

FEB 27 1998

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Senator Iverson asked and received unanimous consent that House File 2494 be referred from the Regular Calendar to the committee on Ways and Means, to be returned to the Regular Calendar no later than 8:00 a.m., Wednesday, April 8, 1998.

SPECIAL ORDER CALENT

4-7-98

494¹⁹⁹⁹

HOUSE FILE

BY COMMITTEE ON AGRICULTURE

REPRINTED

(SUCCESSOR TO HSB 661)

Passed House, Date ^(P.687) 3/12/98 Passed Senate, Date ^(P.1144) 4-6-98
Vote: Ayes 51 Nays 48 Vote: Ayes 36 Nays 14
Approved May 21, 1998

A BILL FOR

1 An Act regulating animal feeding operations and making penalties
2 applicable and providing an effective date.

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

4

HOUSE FILE 2494

H-8152

1 Amend House File 2494 as follows:

2 1. Page 6, by striking lines 24 through 32 and
3 inserting the following:

4 " ". "Animal feeding operation" means the same as
5 defined in section 455B.161."

6 2. Page 7, line 2, by striking the word

7 "agricultural" and inserting the following: "animal
8 feeding".

By WISE of Lee

BELL of Jasper

FALCK of Fayette

LARKIN of Lee

MAY of Worth

MERTZ of Kossuth

O'BRIEN of Boone

THOMAS of Clayton

H-8152 FILED MARCH 2, 1998

WITHDRAWN 3/11/98
(P.687)

HF 2494
hbhc LH

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1 Section 1. NEW SECTION. 7D.10A ALLOCATION TO MANURE
2 STORAGE INDEMNITY FUND.

3 If moneys are not sufficient to support the manure storage
4 indemnity fund as provided in chapter 204, the executive
5 council may allocate from moneys in the general fund of the
6 state, which are not otherwise obligated or encumbered, an
7 amount to the manure storage indemnity fund as provided under
8 section 204.2. However, not more than a total of one million
9 dollars shall be allocated to the manure storage indemnity
10 fund at any time.

11 Sec. 2. Section 204.1, subsections 4, 8, and 9, Code 1997,
12 are amended to read as follows:

13 4. "Department" means the department of agriculture and
14 land-stewardship natural resources.

15 8. "Manure storage structure" means ~~a structure used to~~
16 ~~store manure as part of a confinement feeding operation~~
17 ~~subject to a construction permit issued by the department of~~
18 ~~natural resources pursuant to section 455B.173. A manure~~
19 ~~storage structure includes, but is not limited to, an~~
20 ~~anaerobic lagoon, formed manure storage structure, or earthen~~
21 ~~manure storage basin, the same as defined in section 455B.161~~
22 455B.171.

23 9. "Permittee" means a person who, pursuant to section
24 455B.200A, obtains a permit for the construction of a manure
25 storage structure, or a confinement feeding operation, if a
26 manure storage structure is connected to the confinement
27 feeding operation.

28 Sec. 3. Section 204.2, subsections 2, 3, and 5, Code 1997,
29 are amended to read as follows:

30 2. The fund consists of moneys from indemnity fees
31 remitted by permittees to the department ~~of natural resources~~
32 ~~and transferred to the department of agriculture and land~~
33 ~~stewardship~~ as provided in section 204.3; moneys from
34 indemnity fees remitted by persons required to submit manure
35 management plans to the department pursuant to section 204.3A;

1 sums collected on behalf of the fund by the department through
2 legal action or settlement; moneys required to be repaid to
3 the department by a county pursuant to this chapter; civil
4 penalties assessed and collected by the department ~~of-natural~~
5 ~~resources~~ or the attorney general pursuant to chapter 455B,
6 against ~~permittees~~ animal feeding operations; moneys paid as a
7 settlement involving an enforcement action for a civil penalty
8 subject to assessment and collection against permittees by the
9 department ~~of-natural-resources~~ or the attorney general
10 pursuant to chapter 455B; interest, property, and securities
11 acquired through the use of moneys in the fund; or moneys
12 contributed to the fund from other sources.

13 3. The moneys collected under this section and shall be
14 deposited in the fund and shall be appropriated to the
15 department for the exclusive purpose of indemnifying-a-county
16 for-expenses-related-to-cleaning-up-the-site-of-the
17 confinement-feeding-operation, including removing and
18 disposing-of-manure-from-a-manure-storage-structure providing
19 moneys for cleanup of abandoned facilities as provided in
20 section 204.4, and to pay the department for costs related to
21 administering the provisions of this chapter. For each fiscal
22 year, the department shall not use more than one percent of
23 the total amount which is available in the fund or ten
24 thousand dollars, whichever is less, to pay for the costs of
25 administration. Moneys in the fund shall not be subject to
26 appropriation or expenditure for any other purpose than
27 provided in this section.

28 5. The following shall apply to moneys in the fund:

29 a. On August 31 following the close of each fiscal year,
30 moneys in the fund which are not obligated or encumbered on
31 June 30 of the past fiscal year, less not counting the
32 department's estimate of the cost to the fund for pending or
33 unsettled claims and any amount required to be credited to the
34 general fund of the state under this subsection, and which are
35 in excess of one three million dollars, shall be deposited in

1 the organic nutrient management fund as created in section
2 161C.5 for purposes of supporting the organic nutrient
3 management program.

4 b. The executive council may allocate moneys from the
5 general fund of the state as provided in section 7D.10A in an
6 amount necessary to support the fund, including payment of
7 claims as provided in section 204.4. However, an allocation
8 of moneys from the general fund of the state shall be made
9 only if the amount of moneys in the fund, which are not
10 obligated or encumbered, and not counting the department's
11 estimate of the cost to the fund for pending or unsettled
12 claims and any amount required to be credited to the general
13 fund of the state under this subsection, is less than one
14 million dollars.

15 c. The department shall credit an amount to the general
16 fund of the state which is equal to an amount allocated to the
17 fund by the executive council under paragraph "b". The
18 department shall credit the moneys to the general fund of the
19 state, if the moneys in the fund which are not obligated or
20 encumbered, and not counting the department's estimate of the
21 cost to the fund for pending or unsettled claims and any
22 amount required to be transferred to the general fund under
23 this paragraph, are in excess of two million five hundred
24 thousand dollars. The department is not required to credit
25 the total amount to the general fund of the state during any
26 one fiscal year.

27 Sec. 4. Section 204.3, Code 1997, is amended to read as
28 follows:

29 204.3 FEES.

30 An indemnity fee shall be assessed upon permittees which
31 shall be paid to and collected by the department of natural
32 resources, prior to issuing a permit for the construction of a
33 confinement feeding operation as provided in section 455B-173
34 455B.200A. The amount of the fees shall be based on the
35 following:

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

4 a. For all animals other than poultry, the amount of the
5 fee shall be ~~five~~ ten cents per animal unit of capacity for
6 confinement feeding operations.

7 b. For poultry, the amount of the fee shall be ~~two~~ four
8 cents per animal unit of capacity for confinement feeding
9 operations.

10 2. If the confinement feeding operation has an animal
11 weight capacity of six hundred twenty-five thousand or more
12 pounds but less than one million two hundred fifty thousand
13 pounds, the following shall apply:

14 a. For all animals other than poultry, the amount of the
15 fee shall be ~~seven-and-one-half~~ fifteen cents per animal unit
16 of capacity for confinement feeding operations.

17 b. For poultry, the amount of the fee shall be ~~three~~ six
18 cents per animal unit of capacity for confinement feeding
19 operations.

20 3. If the confinement feeding operation has an animal
21 weight capacity of one million two hundred fifty thousand or
22 more pounds, the following shall apply:

23 a. For all animals other than poultry, the amount of the
24 fee shall be ~~ten~~ twenty cents per animal unit of capacity for
25 confinement feeding operations.

26 b. For poultry, the amount of the fee shall be ~~four~~ eight
27 cents per animal unit of capacity for confinement feeding
28 operations.

29 The department ~~of-natural-resources~~ shall deposit moneys
30 collected from the fees into the fund according to procedures
31 adopted by the department ~~of-agriculture-and-land-stewardship~~.

32 Sec. 5. NEW SECTION. 204.3A MANURE MANAGEMENT PLAN --
33 INDEMNITY FEE REQUIRED.

34 An indemnity fee shall be assessed upon persons required to
35 submit a manure management plan as provided in chapter 455B,

1 but not required to obtain a construction permit pursuant to
2 section 455B.200A. The amount of the fees shall be ten cents
3 per animal unit of capacity for confinement feeding
4 operations.

5 Sec. 6. Section 204.4, subsection 1, Code 1997, is amended
6 to read as follows:

7 1. A county that has acquired real estate containing a
8 manure storage structure following nonpayment of taxes
9 pursuant to section 446.19, may make a claim against the fund
10 to pay ~~the costs of cleaning up the site of the confinement~~
11 ~~feeding operation, including the costs of removing and~~
12 ~~disposing of the manure from a manure storage structure~~
13 cleanup costs incurred by the county as provided in section
14 204.5. Each claim shall include a bid by a qualified person,
15 other than a governmental entity, to remove and dispose of the
16 manure for a fixed amount specified in the bid.

17 Sec. 7. NEW SECTION. 204.4A USE OF FUND FOR EMERGENCY
18 CLEANUP.

19 If the department provides cleanup of a condition caused by
20 a confinement feeding operation as provided in section 204.5,
21 the department may use moneys in the fund for purposes of
22 supporting the cleanup. The department shall reimburse the
23 fund from moneys recovered by the department as reimbursement
24 for the cleanup as provided in section 204.5.

25 Sec. 8. Section 204.5, Code 1997, is amended to read as
26 follows:

27 204.5 SITE CLEANUP.

28 1. a. A county which that has acquired real estate
29 containing on which there is located a confinement feeding
30 operation ~~structure, as defined in section 455B:161,~~ following
31 the nonpayment of taxes pursuant to section 446.19, may ~~clean~~
32 up-the-site provide for cleanup, including removing and
33 disposing of manure at any time, remediating contamination
34 which originates from the confinement feeding operation, or
35 demolishing and disposing of structures relating to the

1 confinement feeding operation. The county may seek
2 reimbursement including by bringing an action for the costs of
3 ~~the removal-and-disposal~~ cleanup from the person abandoning
4 the real estate.

5 b. If the confinement feeding operation has caused a
6 clear, present, and impending danger to the public health or
7 the environment, the department may clean up the confinement
8 feeding operation and remediate contamination which originates
9 from the confinement feeding operation, pursuant to sections
10 455B.381 through 455B.399. The department may seek
11 reimbursement including by bringing an action for the costs of
12 the cleanup from a person liable for causing the condition.

13 2. A person cleaning up a site confinement feeding
14 operation located on real estate acquired by a county may
15 demolish or dispose of any building or equipment used-in of
16 the confinement feeding operation located on the land
17 according to rules adopted by the department ~~of-natural~~
18 ~~resources~~ pursuant to chapter 17A, which apply to the disposal
19 of farm buildings or equipment by an individual or business
20 organization.

21 Sec. 9. NEW SECTION. 331.304A LIMITATIONS ON COUNTY
22 LEGISLATION.

23 1. As used in this section:

24 a. "Agricultural operation" means a condition or activity
25 which occurs on land used for the production of agricultural
26 commodities, including but not limited to the raising,
27 harvesting, handling, drying, or storage of crops for feed,
28 food, seed, or fiber; the care or feeding of livestock; the
29 handling or transportation of crops or livestock; the storage,
30 treatment, or disposal of livestock manure; and the
31 application of fertilizers, soil conditioners, pesticides, and
32 herbicides on crops.

33 b. "County legislation" means any ordinance, motion,
34 resolution, or amendment adopted by a county pursuant to
35 section 331.302.

1 2. A county shall not adopt or enforce county legislation
2 regulating an agricultural operation unless expressly
3 authorized by state law. County legislation adopted in
4 violation of this section is void and unenforceable and any
5 enforcement activity conducted in violation of this section is
6 void.

7 Sec. 10. Section 455B.104, Code 1997, is amended to read
8 as follows:

9 455B.104 DEPARTMENTAL DUTIES -- PERMITS -- REQUIREMENTS
10 AND ASSISTANCE.

11 1. The department shall either approve or deny a permit to
12 a person applying for a permit under this chapter, within six
13 months from the date that the department receives a completed
14 application for the permit. An application which is not
15 approved or denied within the six-month period shall be
16 approved by default. The department shall issue a permit to
17 the applicant within ten days following the date of default
18 approval. However, this ~~section~~ subsection shall not apply to
19 applications for permits which are issued under division II,
20 or division IV, parts 2 through 7.

