be achieved by using an open feedlot effluent control method pursuant to section 459A.401.

Sec. 16. NEW SECTION. 459A.410 EFFLUENT APPLICATION REQUIREMENTS.

Open feedlot effluent shall be applied in a manner which does not cause surface water or groundwater pollution. Application in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, and guidelines adopted pursuant to this chapter, shall be deemed as compliance with this section.

Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF OPERATIONS.

The owner of an open feedlot operation who discontinues the use of the operation shall remove all open feedlot effluent

from related open feedlot operation structures used to store open feedlot effluent, as soon as practical but not later than six months following the date the open feedlot operation is discontinued.

SUBCHAPTER V
ENFORCEMENT

Sec. 18. NEW SECTION. 459A.501 GENERAL.

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

Sec. 19. NEW SECTION. 459A.502 VIOLATIONS -- CIVIL PENALTY.

A person who violates this chapter shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.191. Any civil penalty collected and interest on a civil penalty shall be deposited in the animal agriculture compliance fund created in section 459.401. A person shall not be subject to a penalty under this section and a penalty under section 459.603 for the same violation.

DIVISION II
CONFORMING AMENDMENTS

Sec. 20. Section 455B.103, subsections 3 and 4, Code 2005, are amended to read as follows:

3. Contract, with the approval of the commission, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter, and chapter 459, ~~subchapters-II-and-III~~ and chapter 459A. If the director finds that public agencies of this state cannot provide the laboratory, scientific field measurement and environmental evaluation services required by the department, the director may contract, with the approval of the commission, with any other public or private persons or agencies for such services or for scientific or technical services required to carry out the programs and services assigned to the department.

4. Conduct investigations of complaints received directly or referred by the commission created in section 455A.6 or other investigations deemed necessary. While conducting an

investigation, the director may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter, ~~or~~ chapter 459, ~~subchapters II and III,~~ chapter 459A, or the rules or standards adopted under this chapter, ~~or~~ chapter 459, ~~subchapters II and III~~ or chapter 459A. However, the owner or person in charge shall be notified.

Sec. 21. Section 455B.103A, subsection 1, unnumbered paragraph 1, Code 2005, is amended to read as follows:

If a permit is required pursuant to this chapter, ~~or~~ chapter 459, or chapter 459A for stormwater discharge or an air contaminant source and a facility to be permitted is representative of a class of facilities which could be described and conditioned by a single permit, the director may issue, modify, deny, or revoke a general permit for all of the following conditions:

Sec. 22. Section 455B.103A, subsection 5, Code 2005, is amended to read as follows:

5. The enforcement provisions of division II of this chapter and chapter 459, subchapter II, apply to general permits for air contaminant sources. The enforcement provisions of division III, part 1, of this chapter, and chapter 459, subchapter III, and chapter 459A apply to general permits for stormwater discharge.

Sec. 23. Section 455B.105, subsections 3, 6, and 8, Code 2005, are amended to read as follows:

3. Adopt, modify, or repeal rules necessary to implement this chapter, and chapter 459, and chapter 459A, and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the

department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter, and chapter 459, and chapter 459A. Rules adopted by the executive committee before January 1, 1981, shall remain effective until modified or rescinded by action of the commission.

6. Approve all contracts and agreements under this chapter, and chapter 459, and chapter 459A between the department and other public or private persons or agencies.

8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter, chapter 22, ~~or~~ chapter 459, or chapter 459A, necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

Sec. 24. Section 455B.105, subsection 11, paragraph a, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter, and chapter 459, and chapter 459A relating to permits, conditional permits, and general permits. The commission may also adopt, by rule, a schedule of fees for permit and conditional permit applications and a schedule of fees which may be periodically assessed for administration of permits and conditional permits. In determining the fee schedules, the commission shall consider:

Sec. 25. Section 455B.109, subsection 4, Code 2005, is amended to read as follows:

4. a. ~~All~~ Except as provided in paragraph "b", civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state. ~~However,~~ ~~civil~~

b. The following provisions shall apply to animal feeding operations:

(1) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations

involving animal feeding operations under chapter 459, subchapter II, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

(2) Civil penalties assessed by the department and interest on the penalties arising out of violations committed by animal feeding operations under chapter 459, subchapter III, which may be assessed pursuant to section 455B.191 or 459.604, shall also be deposited in the animal agriculture compliance fund.

(3) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving open feedlot operations under chapter 459A, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

Sec. 26. Section 455B.111, subsection 1, paragraphs a and b, Code 2005, are amended to read as follows:

a. A person, including the state of Iowa, for violating any provision of this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or a rule adopted pursuant to this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A.

b. The director, the commission, or any official or employee of the department where there is an alleged failure to perform any act or duty under this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or a rule adopted pursuant to this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A, which is not a discretionary act or duty.

Sec. 27. Section 455B.111, subsection 5, Code 2005, is amended to read as follows:

5. This section does not restrict any right under statutory or common law of a person or class of person to seek enforcement of provisions of this chapter, ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or a rule adopted pursuant to this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A, or seek other relief permitted under the law.

Sec. 28. Section 455B.112, Code 2005, is amended to read as follows:

455B.112 ACTIONS BY ATTORNEY GENERAL.