21 2. The department shall not issue a permit to a person
22 under this chapter for five years after the date of the last
23 violation committed by the person or by a confinement feeding
24 operation in which the person holds a controlling interest
25 during which the person or operation was classified as a
26 habitual violator under section 455B.191.

27 3. The department shall assist persons applying for
28 assistance to establish and operate renewable fuel production
29 facilities pursuant to the value-added agricultural products
30 and processes financial assistance program established in
31 section 15E.111.

32 Sec. 11. Section 455B.161, Code 1997, is amended by adding
33 the following new subsections:

34 NEW SUBSECTION. 0A. "Actively engaged in farming" means
35 any of the following:

1 a. To be personally involved in the production of crops or
2 animals on a regular, continuous, and substantial basis.
3 However, a lessor, whether under a cash or a crop share lease,
4 is not actively engaged in farming on the area of the tract
5 covered by the lease. This provision applies to both written
6 and oral leases.

7 b. To regularly and frequently make or take an important
8 part in making management decisions substantially contributing
9 to or affecting the success of a farm operation.

10 NEW SUBSECTION. 0B. "Aerobic structure" means an animal
11 feeding operation structure other than an egg washwater
12 storage structure which employs bacterial action which is
13 maintained by the utilization of air or oxygen and which
14 includes aeration equipment.

15 NEW SUBSECTION. 13A. "Family-owned operation" means an
16 animal feeding operation in which all of the following apply:

17 a. The owner is any of the following:

18 (1) An individual.

19 (2) An interest holder in any of the following:

20 (a) A general partnership organized under chapter 486, if
21 all the partners are individuals related or formally related
22 to each other.

23 (b) A family farm corporation, family farm limited
24 liability company, family farm limited partnership, or family
25 trust, as defined in section 9H.1.

26 b. At least one individual who is an owner or an interest
27 holder must be actively engaged in farming on the land where
28 the animal feeding operation is located.

29 As used in this subsection, an interest holder means an
30 individual holding an interest as a partner in a general
31 partnership, a shareholder of a family farm corporation, a
32 member of a family farm limited liability company, a general
33 or limited partner in a family farm limited partnership, or a
34 beneficiary of a family trust.

35 NEW SUBSECTION. 21. "Unformed manure storage structure"

1 means a covered or uncovered animal feeding operation
2 structure, other than a formed manure storage structure, which
3 is an anaerobic lagoon, aerobic structure, or earthen manure
4 storage basin.

5 Sec. 12. NEW SECTION. 455B.161A CONFINEMENT FEEDING
6 OPERATIONS -- CALCULATING ADJACENCY.

7 For purposes of determining adjacency under this part all
8 of the following shall apply:

9 1. Except as provided in subsection 2, two or more
10 confinement feeding operations are adjacent if either of the
11 following applies:

12 a. The confinement feeding operations are separated at
13 their closest points by a distance of one thousand two hundred
14 fifty feet or less.

15 b. All of the following apply:

16 (1) The confinement feeding operations are separated at
17 their closest points by two thousand five hundred feet or
18 less.

19 (2) The confinement feeding operations have a combined
20 animal weight capacity of six hundred twenty-five thousand
21 pounds or more for animals other than bovine or one million
22 six hundred thousand pounds or more for bovine.

23 2. Two or more confinement feeding operations which are
24 owned by one or more family-owned operations are adjacent only
25 if all of the following apply:

26 a. One of the confinement feeding operations was
27 constructed prior to May 31, 1995.

28 b. The confinement feeding operations are separated at
29 their closest points by a distance of seven hundred fifty
30 feet.

31 c. The confinement feeding operations have a combined
32 animal weight capacity of one million two hundred fifty
33 thousand pounds or more.

34 Sec. 13. Section 455B.162, unnumbered paragraph 1, Code
35 1997, is amended to read as follows:

1 The following shall apply to animal feeding operation
 2 structures:

3 1. Except as provided in subsection 2, and sections
 4 455B.163 and 455B.165, this subsection applies to animal
 5 feeding operation structures constructed on or after May 31,
 6 1995, but prior to the effective date of this Act; to the
 7 expansion of structures constructed on or after May 31, 1995;
 8 ~~or, except as provided in section 455B.163, but prior to the~~
 9 effective date of this Act; and to the expansion of structures
 10 constructed prior to May 31, 1995.

11 Sec. 14. Section 455B.162, subsection 1, Code 1997, is
 12 amended to read as follows:

13 ~~1. Except as provided in subsection 2, the following table~~
 14 ~~shall apply to animal feeding operation structures:~~

15 a. The following table represents the minimum separation
 16 distance in feet required between an animal feeding operation
 17 structure and a residence not owned by the owner of the animal
 18 feeding operation, or a commercial enterprise, bona fide
 19 religious institution, or an educational institution:

20		Minimum	
21		separation	
22		distance in	
23		feet for	
24		operations	
25	Minimum	having an	
26	separation	animal	Minimum
27	distance in	weight	separation
28	feet for	capacity of	distance in
29	operations	625,000 or	feet for
30	having an	more pounds	operations
31	animal	but less than	having an
32	weight	1,250,000	animal
33	capacity of	pounds for	weight
34	less than	animals other	capacity of
35	625,000	than bovine,	1,250,000 or

1	pounds for	or 1,600,000	more pounds
2	animals other	or more	for animals
3	than bovine,	pounds but	other than
4	or less than	less than	bovine, or
5	1,600,000	4,000,000	4,000,000 or
6	pounds for	pounds for	more pounds
7	Type of structure	bovine	for bovine

8	Anaerobic		
9	lagoon	1,250	1,875
10	Uncovered earthen		
11	manure storage		
12	basin	1,250	1,875
13	Uncovered formed		
14	manure storage		
15	structure	1,000	1,500
16	Covered earthen		
17	manure storage		
18	basin	750	1,000
19	Covered formed		
20	manure storage		
21	structure	750	1,000
22	Confinement		
23	building	750	1,000
24	Egg washwater		
25	storage structure	750	1,000

26 1A. Except as provided in subsection 2, and sections

27 455B.163 and 455B.165, this subsection applies to animal

28 feeding operation structures constructed on or after the

29 effective date of this Act and to the expansion of structures

30 constructed on or after the effective date of this Act. The

31 following table represents the minimum separation distance in

32 feet required between an animal feeding operation structure

33 and a residence not owned by the owner of the animal feeding

34 operation, or a commercial enterprise, bona fide religious

35 institution, or an educational institution:

	<u>Minimum</u>	<u>Minimum</u>	<u>Minimum</u>
	<u>separation</u>	<u>animal</u>	<u>separation</u>
	<u>distance in</u>	<u>weight</u>	<u>distance in</u>
	<u>feet for</u>	<u>capacity of</u>	<u>feet for</u>
	<u>operations</u>	<u>625,000 or</u>	<u>operations</u>
	<u>having an</u>	<u>more pounds</u>	<u>having an</u>
	<u>animal</u>	<u>but less than</u>	<u>animal</u>
	<u>weight</u>	<u>1,250,000</u>	<u>weight</u>
	<u>capacity of</u>	<u>pounds for</u>	<u>capacity of</u>
	<u>less than</u>	<u>animals other</u>	<u>625,000</u>
	<u>625,000</u>	<u>than bovine,</u>	<u>1,250,000 or</u>
	<u>pounds for</u>	<u>or 1,600,000</u>	<u>more pounds</u>
	<u>animals other</u>	<u>or more</u>	<u>for animals</u>
	<u>than bovine,</u>	<u>pounds but</u>	<u>other than</u>
	<u>or less than</u>	<u>less than</u>	<u>bovine, or</u>
	<u>1,600,000</u>	<u>4,000,000</u>	<u>4,000,000 or</u>
	<u>pounds for</u>	<u>pounds for</u>	<u>more pounds</u>
	<u>bovine</u>	<u>bovine</u>	<u>for bovine</u>
23	<u>Type of structure</u>		
24	<u>Anaerobic</u>		
25	<u>lagoon</u>	<u>1,250</u>	<u>1,875</u>
26	<u>Uncovered earthen</u>		<u>2,500</u>
27	<u>manure storage</u>		
28	<u>basin</u>	<u>1,250</u>	<u>1,875</u>
29	<u>Uncovered formed</u>		
30	<u>manure storage</u>		
31	<u>structure</u>	<u>1,250</u>	<u>1,500</u>
32	<u>Covered earthen</u>		
33	<u>manure storage</u>		
34	<u>basin</u>	<u>1,250</u>	<u>1,500</u>
35	<u>Covered formed</u>		<u>1,875</u>

1	<u>manure storage</u>			
2	<u>structure</u>	1,250	1,500	1,875
3	<u>Confinement</u>			
4	<u>building</u>	1,250	1,500	1,875
5	<u>Egg washwater</u>			
6	<u>storage</u>			
7	<u>structure</u>	1,250	1,500	1,875
8	b. 1B. Except as provided in subsection 2, and sections			
9	455B.163 and 455B.165, this subsection applies to animal			
10	<u>feeding operation structures constructed on or after May 31,</u>			
11	<u>1995; to the expansion of structures constructed on or after</u>			
12	<u>May 31, 1995; and to the expansion of structures constructed</u>			
13	<u>prior to May 31, 1995.</u> The following table represents the			
14	minimum separation distance in feet required between animal			
15	feeding operation structures and a public use area or a			
16	residence not owned by the owner of the animal feeding			
17	operation, a commercial enterprise, a bona fide religious			
18	institution, or an educational institution located within the			
19	corporate limits of a city:			
20			Minimum	
21			separation	
22			distance in	
23			feet for	
24			operations	
25	Minimum		having an	
26	separation		animal	Minimum
27	distance in		weight	separation
28	feet for		capacity of	distance in
29	operations		625,000 or	feet for
30	having an		more pounds	operations
31	animal		but less than	having an
32	weight		1,250,000	animal
33	capacity of		pounds for	weight
34	less than		animals other	capacity of
35	625,000		than bovine,	1,250,000 or

1	pounds for	or 1,600,000	more pounds
2	animals other	or more	for animals
3	than bovine,	pounds but	other than
4	or less than	less than	bovine, or
5	1,600,000	4,000,000	4,000,000 or
6	pounds for	pounds for	more pounds
7	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>
			<u>for bovine</u>

8 Animal feeding
 9 operation
 10 structure 1,250 1,875 2,500

11 1C. On and after the effective date of this Act an animal
 12 feeding operation structure shall not be constructed or
 13 expanded within one hundred fifty feet from a road, street,
 14 bridge, or thoroughfare which is constructed or maintained by
 15 the state or a political subdivision. However, a county where
 16 the road is located may reduce the number of feet required
 17 pursuant to this subsection by county legislation as provided
 18 in section 331.302.

19 Sec. 15. Section 455B.162, subsection 2, paragraph a, Code
 20 1997, is amended to read as follows:

21 a. As used in this subsection, a "qualified confinement
 22 feeding operation" means a confinement feeding operation
 23 having an animal weight capacity of two million or more pounds
 24 for animals other than animals kept in a swine farrow-to-
 25 finish operation or bovine kept in a confinement feeding
 26 operation; a swine farrow-to-finish operation having an animal
 27 weight capacity of two million five hundred thousand or more
 28 pounds; or a confinement feeding operation having an animal
 29 weight capacity of ~~six~~ eight million or more pounds for
 30 bovine.

31 Sec. 16. Section 455B.163, Code 1997, is amended to read
 32 as follows:

33 455B.163 SEPARATION DISTANCE REQUIREMENTS FOR ANIMAL
 34 FEEDING OPERATIONS -- EXPANSION OF PRIOR CONSTRUCTED
 35 STRUCTURES CONSTRUCTED-PRIOR-TO-MAY-31-1995.

1 An animal feeding operation constructed prior to the date
2 that a distance requirement became effective under section
3 455B.162 and which does not comply with the section's distance
4 requirements-of-section-455B.162-on-May-31, 1995, requirements
5 may continue to operate regardless of those-separation
6 distances the distance requirements. The animal feeding
7 operation may be expanded on-or-after-May-31, 1995, regardless
8 of-those-separation-distances, if either any of the following
9 applies:

10 1. a. The An animal feeding operation structure as
11 constructed or expanded prior to May 31, 1995, complies with
12 the distance requirements of applying to that structure as
13 provided in section 455B.162.

14 b. An animal feeding operation structure as constructed or
15 expanded on or after May 31, 1995, but prior to July 1, 1998,
16 complies with the distance requirements applying to that
17 structure as provided in section 455B.162.

18 2. All of the following apply to the expansion of the
19 animal feeding operation:

20 a. No If an animal feeding operation was constructed prior
21 to May 1, 1995, no portion of the animal feeding operation
22 after expansion is closer than before expansion to a location
23 or object for which the applicable separation distance is
24 required under section 455B.162. If an animal feeding
25 operation was constructed on or after May 31, 1995, but prior
26 to July 1, 1998, no portion of the animal feeding operation
27 after expansion is closer than before the expansion to a
28 location or object for which the applicable separation
29 distance is required under section 455B.162.

30 b. The animal weight capacity of the animal feeding
31 operation as expanded is not more than the lesser of the
32 following:

33 (1) Double its capacity on May 31, 1995, for an animal
34 feeding operation constructed prior to May 31, 1995, or on the
35 effective date of this Act, for an animal feeding operation

1 constructed after May 31, 1995, and before the effective date
2 of this Act.

3 (2) Either of the following:

4 (a) Six hundred twenty-five thousand pounds animal weight
5 capacity for animals other than bovine.

6 (b) One million six hundred thousand pounds animal weight
7 capacity for bovine.

8 3. All of the following apply to the expansion of a
9 family-owned operation constructed prior to May 31, 1995:

10 a. No portion of the family-owned operation after
11 expansion is closer than before expansion to a location or
12 object for which separation is required for the family-owned
13 operation under section 455B.162.

14 b. The animal weight capacity of the family-owned
15 operation as expanded is not more than six hundred twenty-five
16 thousand pounds for all animals.

17 Sec. 17. Section 455B.164, Code 1997, is amended to read
18 as follows:

19 455B.164 DISTANCE MEASUREMENTS.

20 All distances between locations or objects provided in this
21 part shall be measured from their closest points, as provided
22 by rules adopted by the department. However, a distance
23 between a road, street, or thoroughfare and an animal feeding
24 operation structure shall be measured from the portion of the
25 right-of-way which is closest to the animal feeding operation
26 structure.

27 Sec. 18. Section 455B.165, subsection 5, Code 1997, is
28 amended to read as follows:

29 5. An animal feeding operation structure which is ~~located~~
30 constructed or expanded within any distance from a residence,
31 educational institution, commercial enterprise, bona fide
32 religious institution, city, or public use area, if the
33 residence, educational institution, commercial enterprise, or
34 bona fide religious institution was constructed or expanded,
35 or the boundaries of the city or public use area were

1 expanded, after the date that the animal feeding operation was
2 established. The date the animal feeding operation was
3 established is the date on which the animal feeding operation
4 commenced operating. A change in ownership or expansion of
5 the animal feeding operation shall not change the established
6 date of operation.

7 Sec. 19. Section 455B.171, Code Supplement 1997, is
8 amended by adding the following new subsections:

9 NEW SUBSECTION. 0A. "Actively engaged in farming" means
10 any of the following:

11 a. To be personally involved in the production of crops or
12 animals on a regular, continuous, and substantial basis.
13 However, a lessor, whether under a cash or a crop share lease,
14 is not actively engaged in farming on the area of the tract
15 covered by the lease. This provision applies to both written
16 and oral leases.

17 b. To regularly and frequently make or take an important
18 part in making management decisions substantially contributing
19 to or affecting the success of a farm operation.

20 NEW SUBSECTION. 0B. "Aerobic structure" means the same as
21 defined in section 455B.161.

22 NEW SUBSECTION. 1A. "Anaerobic lagoon" means the same as
23 defined in section 455B.161.

24 NEW SUBSECTION. 2A. "Animal feeding operation structure"
25 means the same as defined in section 455B.161.

26 NEW SUBSECTION. 3A. "Commercial manure applicator" means
27 a person who engages in the business of and charges a fee for
28 applying manure on the land of another person.

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

31 NEW SUBSECTION. 8A. "Family-owned operation" means an
32 animal feeding operation in which all of the following apply:

33 a. The owner is any of the following:

34 (1) An individual.

35 (2) An interest holder in any of the following:

1 (a) A general partnership organized under chapter 486, if
2 all the partners are individuals related or formally related
3 to each other.

4 (b) A family farm corporation, family farm limited
5 liability company, family farm limited partnership, or family
6 trust, as defined in section 9H.1.

7 b. At least one individual who is an owner or an interest
8 holder must be actively engaged in farming on the land where
9 the animal feeding operation is located.

10 As used in this subsection, an interest holder means an
11 individual holding an interest as a partner in a general
12 partnership, a shareholder of a family farm corporation, a
13 member of a family farm limited liability company, a general
14 or limited partner in a family farm limited partnership, or a
15 beneficiary of a family trust.

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

20 NEW SUBSECTION. 23A. "Restricted spray irrigation
21 equipment" means spray irrigation equipment which disperses
22 manure through an orifice at a rate of eighty pounds per
23 square inch or more.

24 NEW SUBSECTION. 31A. "Spray irrigation equipment" means
25 mechanical equipment used for the aerial application of
26 manure, if the equipment receives manure from a manure storage
27 structure during application via a pipe or hose connected to
28 the structure, and includes a type of equipment customarily
29 used for the aerial application of water to aid the growing of
30 general farm crops.

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

33 Sec. 20. Section 455B.173, subsection 13, Code 1997, is
34 amended by striking the subsection and inserting in lieu
35 thereof the following:

1 13. Adopt, modify, or repeal rules relating to the
2 construction or operation of animal feeding operations, as
3 provided in sections relating to animal feeding operations
4 provided in this part.

5 Sec. 21. Section 455B.191, subsection 7, unnumbered
6 paragraph 2, Code 1997, is amended to read as follows:

7 This subsection shall not apply unless the department of
8 natural resources has previously notified the person of the
9 person's classification as a habitual violator ~~as provided in~~
10 ~~section-455B-173.~~ The department shall notify persons
11 classified as habitual violators of their classification,
12 additional restrictions imposed upon the persons pursuant to
13 the classification, and special civil penalties that may be
14 imposed upon the persons. The notice shall be sent to the
15 persons by certified mail.

16 Sec. 22. NEW SECTION. 455B.200 GENERAL.

17 The commission shall establish by rule adopted pursuant to
18 chapter 17A, requirements relating to the construction,
19 including expansion, or operation of animal feeding
20 operations, including related animal feeding operation
21 structures. The requirements shall include but are not
22 limited to minimum manure control, the issuance of permits,
23 and departmental investigations, inspections, and testing.

24 Sec. 23. NEW SECTION. 455B.200A PERMIT REQUIREMENTS.

25 1. The department shall issue permits for the construction
26 of animal feeding operation structures, including structures
27 which are part of confinement feeding operations, as provided
28 by rules adopted pursuant to section 455B.200. The department
29 shall issue a permit to an animal feeding operation if an
30 application is submitted according to procedures required by
31 the department and the application meets standards established
32 by the department, regardless of whether the animal feeding
33 operation is required to obtain such a permit. The department
34 shall not require that a person obtain a permit for the
35 construction of an animal feeding operation structure if the

1 structure is part of a small animal feeding operation. For
2 purposes of this section, an animal feeding operation
3 structure includes a manure storage structure.

4 2. The department shall not issue a permit for the
5 construction of an animal feeding operation structure which is
6 part of a confinement feeding operation unless the person
7 submits all of the following:

8 a. An indemnity fee as provided in section 204.3 which the
9 department shall deposit into the manure storage indemnity
10 fund created in section 204.2.

11 b. A manure management plan as provided in section
12 455B.203.

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

22 4. The department shall cooperate with the natural
23 resources conservation service of the United States department
24 of agriculture. To the extent allowed by the service, the
25 department shall consult with the service regarding the
26 proposed site of an animal feeding operation structure which
27 is part of a confinement feeding operation and may require
28 that an applicant submit an evaluation of the proposed site
29 prepared by the service.

30 The department may adopt a recommendation by the service
31 that an unformed manure storage structure be constructed with
32 a secondary containment barrier, unless the department
33 determines that the recommendation is unsupportable by any
34 scientific or engineering evidence. The department shall
35 require that a secondary containment barrier be constructed

1 with materials and according to specifications required by the
2 department.

3 5. An applicant for a construction permit shall not begin
4 construction at the location of a site planned for the
5 construction of an animal feeding operation structure until
6 the person has been granted a permit for the construction of
7 the structure by the department.

8 6. The department shall make a determination regarding the
9 approval or denial of a permit within sixty days from the date
10 that the department receives a completed application for a
11 permit. However, the sixty-day requirement shall not apply to
12 an application if the applicant is not required to obtain a
13 permit in order to construct an animal feeding operation
14 structure or to operate an animal feeding operation.

15 7. The department shall deliver a copy or require the
16 applicant to deliver a copy of the application for a
17 construction permit and the applicant's manure management plan
18 to the county board of supervisors in the county where the
19 confinement feeding operation or related animal feeding
20 operation structure subject to the permit is to be located.

21 a. The department shall not approve the application until
22 thirty days following delivery of the application to the
23 county board of supervisors.

24 b. The county board of supervisors may hold a public
25 hearing to receive public comments regarding the application.
26 The county board of supervisors may submit comments by the
27 board and the public to the department as provided in this
28 section. The comments may include, but are not limited to,
29 any of the following:

30 (1) The existence of a structure or area not included in
31 the permit application which benefits from a separation
32 distance requirement as provided in section 455B.162 or
33 455B.204.

34 (2) The suitability of soils and the hydrology of the site
35 where construction is proposed.

1 (3) The availability of land for the application of manure
2 originating from the confinement feeding operation.

3 (4) The impact of construction upon established drainage
4 tile lines which cross the property boundaries of the site
5 where the construction is proposed.

6 c. The department shall consider and respond to comments
7 submitted by the county board of supervisors regarding
8 compliance by the applicant with the legal requirements for
9 approving the construction permit as provided in this chapter,
10 including rules adopted by the commission pursuant to this
11 chapter, if the comments are delivered to the department
12 within thirty days after receipt of the application by the
13 county board of supervisors.

14 d. The department shall notify the county board of
15 supervisors three days prior to conducting an inspection of
16 the site where the construction is proposed.

17 e. The department shall notify the county board of
18 supervisors of the department's decision to approve or
19 disapprove an application for a construction permit within
20 three days following the department's decision. The county
21 board of supervisors may contest the decision as provided by
22 rules adopted by the commission in conformance with chapter
23 17A. In contesting the decision, the county shall submit a
24 statement to the department, providing all reasons why the
25 application should be approved or disapproved according to
26 legal requirements provided in this chapter. The statement
27 shall include an evaluation of the construction permit
28 application by the field office of the natural resources and
29 conservation service of the United States department of
30 agriculture serving the county, to the extent that the natural
31 resources and conservation service agrees to assist the county
32 in preparing an evaluation.

33 (1) The county board of supervisors must contest the
34 decision within fourteen days following receipt of the
35 department's notice to approve or disapprove the application.

1 (2) The contested case shall be heard by an administrative
2 law judge who shall develop an expertise regarding legal
3 requirements necessary in order to approve an application and
4 issue a permit for the construction of an animal feeding
5 operation structure. The proposed decision of the
6 administrative law judge may be appealed to the commission for
7 final agency action.

8 8. Prior to issuing a permit to a person for the
9 construction of an animal feeding operation, the department
10 may require the installation and operation of a hydrological
11 monitoring system for an exclusively earthen manure storage
12 structure according to rules which shall be adopted by the
13 department.

14 9. a. The department shall not issue a permit to a person
15 under this section if an enforcement action by the department,
16 relating to a violation of this chapter concerning a
17 confinement feeding operation in which the person has an
18 interest, is pending.

19 b. The department shall not issue a permit to a person
20 under this section for five years after the date of the last
21 violation committed by a person or confinement feeding
22 operation in which the person holds a controlling interest
23 during which the person or operation was classified as a
24 habitual violator under section 455B.191.

25 Sec. 24. NEW SECTION. 455B.200B CONFINEMENT FEEDING
26 OPERATIONS -- CALCULATING ADJACENCY.

27 For purposes of this part, two or more confinement feeding
28 operations are adjacent if any of the following apply:

29 1. The confinement feeding operations are separated at
30 their closest points by a distance of one thousand two hundred
31 fifty feet or less.

32 2. All of the following apply:

33 a. The confinement feeding operations are separated at
34 their closest points by two thousand five hundred feet or
35 less.

1 b. The confinement feeding operations have a combined
2 animal weight capacity of six hundred twenty-five thousand
3 pounds or more for animals other than bovine or one million
4 six hundred thousand pounds or more for bovine.

5 Sec. 25. Section 455B.201, subsection 4, Code 1997, is
6 amended by striking the subsection.

7 Sec. 26. Section 455B.202, Code Supplement 1997, is
8 amended to read as follows:

9 455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING ACTIONS
10 AND HABITUAL VIOLATORS.

11 1. As used in this section, "construction" unless the
12 context otherwise requires:

13 a. "Chronic violator" means the same as defined in section
14 657.11.