In addition to the duty to commence legal proceedings at the request of the director or commission under this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A the attorney general may institute civil or criminal proceedings, including an action for injunction, to enforce the provisions of this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A including orders or permits issued or rules adopted under this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A.

Sec. 29. Section 455B.113, subsection 1, Code 2005, is amended to read as follows:

1. The director shall certify laboratories which perform laboratory analyses of samples required to be submitted by the department by this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A, or by rules adopted in accordance with this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A; or by permits or orders issued under this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A.

Sec. 30. Section 455B.115, Code 2005, is amended to read as follows:

455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

Laboratory analysis of samples as required by this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A; or by rules adopted, or by permits or orders issued pursuant to this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A shall be conducted by a laboratory certified by the director as having the necessary competence, equipment, and capabilities to perform the analysis. Analytical results from laboratories not certificated shall not be accepted by the director.

Sec. 31. Section 455B.179, Code 2005, is amended to read as follows:

455B.179 TRADE SECRETS PROTECTED.

Upon a satisfactory showing by any person to the director that public disclosure of any record, report, permit, permit application, or other document or information or part thereof would divulge methods or processes entitled to protection as a trade secret, any such record, report, permit, permit application, or other document or part thereof other than

effluent data and analytical results of monitoring of public water supply systems, shall be accorded confidential treatment. Notwithstanding the provisions of chapter 22, a person in connection with duties or employment by the department shall not make public any information accorded confidential status; however, any such record or other information accorded confidential status may be disclosed or transmitted to other officers, employees, or authorized representatives of this state or the United States concerned with carrying out this part of this division; ~~or~~ chapter 459, subchapter III, or chapter 459A; or when relevant in any proceeding under this part of this division; ~~or~~ chapter 459, subchapter III; or chapter 459A.

Sec. 32. Section 455B.182, Code 2005, is amended to read as follows:

455B.182 FAILURE CONSTITUTES CONTEMPT.

Failure to obey any order issued by the department with reference to a violation of this part of this division; ~~or~~ chapter 459, subchapter III~~7~~; or chapter 459A; or any rule promulgated or permit issued pursuant thereto shall constitute prima facie evidence of contempt. In such event the department may certify to the district court of the county in which such alleged disobedience occurred the fact of such failure. The district court after notice, as prescribed by the court, to the parties in interest shall then proceed to hear the matter and if it finds that the order was lawful and reasonable it shall order the party to comply with the order. If the person fails to comply with the court order, that person shall be guilty of contempt and shall be fined not to exceed five hundred dollars for each day that the person fails to comply with the court order. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of any waters of the state or related to public water supply systems and a conviction under this section shall not be a bar to prosecution under any other penal statute.

Sec. 33. Section 455B.185, Code 2005, is amended to read as follows:

455B.185 DATA FROM DEPARTMENTS.

The commission and the director may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the commission or the director to properly carry out their activities and effectuate the purposes of this part 1 of division III; and chapter 459, subchapter III; or chapter 459A. The department shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

Sec. 34. Section 459.102, subsection 2, paragraph a, Code 2005, is amended to read as follows:

a. A settled open feedlot effluent basin ~~that collects and stores only precipitation-induced runoff from an open feedlot~~ as defined in section 459A.102.

Sec. 35. Section 459.102, subsections 37, 45, and 46, Code 2005, are amended by striking the subsections.

Sec. 36. Section 459.401, subsection 2, paragraph a, subparagraph (5), Code 2005, is amended to read as follows:

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

Sec. 37. Section 459.309, Code 2005, is repealed.

DIVISION III

AGRICULTURAL PRODUCTION LIENS

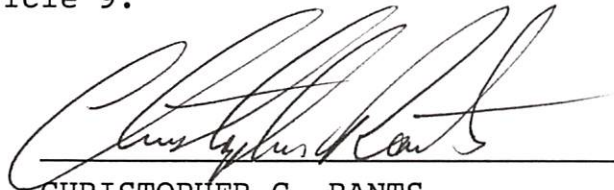
Sec. 38. Section 579A.2, subsection 3, paragraph b, Code 2005, is amended to read as follows:

b. The lien terminates one year after the cattle have left the custom cattle feedlot. ~~Section 554.9515 shall not apply to a financing statement perfecting the lien.~~ The lien may be terminated by the custom cattle feedlot operator who files a termination statement as provided in chapter 554, article 9.

Sec. 39. Section 579B.4, subsection 1, paragraph b, Code 2005, is amended to read as follows:

b. For a lien arising out of producing a crop, the lien becomes effective the day that the crop is first planted. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as

provided in section 554.9308. The contract producer must file a financing statement for the crop within forty-five days after the crop is first planted. The lien terminates one year after the crop is no longer under the authority of the contract producer. For purposes of this section, a crop is no longer under the authority of the contract producer when the crop or a warehouse receipt issued by a warehouse operator licensed under chapter 203C for grain from the crop is no longer under the custody or control of the contract producer. ~~Section-554.9515-shall-not-apply-to-a-financing-statement perfecting-the-lien.~~ The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.



CHRISTOPHER C. RANTS
Speaker of the House



JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 805, Eighty-first General Assembly.



MARGARET THOMSON
Chief Clerk of the House

Approved May 23, 2005



THOMAS J. VILSACK
Governor