15 b. "Construction" means the same as defined by rules
16 adopted by the department applicable to the construction of
17 animal feeding operation structures as provided in this part.

18 c. "Habitual violator" means a person classified as a
19 habitual violator pursuant to section 455B.191.

20 d. "Operation of law" means a transfer by inheritance,
21 devise or bequest, court order, dissolution decree, order in
22 bankruptcy, insolvency, replevin, foreclosure, execution sale,
23 the execution of a judgment, the foreclosure of a real estate
24 mortgage, the forfeiture of a real estate contract, or a
25 transfer resulting from a decree for specific performance.

26 e. "Suspect site" means a confinement feeding operation or
27 land where a confinement feeding operation could be
28 constructed, if the site is subject to a suspect transaction.

29 f. "Suspect transaction" means a transaction in which a
30 habitual violator or chronic violator does any of the
31 following:

32 (1) Transfers a controlling interest in a suspect site to
33 any of the following:

34 (a) An employee of the habitual violator or chronic
35 violator or business in which the person holds a controlling

1 interest.

2 (b) A person who holds an interest in a business,
3 including a confinement feeding operation, in which the
4 habitual violator or chronic violator holds a controlling
5 interest.

6 (c) A person related to the habitual violator or chronic
7 violator as spouse, parent, grandparent, lineal ascendant of a
8 grandparent or spouse and any other lineal descendant of the
9 grandparent or spouse, or a person acting in a fiduciary
10 capacity for a related person. This paragraph does not apply
11 to a transaction completed by an operation of law.

12 (2) Provides financing for the construction or operation
13 of a confinement feeding operation to any person, by providing
14 a contribution or loan to the person, or providing cash or
15 other tangible collateral for a contribution or loan made by a
16 third person.

17 g. "Transaction" includes a transfer in any manner or by
18 any means, including any of the following:

19 (1) Delivery and acceptance between two parties, including
20 by contract or agreement with or without consideration,
21 including by sale, exchange, barter, or gift.

22 (2) An operation of law.

23 2. a. A person shall not construct or expand an animal
24 feeding operation structure which is part of a confinement
25 feeding operation, if the person is a any of the following:

26 (1) A party to a pending action for a violation of this
27 chapter concerning a confinement feeding operation in which
28 the person has a controlling interest and the action is
29 commenced in district court by the attorney general.

30 (2) A habitual violator or a chronic violator.

31 b. A person shall not construct or expand an animal
32 feeding operation structure which is part of a confinement
33 feeding operation for five years after the date of the last
34 violation committed by a person or confinement feeding
35 operation in which the person holds a controlling interest

1 during which the person or operation was classified as a
2 habitual violator ~~under section 455B-191.~~

3 ~~3.~~ c. This ~~section~~ subsection shall not prohibit a person
4 from completing the construction or expansion of an animal
5 feeding operation structure, if any of the following apply:

6 a. (1) The person has an unexpired permit for the
7 construction or expansion of the animal feeding operation
8 structure.

9 b. (2) The person is not required to obtain a permit for
10 the construction or expansion of the animal feeding operation
11 structure.

12 d. For purposes of this subsection, "construct" or
13 "expand" includes financing and contracting to build an animal
14 feeding operations structure regardless of whether the person
15 subsequently leases, owns, or operates the animal feeding
16 operation structure.

17 3. A suspect transaction shall be presumed to be made in
18 order to avoid conditions and enhanced penalties imposed upon
19 a habitual violator or chronic violator pursuant to this
20 chapter. A person receiving control of a suspect site
21 pursuant to a suspect transaction shall be deemed to be an
22 agent of the habitual violator or chronic violator, unless the
23 habitual violator or chronic violator and the person receiving
24 the controlling interest in the a suspect site because of the
25 suspect transaction, both prove by clear and convincing
26 evidence all of the following:

27 a. That the suspect transaction was for a legitimate
28 business purpose made by parties exercising independent and
29 reasonable judgment.

30 b. That the habitual violator or chronic violator does not
31 exercise a controlling influence over the business affairs of
32 the confinement feeding operation.

33 If the person receiving control of a suspect site is deemed
34 to be an agent of a habitual violator or chronic violator, the
35 person shall not construct or expand an animal feeding

1 operation structure which is part of a confinement feeding
2 operation, for as long as the habitual violator or chronic
3 violator, including the agent, or the confinement feeding
4 operation is classified as a habitual violator or chronic
5 violator.

6 4. The department shall conduct an annual review of each
7 confinement feeding operation which is a habitual violator or
8 chronic violator and each confinement feeding operation in
9 which a habitual violator or chronic violator holds a
10 controlling interest.

11 Sec. 27. Section 455B.203, subsection 1, Code 1997, is
12 amended to read as follows:

13 1. In-order-to-receive The following persons shall submit
14 a manure management plan to the department:

15 a. The owner of a confinement feeding operation, other
16 than a small animal feeding operation, if the animal feeding
17 operation was constructed or expanded after May 31, 1985,
18 regardless of whether the confinement feeding operation was
19 required to be constructed pursuant to a construction permit
20 approved by the department.

21 b. The owner of a confinement feeding operation, if the
22 confinement feeding operation is required to be constructed
23 pursuant to a permit issued by the department pursuant to
24 section 455B.200A.

25 c. A person who owns a confinement feeding operation,
26 other than a small animal feeding operation, in another state
27 if the manure is applied on land located in this state.

28 1A. A person shall not remove manure from a manure storage
29 structure which is part of a confinement feeding operation for
30 which a manure management plan is required under this section,
31 unless the department approves a manure management plan
32 submitted by the owner of the confinement feeding operation as
33 provided by the department. The department may adopt rules
34 allowing a person to remove manure from a manure storage
35 structure until the manure management plan is approved or

1 disapproved by the department according to terms and
2 conditions required by the department. The department shall
3 not issue a permit for the construction of a confinement
4 feeding operation or a related animal feeding operation
5 structure unless the applicant submits a manure management
6 plan together with an application as provided in section
7 ~~455B.173, a person shall submit a manure management plan to~~
8 ~~the department together with the application for a~~
9 construction permit 455B.200A.

10 Sec. 28. Section 455B.203, subsection 2, unnumbered
11 paragraph 1, Code 1997, is amended to read as follows:

12 A manure management plan shall conform with the
13 requirements of section 455B.203B. The plan shall include all
14 of the following:

15 Sec. 29. Section 455B.203, subsection 3, Code 1997, is
16 amended to read as follows:

17 3. a. A person classified as a habitual violator or a
18 confinement feeding operation in which a habitual violator
19 owns a controlling interest, as provided in section 455B.191,
20 shall submit a manure management plan to the department on an
21 annual basis, which must be approved by the department for the
22 following year of operation.

23 b. A person receiving a controlling interest in a
24 confinement feeding operation pursuant to a suspect
25 transaction as provided in section 455B.202 must submit a
26 manure management plan to the department prior to taking
27 control of the confinement feeding operation. The department
28 shall not approve the manure management plan, if any of the
29 following applies:

30 (1) The person taking control of the confinement feeding
31 operation exercised managerial authority over a confinement
32 feeding operation and one of the following applies:

33 (a) The confinement feeding operation is classified as a
34 habitual violator or chronic violator.

35 (b) The person owning a controlling interest in the

1 confinement feeding operation is classified as a habitual
2 violation or chronic violator.

3 (2) The confinement feeding operation is subject to a
4 pending action for a violation of this chapter and the action
5 is commenced in district court by the attorney general.

6 (3) The department finds that the person is unwilling or
7 incapable of instituting changes necessary in order to ensure
8 that manure originating from the confinement feeding operation
9 is managed in a manner consistent with this chapter, including
10 rules adopted by the department. The person shall have the
11 burden of demonstrating by clear and convincing evidence that
12 the person is willing and capable of instituting the necessary
13 changes. The department shall consider the person's
14 experience and past history of controlling confinement feeding
15 operations.

16 Sec. 30. NEW SECTION. 455B.203A MANURE APPLICATORS
17 CERTIFICATION.

18 1. As used in this section, unless the context otherwise
19 requires:

20 a. "Commercial manure applicator" means the same as
21 defined in section 455B.171.

22 b. "Confinement site" means a site where there is located
23 a manure storage structure which is part of a confinement
24 feeding operation, other than a small animal feeding
25 operation.

26 c. "Confinement site manure applicator" means a person who
27 applies manure stored at a confinement site.

28 2. a. A commercial manure applicator shall not apply
29 manure to land, unless the person is certified pursuant this
30 section.

31 b. A confinement site manure applicator shall not apply
32 manure to land, unless the person is certified pursuant to
33 this section.

34 3. A person required to be certified under this section
35 shall choose between a one-year certification for which the

1 person shall pay a thirty dollar fee or a three-year
2 certification for which the person shall pay a seventy-five
3 dollar fee.

4 4. To be initially certified a person must complete an
5 educational program which shall consist of an examination
6 required to be passed by the person. After initial
7 certification, the person must renew the certification by
8 completing the educational program which shall consist of
9 either an examination or continuing instructional courses.
10 The person must pass the examination each third year following
11 initial certification or may elect to attend two hours of
12 continuing instructional courses each year.

13 5. The department shall adopt, by rule, requirements for
14 the certification, including educational program requirements.
15 The department may establish different educational programs
16 designed for commercial manure applicators and confinement
17 site manure applicators. The department shall adopt rules
18 necessary to administer this section, including establishing
19 certification standards, which shall at least include
20 standards for the handling, application, and storage of
21 manure, the potential effects of manure upon surface water and
22 groundwater, and procedures to remediate the potential effects
23 on surface water or groundwater.

24 a. The department shall adopt by rule criteria for
25 allowing a person required to be certified to complete either
26 a written or oral examination.

27 b. The department shall administer the continuing
28 instructional courses, by either teaching the courses or
29 selecting persons to teach the courses, according to criteria
30 as provided by rules adopted by the department. The
31 department shall, to the extent possible, select persons to
32 teach the continuing instructional courses. The department is
33 not required to compensate persons to teach the continuing
34 instructional courses. In selecting persons, the department
35 shall consult with organizations interested in the application

1 of manure, including associations representing manure
2 applicators and associations representing agricultural
3 producers. The Iowa cooperative extension service in
4 agriculture and home economics of Iowa state university of
5 science and technology shall cooperate with the department in
6 administering the continuing instructional courses. The Iowa
7 cooperative extension service may teach continuing
8 instructional courses, train persons selected to teach
9 courses, or distribute informational materials to persons
10 teaching the courses.

11 c. The department, in administering the certification
12 program under this section, may cooperate with the department
13 of agriculture and land stewardship in administering the
14 certification program for pesticide applicators pursuant to
15 section 206.5.

16 6. This section shall not require a person to be certified
17 as a commercial manure applicator because the person is any of
18 the following:

19 a. Actively engaged in farming who trades work with
20 another such person.

21 b. Employed by a person actively engaged in farming not
22 solely as a manure applicator who applies manure as an
23 incidental part of the person's general duties.

24 c. Engaged in applying manure as an incidental part of a
25 custom farming operation.

26 d. Engaged in applying manure as an incidental part of a
27 person's duties as provided by rules adopted by the department
28 providing for an exemption.

29 7. A person is not required to be certified as a
30 commercial manure applicator to apply manure for a period of
31 thirty days from the date of initial employment as a
32 commercial manure applicator if the person applying the manure
33 is acting under the instructions and control of a certified
34 commercial manure applicator who is in sight or hearing
35 distance of the supervised person.

1 Sec. 31. NEW SECTION. 455B.203B APPLICATION
2 REQUIREMENTS.

3 1. The department of natural resources shall adopt rules
4 governing the application of manure originating from an
5 anaerobic lagoon or aerobic structure which is part of a
6 confinement feeding operation. The rules shall establish
7 application rates and practices to minimize groundwater or
8 surface water pollution resulting from application, including
9 pollution caused by runoff or other manure flow resulting from
10 precipitation events. The rules shall establish different
11 application rates and practices based on the water holding
12 capacity of the soil at the time of application.

13 2. A person shall not apply manure by spray irrigation
14 equipment, except as provided by rules adopted by the
15 department pursuant to chapter 17A. However, a person shall
16 not use restricted spray irrigation equipment to apply manure
17 originating from a confinement feeding operation, unless the
18 manure has been diluted as provided by rules adopted by the
19 department, including diluted by use of an anaerobic lagoon.

20 Sec. 32. Section 455B.204, Code 1997, is amended to read
21 as follows:

22 455B.204 DISTANCE REQUIREMENTS.

23 1. ~~An animal feeding operation structure shall be located~~
24 ~~at least five hundred feet away from the surface intake of an~~
25 ~~agricultural drainage well or known sinkhole, and at least two~~
26 ~~hundred feet away from~~ As used in this section, unless the
27 context otherwise requires:

28 a. "Major water source" means a lake, reservoir, river, or
29 stream located within the territorial limits of the state, any
30 marginal river area adjacent to the state, which can support a
31 floating vessel capable of carrying one or more persons during
32 a total of a six-month period in one out of ten years,
33 excluding periods of flooding which has been identified by
34 rules adopted by the commission.

35 b. "Watercourse" means the same as defined in section

1 455B.261.

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

4 a. An animal feeding operation structure shall not be
5 constructed or expanded closer than five hundred feet away
6 from a wellhead or cistern of an agricultural drainage well or
7 known sinkhole.

8 b. An animal feeding operation structure shall not be
9 constructed or expanded if the animal feeding operation
10 structure as constructed or expanded is closer than any of the
11 following:

12 (1) Two hundred feet away from a watercourse other than a
13 major water source. The department may grant a variance to a
14 person constructing a manure storage structure with a
15 secondary containment barrier, if the design and construction
16 of the secondary containment barrier meet requirements
17 established by the department.

18 (2) Five hundred feet away from a major water source.

19 c. A watercourse, other than a major water source, shall
20 not be constructed, expanded, or diverted, if the watercourse
21 as constructed, expanded, or diverted is closer than two
22 hundred feet away from an animal feeding operation structure.

23 d. A major water source shall not be constructed,
24 expanded, or diverted, if the water source as constructed,
25 expanded, or diverted is closer than five hundred feet from an
26 animal feeding operation structure.

27 3. However, no No distance separation is required between
28 a location or object and a farm pond or privately owned lake,
29 as defined in section 462A.2.

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

33 ~~2.--A-person-shall-not-dispose-of-manure-closer-to-a~~
34 ~~designated-area-than-provided-in-section-159-27-~~

35 5. A person shall not construct or expand an unformed

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

3 Sec. 33. NEW SECTION. 455B.205 MANURE STORAGE STRUCTURES
4 -- CONSTRUCTION STANDARDS -- INSPECTIONS.

5 1. The department shall establish by rule engineering
6 standards for the construction of manure storage structures.

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

11 a. The lining of the structure shall be constructed with
12 materials deemed suitable by the department in order to
13 minimize seepage loss through the lining's seal.

14 b. The structure shall be constructed with materials
15 deemed suitable by the department in order to control erosion
16 on the structure's berm, side slopes, and base.

17 c. The structure shall be constructed to minimize seepage
18 into near-surface water sources.

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

1 2. The department shall to every extent practical
2 cooperate with the state office and field offices of the
3 natural resources conservation service of the United States
4 department of agriculture in adopting construction standards
5 for anaerobic lagoons.

6 3. The department shall inspect each unformed manure
7 storage structure at least once each year. An inspection
8 conducted pursuant to this subsection shall be limited to a
9 visual inspection of the site where the unformed manure
10 storage structure is located. The department shall inspect
11 the site at a reasonable time after providing at least twenty-
12 four hours' notice to the person owning or managing the
13 confinement feeding operation. However, in order to inspect
14 the premises the departmental inspector must comply with
15 standard biosecurity requirements customarily required by the
16 operation. The visual inspection shall include, but not be
17 limited to, determining whether any of the following exists:

- 18 a. An adequate freeboard level.
19 b. The seepage of manure from the unformed manure storage
20 structure.
21 c. Erosion.
22 d. Inadequate vegetation cover.
23 e. The presence of an opening allowing manure to drain
24 from the unformed manure storage structure.

25 Sec. 34. NEW SECTION. 455B.206 CONSTRUCTION OF EARTHEN
26 MANURE STORAGE BASIN -- MORATORIUM.

27 1. A person shall not construct or expand an earthen
28 manure storage basin on or after July 1, 1998.

29 2. This section is repealed on July 1, 2001.

30 Sec. 35. Section 558A.2, subsection 3, Code 1997, is
31 amended to read as follows:

32 3. The disclosure statement may be filed with the county
33 recorder with instruments affecting the transfer of real
34 estate. ~~However, the~~ An acknowledgment as provided in section
35 558A.4 must be filed with the county recorder with any form of

1 instrument conveying real estate as provided in chapter 558
2 for which a disclosure statement is required. The failure to
3 file the disclosure statement or acknowledgment shall not
4 cause a defect in the title to the property, except as
5 provided in section 558A.8.

6 Sec. 36. Section 558A.4, subsection 1, Code 1997, is
7 amended to read as follows:

8 1. The disclosure statement shall include information all
9 of the following:

10 a. Information relating to the condition and important
11 characteristics of the property and structures located on the
12 property, including significant defects in the structural
13 integrity of the structure, as provided in rules which shall
14 be adopted by the real estate commission pursuant to section
15 543B.9. ~~The disclosure statement shall also include whether~~

16 b. Whether the property is located in a real estate
17 improvement district and the amount of any special assessment
18 against the property under chapter 358C.

19 c. Any acknowledgment which is required as provided in
20 section 558A.4A.

21 2. The rules may require the disclosure to include
22 information relating to the property's zoning classification;
23 the condition of plumbing, heating, or electrical systems; or
24 the presence of pests.

25 Sec. 37. NEW SECTION. 558A.4A ANIMAL FEEDING OPERATIONS
26 DISCLOSURE ACKNOWLEDGEMENT.

27 The transferee of property which is a type of property
28 subject to a separation distance from an animal feeding
29 operation as required in section 455B.162 must sign an
30 acknowledgment. The acknowledgement shall be in a form
31 prescribed by the commission. The acknowledgment shall state
32 the following:

33

NOTICE

34 THE PROPERTY YOU ARE PURCHASING IS LOCATED WITHIN A
35 SEPARATION DISTANCE AS REQUIRED BY IOWA CODE SECTION 455B.162

1 BETWEEN ANIMAL FEEDING OPERATION STRUCTURES AND RESIDENCES.
2 SEPARATION DISTANCES ALSO APPLY TO COMMERCIAL ENTERPRISES,
3 BONA FIDE RELIGIOUS INSTITUTIONS, EDUCATIONAL INSTITUTIONS,
4 AND PUBLIC USE AREAS.

5 YOU ARE ADVISED TO SEEK THE COUNSEL OF AN ATTORNEY.

6 Sec. 38. Section 558A.8, Code 1997, is amended to read as
7 follows:

8 558A.8 VALIDITY OF A TRANSFER.

9 1. A Except as provided in subsection 2, a transfer under
10 this chapter shall not be invalidated solely because of a
11 failure of a person to comply with a provision of this
12 chapter.

13 2. A transferee may bring a cause of action to invalidate
14 the transfer based on a failure to file an acknowledgment with
15 the county as provided in section 558A.2. The cause of action
16 shall be limited as provided in section 614.29.

17 Sec. 39. NEW SECTION. 614.28A FAILURE TO FILE
18 ACKNOWLEDGMENTS REGARDING ANIMAL FEEDING OPERATIONS.

19 An action based upon a claim to invalidate a transfer of
20 property as provided in section 558A.8 shall not be
21 maintained, either at law or in equity, in any court if the
22 claim is brought after one hundred twenty days after the
23 instrument conveying the property is filed with the county
24 recorder as provided in chapter 558.

25 Sec. 40. 1995 Iowa Acts, chapter 195, section 38, is
26 amended to read as follows:

27 SEC. 38. INDEMNITY FEES -- PRIOR PERMITTEES.

28 1. The indemnity fee imposed upon permittees pursuant to
29 section 204.3, as enacted in this Act, shall be imposed upon
30 all persons who have received a permit by the department of
31 natural resources for the construction of a confinement
32 feeding operation with a manure storage structure as defined
33 in section ~~455B-161~~ 204.1, as enacted in this Act, prior to
34 the effective date of this Act. However, an indemnity fee
35 shall not be imposed upon a-person the following persons:

1 a. A person who has received a construction permit more
2 than ten years prior to the effective date of this Act.

3 b. A person who has received a construction permit within
4 ten years prior to May 31, 1995, if the confinement feeding
5 operation was not constructed under the permit and the permit
6 has expired.

7 2. To every extent possible, the department of natural
8 resources shall notify all persons required to pay the fee.
9 The notice shall be in writing. The department shall
10 establish a date when the fees must be paid to the department,
11 which shall be not less than three months after the delivery
12 of the notice. If a person is delinquent in paying the
13 indemnity fee when due, or if upon examination, an
14 underpayment of the fee is found by the department, the person
15 is subject to a penalty of ten dollars or an amount equal to
16 the amount of deficiency for each day of the delinquency,
17 whichever is less. ~~After the date required for payment, the~~
18 ~~department shall transfer all outstanding claims to the~~
19 ~~department of agriculture and land stewardship.~~

20 3. The department of natural resources shall deliver to
21 receive from the department of agriculture and land
22 stewardship the most current available information regarding
23 the persons required to pay the fee and any delinquency
24 penalty, including the names and addresses of the persons, and
25 the capacity of the confinement feeding operations subject to
26 the permit. The department of agriculture and land
27 stewardship natural resources, in cooperation with the
28 attorney general, may bring a court action in order to collect
29 indemnity fees and delinquency penalties required to be paid
30 under this section.

31 Sec. 41. AMNESTY PERIOD. Notwithstanding 1995 Iowa Acts,
32 chapter 195, section 38, a person who has not paid an
33 indemnity fee as required by that Act, as amended by this Act,
34 shall not be subject to a delinquency penalty as provided in
35 that Act, if the person pays the full amount of the indemnity

1 fee to the department of agriculture and land stewardship on
2 or before December 31, 1998, as required by the department.

3 Sec. 42. EFFECT OF THIS ACT -- REFUND. Nothing in this
4 Act requires the department of natural resources or the
5 department of agriculture and land stewardship to refund an
6 indemnity fee or delinquency penalty payment paid by
7 permittees pursuant to 1995 Iowa Acts, chapter 195, section
8 38.

9 Sec. 43. INDEMNITY FEES -- PRIOR MANURE MANAGEMENT PLAN
10 SUBMITTEES.

11 1. The indemnity fee imposed upon persons required to
12 submit a manure management plan pursuant to section 204.3A, as
13 enacted in this Act, shall be imposed upon all persons who are
14 required to submit a manure management plan under section
15 455B.203 as amended in this Act. However, a fee shall not be
16 imposed upon a person who was not required to submit a manure
17 management plan to the department of natural resources
18 pursuant to 1995 Iowa Acts, chapter 195, and 567 IAC section
19 65.18(455B).

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

30 Sec. 44. INDEMNITY FEES -- PRIOR CONSTRUCTION PERMITTEES.
31 The department of agriculture and land stewardship shall
32 deliver to the department of natural resources the most
33 current available information regarding persons required to
34 pay the indemnity fee imposed pursuant to 1995 Iowa Acts,
35 chapter 195, section 38. The department of natural resources,

1 in cooperation with the attorney general, may bring a court
2 action in order to collect indemnity fees and delinquency
3 penalties as provided in that Act for deposit into the manure
4 storage indemnity fund as created in section 204.2.

5 Sec. 45. MANURE MANAGEMENT PLAN SUBMISSIONS. All persons
6 required to submit a manure management plan pursuant to
7 section 455B.203 as amended by this Act shall submit a manure
8 management plan according to the same requirements, as
9 provided in that section or rules adopted by the department
10 pursuant to that section. Persons who have submitted a manure
11 management plan that complies with those requirements are not
12 required to submit a new manure management plan. Persons who
13 have not submitted a manure management plan that complies with
14 those requirements shall not be required to submit a new
15 manure management plan until July 1, 1999.

16 Sec. 46. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The
17 members of the animal agriculture consulting organization
18 shall consult with the department of natural resources
19 regarding this Act, rules adopted pursuant to this Act, and
20 the Act's implementation, to the same extent and in the same
21 manner as required in 1995 Iowa Acts, chapter 195, section 37.

22 Sec. 47. DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES
23 -- RULEMAKING. The department of natural resources is
24 required to adopt rules under this Act, including adopting new
25 rules or amending existing rules, only to the extent that
26 rules must be adopted in order to comply with the requirements
27 of this Act. This section shall not be construed to limit the
28 authority of the department to adopt rules under this Act or
29 other statutory authority which the department determines is
30 necessary or advisable.

31 Sec. 48. DIRECTIONS TO IOWA CODE EDITOR.

32 1. The Iowa Code editor is directed to transfer chapter
33 204, as amended by this Act, to a chapter determined
34 appropriate by the Iowa Code editor. The Iowa Code editor
35 shall correct internal references as necessary.

1 which regulates animal feeding operations. The bill provides
2 for determining when adjacent confinement feeding operations
3 are considered as a single operation.

4 The bill amends separation distance requirements between
5 animal feeding operation structures and homes, schools,
6 businesses, and churches, by increasing several of those
7 separation distance requirements.

8 The bill amends Code section 455B.173, subsection 13,
9 providing for the issuance of permits by the department for
10 animal feeding operations. The bill transfers that section
11 for purposes of enhancing readability, and amends several of
12 its provisions.

13 The bill provides that a county board of supervisors may
14 hold a public hearing to receive public comments regarding an
15 application for a construction permit for an animal feeding
16 operation. The county board of supervisors may submit
17 comments by the board and the public to the department. The
18 bill provides that a county board of supervisors may contest
19 the decision as provided by rules adopted by the environmental
20 protection commission in conformance with Code chapter 17A.

21 The bill expands the number of persons required to submit
22 manure management plans, including the owner of a confinement
23 feeding operation, constructed or expanded after May 31, 1985,
24 other than a small animal feeding operation, regardless of
25 whether a permit is required for the operation. The bill also
26 provides that an out-of-state owner must submit a manure
27 management plan if the manure is applied in this state.

28 The bill provides for the certification of commercial
29 manure applicators and persons who apply manure which
30 originates from a confinement feeding operation other than a
31 small animal feeding operation. The bill provides that a
32 manure applicator is prohibited from applying manure unless
33 the person is certified by the department. The requirements
34 involve passing an examination and taking continuing
35 instructional courses. The requirements are similar to

1 requirements imposed upon commercial pesticide applicators.

2 The bill assesses fees for certification.

3 The bill requires the department of natural resources to
4 adopt rules governing the application of manure originating
5 from an anaerobic lagoon or aerobic structure which is part of
6 a confinement feeding operation. The rules must establish
7 application rates and practices to minimize groundwater or
8 surface water pollution resulting from application, including
9 pollution caused by runoff or other manure flow resulting from
10 precipitation events. The rules shall establish different
11 application rates and practices based on the water holding
12 capacity of the soil at the time of application. The bill
13 restricts the use of spray irrigation equipment used to apply
14 manure with a large dispersal rate.

15 The bill requires the department to establish engineering
16 standards for the construction of formed manure storage
17 structures. The bill provides special requirements for
18 unformed structures. The rules adopted by the department
19 shall account for special design characteristics of animal
20 feeding operations. The department must cooperate with the
21 state office and field offices of the natural resources
22 conservation service of the United States department of
23 agriculture in adopting construction standards for anaerobic
24 lagoons.

25 The bill provides separation distances between animal
26 feeding operation structures and roads and water sources,
27 including increasing the distance required between an animal
28 feeding operation structure and a lake, river, or stream
29 located within the territorial limits of the state, or a
30 marginal river area adjacent to the state. The bill provides
31 that water sources cannot be constructed or diverted near
32 animal feeding operations. The bill requires that the seller
33 of property located with a separation distance notify the
34 buyer.

35 The bill imposes a moratorium on the construction or

1 expansion of earthen manure storage basins until July 1, 2001.

2 The bill amends a provision of law which currently
3 prohibits a habitual violator from obtaining a permit by the
4 department of natural resources for the construction or
5 operation of another animal feeding operation. This bill
6 extends that prohibition to apply to all environmental permits
7 issued by the department under Code chapter 455B.

8 The bill provides that a transaction involving a habitual
9 violator or a chronic violator may be considered suspect, if
10 the transaction involves (1) transferring a controlling
11 interest in the operation or land where an operation may be
12 constructed to a person who is financially close or family
13 related or (2) financing the construction or operation of a
14 confinement feeding operation. The bill provides that a
15 suspect transaction is not recognized for purposes of
16 enforcing environmental laws, unless the violator and the
17 person receiving a controlling interest in a confinement
18 feeding operation prove by clear and convincing evidence that
19 the transaction was for a legitimate business purpose made by
20 parties exercising independent and reasonable judgment, and
21 the chronic violator does not exercise a controlling influence
22 over the business affairs of the confinement feeding
23 operation.

24 This bill excuses the payment of the indemnity fee in
25 certain cases, including persons not required to submit a
26 manure management plan before 1995 or for persons obtaining a
27 construction permit which has expired. The bill also provides
28 that a person who has not paid an indemnity fee is not subject
29 to a delinquency penalty if the person pays the full amount of
30 the indemnity fee to the department of natural resources on or
31 before December 31, 1998, as required by the department.

32 The bill requires that the department consult with members
33 of organizations representing various interests known as the
34 animal agriculture consulting organization.

35



**HOUSE FILE 2494
FISCAL NOTE**

A fiscal note for House File 2494 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2494 regulates animal feeding operations in the State of Iowa.

BACKGROUND

The Bill doubles Manure Storage Indemnity fees for animal feeding operations filing for construction permits and imposes fees on operators filing manure management plans. The Bill requires the Department of Natural Resources to establish engineering standards for the construction of formed manure storage structures. The Bill also requires the Department cooperate with the Natural Resources Conservation Service of the United States Department of Agriculture in adopting construction standards for anaerobic lagoons. The Bill also requires the establishment of rules for requirements related to construction, expansion, and operation of animal feeding operations including issuing of permits, investigations, and testing.

ASSUMPTIONS

1. Fiscal Year 1999 and FY 2000 Manure Storage Indemnity Fund receipts are based on 250 new facilities, with an average herd size of 4,100 head, each year filing manure storage management plans and 50 new facilities, with an average herd size of 7,300 head, being large enough to require construction permits.
2. Beyond FY 2000 it is unknown how many, if any, new animal feeding operations will be large enough to require construction permits.
3. The cost of administering the Manure Storage Indemnity Fund is the lesser of 1.0% of the fund balance or \$10,000 (current law).
4. Twenty-two new FTE positions above the current FY 1998 funding level will be required. These new positions include 1.0 FTE environmental program supervisor position, 1.0 FTE environmental engineer III position, 2.0 FTE environmental engineer II positions, 2.0 FTE environmental specialist III positions, 8.0 FTE environmental specialist II positions, 3.0 FTE geologist II positions, 1.0 FTE attorney II position, 1.0 FTE data processing specialist position, and 3.0 FTE clerk IV positions. These new positions will review and approve construction permit applications and manure storage management plans for new animal feeding operating facilities.

FISCAL IMPACT

The estimated fiscal impact of HF 2494 is approximately \$1.1 million. The

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estimate includes \$957,000 for salary and benefits and \$104,000 for related costs of vehicles and support. Fiscal Year 2000 impact is estimated to be \$980,000.

House File 2494 will also increase Manure Storage Indemnity fees in FY 1999 and FY 2000 by approximately \$41,000.

SOURCE

Department of Natural Resources

(LSB 4186hv, SKW)

FILED MARCH 12, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2494

161

1 Amend House File 2494 as follows:

2 1. By striking page 6, line 21, through page 7,
3 line 6.

By FREVERT of Palo Alto
 BERNAU of Story
 BRAND of Tama
 BUKTA of Clinton
 BURNETT of Story
 CONNORS of Polk
 DODERER of Johnson
 DOTZLER of Black Hawk
 DREES of Carroll
 FALLON of Polk
 FOEGE of Linn
 FORD of Polk
 HOLVECK of Polk
 HUSER of Polk
 JOCHUM of Dubuque
 KINZER of Scott
 KOENIGS of Mitchell

KREIMAN of Davis
 MASCHER of Johnson
 MAY of Worth
 MUNDIE of Webster
 MURPHY of Dubuque
 MYERS of Johnson
 OSTERHAUS of Jackson
 REYNOLDS-KNIGHT of Van Buren
 RICHARDSON of Warren
 SCHERRMAN of Dubuque
 SCHRADER of Marion
 SHOULTZ of Black Hawk
 TAYLOR of Linn
 WEIGEL of Chickasaw
 WHITEAD of Woodbury
 MORELAND of Wapello

H-8161 FILED MARCH 3, 1998

Lost 3/12/98 (p. 648)

HOUSE FILE 2494

H-8220

1 Amend House File 2494 as follows:

2 1. Page 19, line 33, by inserting after the word
 3 "The" the following: "department shall at a minimum
 4 require that a person obtain a permit for the
 5 construction of an animal feeding operation structure
 6 which is part of a confinement feeding operation if
 7 the animal weight capacity of the confinement feeding
 8 operation is four hundred thousand pounds or more.
 9 However, the".

By KOENIGS of Mitchell

H-8220 FILED MARCH 4, 1998

Lost 3/12/98 (p. 656)

HOUSE FILE 2494

H-8177

1 Amend House File 2494 as follows:

2 1. Page 37, by inserting after line 24 the
3 following:

4 "Sec. ____ . Section 657.11, subsections 2, 3, 5, 6,
5 7, and 8, Code 1997, are amended to read as follows:

6 2. ~~If a person has received all permits required~~
7 ~~pursuant to chapter 455B for an animal feeding~~
8 ~~operation, as defined in section 455B.161, there shall~~
9 ~~be a rebuttable presumption that an~~ An animal feeding
10 operation is, as defined in section 455B.161, shall
11 not be found to be a public or private nuisance under
12 this chapter or under principles of common law, and
13 that the animal feeding operation does shall not be
14 found to unreasonably and continuously for substantial
15 periods of time interfere with another person's
16 comfortable use and enjoyment of the person's life or
17 property under any other cause of action. The
18 ~~rebuttable presumption also applies to persons who are~~
19 ~~not required to obtain a permit pursuant to chapter~~
20 ~~455B for an animal feeding operation as defined in~~
21 ~~section 455B.161. The rebuttable presumption~~ However,
22 this section shall not apply if the person bringing
23 the action proves that an injury to a the person or
24 damage to the person's property is proximately caused
25 by a either of the following:

26 a. The failure to comply with a federal statute or
27 regulation or a state statute or rule which applies to
28 the animal feeding operation.

29 b. ~~3. The rebuttable presumption may be overcome~~
30 ~~by clear and convincing evidence of both~~ Both of the
31 following:

32 a- (1) The animal feeding operation unreasonably
33 and continuously for substantial periods of time
34 interferes with another the person's comfortable use
35 and enjoyment of the person's life or property.

36 b- (2) The injury or damage is proximately caused
37 by the negligent operation of the animal feeding
38 operation failed to use existing prudent generally
39 accepted management practices reasonable for the
40 operation.

41 5. ~~The rebuttable presumption created by this~~ This
42 section shall apply regardless of the established date
43 of operation or expansion of the animal feeding
44 operation. The rebuttable presumption A defense
45 against a cause of action provided in this section
46 includes, but is not limited to, a defense for actions
47 arising out of the care and feeding of animals; the
48 handling or transportation of animals; the treatment
49 or disposal of manure resulting from animals; the
50 transportation and application of animal manure; and

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1 the creation of noise, odor, dust, or fumes arising
2 from an animal feeding operation.

3 ~~6. An animal-feeding-operation-that-complies-with~~
4 ~~the-requirements-in-chapter-455B-for-animal-feeding~~
5 ~~operations-shall-be-deemed-to-meet-any-common-law~~
6 ~~requirements-regarding-the-standard-of-a-normal-person~~
7 ~~living-in-the-locality-of-the-operation.~~

8 7.--A If a court determines that a claim is
9 frivolous, a person who brings the claim as part of a
10 losing cause of action against a person for-whom-the
11 rebuttable-presumption-created who may raise a defense
12 under this section is-not-rebutted, shall be liable to
13 the person against whom the action was brought for all
14 costs and expenses incurred in the defense of the
15 action,~~if-the-court-determines-that-a-claim-is~~
16 ~~frivolous.~~

17 8. ~~The-rebuttable-presumption-created-in-this~~ This
18 section does not apply to an injury to a person or
19 damages to property caused by the animal feeding
20 operation before May 31, 1995.

21 Sec. ____ . Section 657.11, subsection 4, unnumbered
22 paragraph 1, Code 1997, is amended to read as follows:

23 4. ~~The-rebuttable-presumption~~ This section does
24 not apply to a person against whom a cause of action
25 is brought as provided in this section during any
26 period that the person is classified as a chronic
27 violator under this subsection as to any confinement
28 feeding operation in which the person holds a
29 controlling interest, as defined by rules adopted by
30 the department of natural resources. ~~The-rebuttable~~
31 ~~presumption~~ This section shall apply to the person on
32 and after the date that the person is removed from the
33 classification of chronic violator. For purposes of
34 this subsection, "confinement feeding operation" means
35 ~~an-animal-feeding-operation-in-which-animals-are~~
36 ~~confined-to-areas-which-are-totally-roofed,-and-which~~
37 ~~are-regulated-by-the-department-of-natural-resources~~
38 ~~or-the-environmental-protection-commission~~ the same as
39 defined in section 455B.161."

40 2. By renumbering as necessary.

By WISE of Lee
BELL of Jasper
FALCK of Fayette
LARKIN of Lee

MAY of Worth
MERTZ of Kossuth
O'BRIEN of Boone
THOMAS of Clayton

H-8177 FILED MARCH 3, 1998

Not German
3/12/98
(p. 675)

HOUSE FILE 2494

H-8222

1 Amend House File 2494 as follows:

2 1. Page 6, line 21, by striking the words

3 "LIMITATIONS ON".

4 2. Page 6, line 22, by inserting after the word

5 "LEGISLATION" the following: "-- CONFINEMENT FEEDING

6 OPERATIONS".

7 3. By striking page 6, line 24, through page 7,

8 line 6, and inserting the following:

9 "a. "Animal feeding operation structure" means the

10 same as defined in section 455B.161.

11 b. "Confinement feeding operation" means the same

12 as defined in section 455B.161.

13 c. "Small animal feeding operation" means the same

14 as defined in section 455B.161.

15 2. a. Notwithstanding section 335.2, a county may

16 adopt a confinement feeding operations siting

17 ordinance, pursuant to section 331.302. The purpose

18 of the ordinance shall be to allow approval of the

19 siting of a confinement feeding operation regardless

20 of whether the county has adopted an ordinance under

21 chapter 335. The ordinance shall authorize a county

22 to approve the site of the construction or expansion

23 of a confinement feeding operation, including

24 confinement feeding operation buildings and related

25 animal feeding operation structures in order to

26 preserve and protect natural resources, including

27 water sources and fragile environmental locations;

28 lessen congestion and overcrowding of confinement

29 feeding operations, especially near cities; and to

30 protect the health and welfare of the public.

31 b. The ordinance shall provide for methods and

32 procedures required for submission of proposals,

33 review of proposals, and approval of a site. In

34 administering the ordinance, the county shall

35 establish a confinement feeding operations siting

36 commission which shall review each proposal for the

37 construction or expansion of a confinement feeding

38 operation, and recommend to the county board of

39 supervisors that the board approve or disapprove the

40 proposal. The board shall appoint five members of the

41 commission. Four members shall not reside in a city,

42 and one member shall reside in a city. At least three

43 of the members shall be persons who are or were

44 actively engaged in animal agriculture. The

45 commission shall make its recommendation to the board

46 within forty-five days after the date that the board

47 received a complete proposal. The board shall approve

48 or disapprove a proposal within forty-five days after

49 the date that the board receives the commission's

50 recommendation.

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ITW

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1 c. A confinement feeding operations siting
 2 ordinance shall not apply to a proposed confinement
 3 feeding operation or to the proposed expansion of a
 4 confinement feeding operation, if the confinement
 5 feeding operation is part of a family farm operation
 6 as provided in this section.

7 3. The county board of supervisors shall determine
 8 if the confinement feeding operation qualifies as a
 9 family farm operation. In making this determination
 10 the board shall review facts relating to the
 11 confinement feeding operation and the person owning or
 12 leasing the land where the confinement feeding
 13 operation is located, including the extent to which
 14 the person:

15 a. Has held an interest in the land.
 16 b. Is actively engaged in farming the land.
 17 c. Produces different species of livestock on the
 18 land.
 19 d. Produces crops on the land. If crops are
 20 produced on the land, the board shall consider the
 21 extent to which the crops are used to feed livestock
 22 produced on the land.
 23 e. Owns and operates machinery for the following:
 24 (1) The planting and harvesting of grain on the
 25 land.
 26 (2) The application of manure on the land.
 27 f. Owns and uses facilities for the storage of
 28 grain produced on the land."

29 2. Page 21, line 20, by inserting after the word
 30 "located." the following: "All of the following shall
 31 apply, unless the county has adopted a confinement
 32 feeding operation siting ordinance as provided in
 33 section 331.304A:"

By FREVERT of Palo Alto

H-8222 FILED MARCH 4, 1998

WITHDRAWN 3/12/98 (P.685)

HOUSE FILE 2494

H-8223

1 Amend House File 2494 as follows:
 2 1. Page 15, line 15, by striking the word and
 3 figures "July 1, 1998," and inserting the following:
 4 "the effective date of this Act,".
 5 2. Page 15, line 26, by striking the word and
 6 figures "July 1, 1998," and inserting the following:
 7 "the effective date of this Act,".
 8 3. Page 41, by striking lines 14 and 15 and
 9 inserting the following:
 10 "Sec. ____ . EFFECTIVE DATE. This Act, being deemed
 11 of immediate importance, takes effect upon enactment."

By KOENIGS of Mitchell

H-8223 FILED MARCH 4, 1998

WITHDRAWN 3/12/98 (P.652)

HOUSE FILE 2494

H-8224

1 Amend House File 2494 as follows:

2 1. Page 35, by inserting after line 29 the
3 following:

4 "Sec. ____ . NEW SECTION. 455B.207 CONFINEMENT
5 FEEDING OPERATIONS -- COUNTY POWERS AND DUTIES.

6 The board of supervisors in the county where a
7 confinement feeding operation is located may enforce
8 sections 455B.201 through 455B.206, including rules
9 adopted pursuant to those sections. The board must
10 deliver a notice by certified mail to the department,
11 stating that an operation may be in violation of the
12 sections or departmental rules. The board shall
13 deliver the notice only after approval of the action
14 by resolution. The notice shall be in writing and
15 shall state the location of the operation, the name
16 and address of the owner, and an explanation of the
17 possible violation. The board may inform the
18 department that the board reserves its right to
19 enforce the sections or rules as provided in this
20 section, if the department fails to initiate an
21 investigation or enforcement action or continue an
22 enforcement action which results in an administrative
23 hearing or a settlement of the case. The county may
24 begin enforcement proceedings after thirty days
25 following delivery of the notice, unless the
26 department commences and maintains active enforcement
27 of the sections or its rules. The county shall not
28 initiate or continue an enforcement action if the
29 county receives notice and results of the
30 investigation by the department that the department
31 has conducted an investigation and has determined that
32 the operation is not in violation of the sections or
33 departmental rules. Once the county begins an
34 enforcement action, it shall be the party in interest
35 in the case and have sole authority and responsibility
36 to proceed with the action. The county may refer any
37 case to the attorney general. The department of
38 natural resources may assume the enforcement action
39 from the county. However, if the department assumes
40 the enforcement action, the department shall be
41 required to resolve the action. The county shall
42 bring the enforcement action according to the same
43 procedures used for a county infraction as provided in
44 section 331.307. However, the civil penalty may be
45 for any amount that could be assessed by the
46 department."

47 2. By renumbering as necessary.

By MERTZ of Kossuth

H-8224 FILED MARCH 4, 1998

Last 3/12/98

(P. 672)

INQUIRY

HOUSE FILE 2494

H-8221

1 Amend House File 2494 as follows:

2 1. Page 1, line 35, by inserting after the figure
3 "204.3A;" the following: "permit application fees
4 paid to the department before obtaining a permit to
5 construct an animal feeding operation structure which
6 is part of a confinement feeding operation as provided
7 in section 455B.200A;".

8 2. Page 4, by striking lines 1 through 28 and
9 inserting the following:

10 "1. If the confinement feeding operation ~~has an~~
11 ~~animal weight capacity of less than six hundred~~
12 ~~twenty-five thousand pounds, the following shall~~
13 ~~apply:~~

14 a. ~~For all animals other than~~ keeps poultry, the
15 amount of the fee shall be five ten cents per animal
16 unit of capacity for the confinement feeding
17 operations operation.

18 b. ~~For poultry, the amount of the fee shall be two~~
19 ~~cents per animal unit of capacity for confinement~~
20 ~~feeding operations.~~

21 2. If the confinement feeding operation ~~has an~~
22 ~~animal weight capacity of six hundred twenty-five~~
23 ~~thousand or more pounds but less than one million two~~
24 ~~hundred fifty thousand pounds, the following shall~~
25 ~~apply:~~

26 a. ~~For all~~ keeps animals other than poultry, the
27 amount of the fee shall be seven and one half twenty-
28 five cents per animal unit of capacity for the
29 confinement feeding operations operation.

30 b. ~~For poultry, the amount of the fee shall be~~
31 ~~three cents per animal unit of capacity for~~
32 ~~confinement feeding operations.~~

33 3. ~~If the confinement feeding operation has an~~
34 ~~animal weight capacity of one million two hundred~~
35 ~~fifty thousand or more pounds, the following shall~~
36 ~~apply:~~

37 a. ~~For all animals other than poultry, the amount~~
38 ~~of the fee shall be ten cents per animal unit of~~
39 ~~capacity for confinement feeding operations.~~

40 b. ~~For poultry, the amount of the fee shall be~~
41 ~~four cents per animal unit of capacity for confinement~~
42 ~~feeding operations."~~

43 3. Page 20, by inserting after line 7 the
44 following:

45 "____. A permit application fee of fifty dollars
46 which the department shall deposit into the manure
47 storage indemnity fund created in section 204.2."

48 4. By renumbering as necessary.

By MERTZ of Kossuth

H-8221 FILED MARCH 4, 1998

WITHDRAWN 3/12/98 (p. 684)

HOUSE FILE 2494

H-8226

1 Amend House File 2494 as follows:

2 1. Page 1, by inserting after line 10 the
3 following:

4 "Sec. ____ . Section 13.13, subsection 2, Code 1997,
5 is amended to read as follows:

6 2. The farm assistance program coordinator shall
7 contract with a nonprofit organization chartered in
8 this state to provide mediation services as provided
9 in chapters 654A, 654B, and 654C, and to conduct
10 neighbor meetings pursuant to section 455B.205A. The
11 contract may be terminated by the coordinator upon
12 written notice and for good cause. The organization
13 awarded the contract is designated as the farm
14 mediation service for the duration of the contract.
15 The organization may, upon approval by the
16 coordinator, provide mediation services other than as
17 provided by law. The farm mediation service is not a
18 state agency for the purposes of chapters 19A, 20, and
19 669.

20 Sec. ____ . Section 13.15, Code 1997, is amended to
21 read as follows:

22 13.15 RULES AND FORMS -- FEES.

23 1. The farm mediation service shall recommend
24 rules to the farm assistance program coordinator. The
25 coordinator shall adopt rules pursuant to chapter 17A
26 to set the compensation of mediators and to implement
27 this subchapter and chapters 654A, 654B, and 654C, and
28 section 455B.205A.

29 2. The rules shall provide for an hourly mediation
30 fee not to exceed fifty dollars for the borrower and
31 one hundred dollars for the creditor. The hourly
32 mediation fee may be waived for any party
33 demonstrating financial hardship upon application to
34 the farm mediation service.

35 3. The compensation of a mediator shall be no more
36 than twenty-five dollars per hour, and all parties
37 shall contribute an equal amount of the cost.
38 However, if a meeting is held under section 455B.205A,
39 the animal feeding operation shall pay the mediator
40 the costs of the mediator in conducting the meeting.

41 4. The coordinator shall adopt voluntary mediation
42 application and mediation request forms. The
43 coordinator shall adopt forms necessary to administer
44 section 455B.205A.

45 Sec. ____ . NEW SECTION. 13.17 GOOD NEIGHBOR
46 MEETINGS.

47 The farm assistance program coordinator, provided
48 in this subchapter, shall contract with the farm
49 mediation service to conduct meetings in order to
50 provide for a good neighbor policy relating to animal

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1 feeding operations as provided in section 455B.205A.
2 The meeting shall not be considered mediation under
3 this subchapter or chapters 654A and 654B."

4 2. Page 20, by inserting after line 12 the
5 following:

6 "____. The application for a construction permit
7 shall include a section for a good neighbor policy as
8 required pursuant to section 455B.205A, which the
9 applicant is not required to complete unless the
10 applicant elects to be eligible for protection from
11 legal action as provided in section 657.11. The
12 department shall file a permittee's amendments to the
13 good neighbor policy section with the application."

14 3. Page 35, by inserting after line 24 the
15 following:

16 "Sec. ____ . NEW SECTION. 455B.205A GOOD NEIGHBOR
17 POLICY.

18 1. The purpose of this section is to codify the
19 spirit of informal conduct to the expansion of animal
20 feeding operations in this state, which has
21 traditionally existed between farmers and neighbors,
22 based on a common set of farmer-neighbor expectations
23 relating to conversion, cooperation, tolerance, and
24 community harmony, when a farmer implements good faith
25 business practices.

26 2. A person who, on and after the effective date
27 of this Act, shall not obtain a construction permit
28 pursuant to section 455B.200A, unless the person
29 develops a good neighbor policy prior to receiving the
30 permit in order to provide that the animal feeding
31 operation subject to the permit is eligible for
32 protection from legal action as provided in section
33 657.11. In order to satisfy this requirement, the
34 applicant shall satisfy the requirements of this
35 section. The good neighbor policy shall continue in
36 effect after a transfer in ownership of the operation.
37 The portion of the application providing for a good
38 neighbor policy may be amended by the operation's
39 permittee after complying with the requirements of
40 this section and filing the amended portion with the
41 department.

42 3. The applicant or permittee shall provide a
43 written notice to all residents located within one
44 mile of any animal feeding operation structure subject
45 to the permit. The notice shall provide a time and
46 place in the county in which the operation is to be
47 located where all of the following shall be available
48 for public inspection:

49 a. The site plans for the construction of each
50 structure subject to a construction permit.

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1 b. A completed application required pursuant to
2 section 455B.200A, including a proposed good neighbor
3 policy, or proposed amendments to the good neighbor
4 policy, as provided in this section.

5 c. A manure management plan, if required pursuant
6 to section 455B.203.

7 4. At least one neighbors meeting shall be held in
8 order to provide persons residing within one mile of
9 the site subject to the construction permit, with the
10 opportunity to express comments regarding the
11 operation, and the good neighbor policy. A
12 representative of the animal feeding operation shall
13 attend the meeting. A mediator designated by the farm
14 mediation service shall conduct the meeting and
15 certify to the department of natural resources that
16 the meeting was conducted as required pursuant to this
17 section.

18 5. The good neighbor portion of an application for
19 a permit for the construction of an animal feeding
20 operation or an amendment to the portion shall include
21 all of the following:

22 a. Procedures to notify neighbors of events,
23 including the cleaning of structures or the disposal
24 of manure, that may cause special discomfort to
25 neighbors.

26 b. A method to ensure that communication between
27 the animal feeding operation and neighbors is
28 maintained, including methods for neighbors to notify
29 an animal feeding operation when special occasions
30 occur such as weddings, holidays, parties, or
31 funerals.

32 c. The establishment of a nonjudicial dispute
33 resolution forum for neighbors and an animal feeding
34 operation to informally reach solutions to matters of
35 concern affecting the parties.

36 d. Methods to reduce impacts on the fair market
37 value of neighboring property due to the construction
38 or operation of an animal feeding operation structure,
39 which may include the purchase or lease of property
40 around an animal operation structure, or the payment
41 of compensation to neighboring property owners.

42 e. The implementation of practices and the
43 installation of systems to ensure that animal diseases
44 originating from the operation do not contaminate
45 animals located on neighboring property.

46 f. Practices and systems designed to reduce the
47 discomfort to neighbors arising from an animal feeding
48 operation. The application may include practical and
49 inexpensive methods utilized by the operation to
50 reduce odor, including planting trees around animal

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1 feeding operation structures and providing that open
2 manure storage structures be covered with materials
3 which inhibit odor, such as straw, foam pellets, or
4 mats.

5 6. The Iowa cooperative extension service in
6 agriculture and home economics at Iowa state
7 university shall assist in carrying out the purpose of
8 this section by developing a model good neighbor
9 policy which may be used by animal feeding operations
10 in complying with this section. The service shall
11 provide different versions of the policy based on
12 various possible situations. In developing different
13 versions, the service shall consider the type and size
14 of animal feeding operations, the type and size of
15 animal feeding operation structures utilized by
16 operations, the different species of animals
17 maintained at operations, varying distances to
18 neighboring residents, different types of locations of
19 existing or planned animal feeding operations located
20 in close proximity to the operation to be constructed.
21 The services shall develop its model good neighbor
22 policy based upon the sensibilities of a reasonable
23 rural resident in the county who is familiar with and
24 appreciates the importance of animal agriculture."
25 4. By renumbering as necessary.

By KOENIGS of Mitchell

H-8226 FILED MARCH 4, 1998

Not Done
3/12/98
(p. 684)

HOUSE FILE 2494

H-8231

1 Amend House File 2494 as follows:
2 1. Page 37, by inserting after line 24 the
3 following:
4 "Sec. _____. Section 657.11, subsection 4, Code
5 1997, is amended by striking the subsection.
6 Sec. _____. NEW SECTION. 657.11A CHRONIC
7 VIOLATORS.
8 1. As used in this section, unless the context
9 otherwise requires:
10 a. "Commission" means the environmental protection
11 commission created in section 455A.6.
12 b. "Confinement feeding operation" means the same
13 as defined in section 455B.161.
14 c. "Department" means the department of natural
15 resources.
16 d. "Suspect site" means a confinement feeding
17 operation or land where a confinement feeding
18 operation could be constructed, if the site is subject
19 to a suspect transaction.
20 e. "Suspect transaction" means a transaction in
21 which a person classified as a chronic violator under
22 this section does any of the following:
23 (1) Transfers a controlling interest in a suspect
24 site to any of the following:
25 (a) An employee of the chronic violator or
26 business in which the person holds a controlling
27 interest.
28 (b) A person who holds an interest in a business,
29 including a confinement feeding operation, in which
30 the chronic violator holds a controlling interest.
31 (c) A person related to the chronic violator as
32 spouse, parent, grandparent, lineal ascendant of a
33 grandparent or spouse and any other lineal descendant
34 of the grandparent or spouse, or a person acting in a
35 fiduciary capacity for a related person.
36 (2) Provides financing for the construction or
37 operation of a confinement feeding operation to any
38 person, including by providing a contribution, loan to
39 the person, or providing collateral for a contribution
40 or loan made by a third person.
41 2. The rebuttable presumption provided in section
42 657.11 does not apply to a person during any period
43 that the person is classified as a chronic violator
44 under this section as to any confinement feeding
45 operation in which the person holds a controlling
46 interest, as defined by rules adopted by the
47 department of natural resources. The rebuttable
48 presumption shall apply to the person on and after the
49 date that the person is removed from the
50 classification of chronic violator.

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1 3. A person shall be classified as a chronic
2 violator if the person has committed three or more
3 violations as described in this subsection prior to,
4 on, or after July 1, 1996. In addition, in relation
5 to each violation, the person must have been subject
6 to either of the following:

7 a. The assessment of a civil penalty by the
8 department or the commission in an amount equal to
9 three thousand dollars or more.

10 b. A court order or judgment for a legal action
11 brought by the attorney general after referral by the
12 department or commission.

13 4. Each violation must have occurred within five
14 years prior to the date of the latest violation,
15 counting any violation committed by a confinement
16 feeding operation in which the person holds a
17 controlling interest. A violation occurs on the date
18 the department issues an administrative order to the
19 person assessing a civil penalty of three thousand
20 dollars or more, or on the date the department
21 notifies a person in writing that the department will
22 recommend that the commission refer, or the commission
23 refers the case to the attorney general for legal
24 action, or the date of entry of the court order or
25 judgment, whichever occurs first. A violation under
26 this subsection shall not be counted if the civil
27 penalty ultimately imposed is less than three thousand
28 dollars, the department or commission does not refer
29 the action to the attorney general, the attorney
30 general does not take legal action, or a court order
31 or judgment is not entered against the person. A
32 person shall be removed from the classification of
33 chronic violator on the date on which the person and
34 all confinement feeding operations in which the person
35 holds a controlling interest have committed less than
36 three violations described in this subsection for the
37 prior five years.

38 5. For purposes of counting violations, a
39 continuing and uninterrupted violation shall be
40 considered as one violation. Different types of
41 violations shall be counted as separate violations
42 regardless of whether the violations were committed
43 during the same period. The violation must be a
44 violation of a state statute, or a rule adopted by the
45 department, which applies to a confinement feeding
46 operation and any related animal feeding operation
47 structure, including an anaerobic lagoon, earthen
48 manure storage basin, formed manure storage structure,
49 or egg washwater storage structure, or any related
50 pollution control device or practice. The structure,

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1 device, or practice must be part of the confinement
2 feeding operation. The violation must be one of the
3 following:

4 a. Constructing or operating a related animal
5 feeding operation structure or installing or using a
6 related pollution control device or practice, for
7 which the person must obtain a permit, in violation of
8 statute or rules adopted by the department, including
9 the terms or conditions of the permit.

10 b. Intentionally making a false statement or
11 misrepresenting information to the department as part
12 of an application for a construction permit for the
13 related animal feeding operation structure, or the
14 installation of the related pollution control device
15 or practice, for which the person must obtain a
16 construction permit from the department.

17 c. Failing to obtain a permit or approval by the
18 department for a permit to construct or operate a
19 confinement feeding operation or use a related animal
20 feeding operation structure or pollution control
21 device or practice, for which the person must obtain a
22 permit from the department.

23 d. Operating a confinement feeding operation,
24 including a related animal feeding operation structure
25 or pollution control device or practice, which causes
26 pollution to the waters of the state, if the pollution
27 was caused intentionally, or caused by a failure to
28 take measures required to abate the pollution which
29 resulted from an act of God.

30 e. Failing to submit a manure management plan as
31 required, or operating a confinement feeding operation
32 required to have a manure management plan without
33 having submitted the manure management plan.

34 6. A suspect transaction shall be presumed to be
35 made in order to avoid a cause of action for nuisance
36 brought against the person classified as a chronic
37 violator. The person receiving control of the
38 operation pursuant to the suspect transaction shall be
39 deemed to be an agent of the chronic violator, unless
40 the chronic violator and the person receiving the
41 controlling interest in the confinement feeding
42 operation because of the suspect transaction, prove by
43 clear and convincing evidence all of the following:

44 a. That the suspect transaction was for a
45 legitimate business purpose made by parties exercising
46 independent and reasonable judgment.

47 b. That the chronic violator does not exercise a
48 controlling influence over the business affairs of the
49 confinement feeding operation.

50 7. If the person receiving control of a suspect

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1 site is deemed to be an agent of a chronic violator,
 2 the presumption that the confinement feeding operation
 3 is not a public or private nuisance as provided in
 4 section 657.11 shall not apply for as long as the
 5 chronic violator, including the agent, or the
 6 confinement feeding operation is classified as a
 7 chronic violator."
 8 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-8231 FILED MARCH 4, 1998

*Not Hermone
 Motion to suspend Gales Lost
 3-12-98*

HOUSE FILE 2494

H-8237

1 Amend House File 2494 as follows:
 2 1. Page 21, by inserting after line 23 the
 3 following:
 4 " . The county board of supervisors shall notify
 5 the department that it approves or disapproves the
 6 application within twenty days from that date that the
 7 application was delivered to the board according to
 8 procedures adopted by the department. The board's
 9 consideration of the application shall be limited to
 10 the appropriateness of the site of the proposed
 11 confinement feeding operation. The county shall
 12 consider the location where the construction is
 13 proposed, including the suitability of the soils and
 14 the hydrology of the site, the population density of
 15 the area, the character of residential development in
 16 the area, and factors related to land use planning.
 17 The department shall not reverse a decision by the
 18 board to approve or disapprove an application based on
 19 the appropriateness of the site as provided in this
 20 paragraph."
 21 2. By striking page 22, line 17, through page 23,
 22 line 7.
 23 3. By renumbering as necessary.

By KOENIGS of Mitchell

H-8237 FILED MARCH 4, 1998

*Lost
 3/12/98
 (p. 663)*

HOUSE FILE 2494

H-8247

1 Amend House File 2494 as follows:
2 1. Page 35, by inserting after line 24 the
3 following:
4 "4. The department shall conduct random
5 inspections of animal feeding operations, including
6 animal feeding operation structures, unformed manure
7 storage structures, and formed manure storage
8 structures, as defined in section 455B.161, and manure
9 management practices employed by the operation as
10 provided in sections 455B.202 and 455B.203B, to ensure
11 that such operations comply with all applicable
12 requirements of this chapter and rules adopted by the
13 department pursuant to this chapter. However, in
14 order to access the operation, the departmental
15 inspector must comply with standard disease control
16 restrictions customarily required by the operation.
17 The department shall complete a written report for
18 each inspection which shall be available as a public
19 record as provided in chapter 22."

By MUNDIE of Webster

H-8247 FILED MARCH 5, 1998

lost 3/12/98
(p. 669)

HOUSE FILE 2494

H-8248

1 Amend House File 2494 as follows:
2 1. Page 35, line 27, by striking the word
3 "earthen" and inserting the following: "unformed".
4 2. Page 35, line 28, by striking the word "basin"
5 and inserting the following: "structure".

By SCHERRMAN of Dubuque

H-8248 FILED MARCH 5, 1998

lost 3/12/98 (p. 671)

HOUSE FILE 2494

H-8249

1 Amend House File 2494 as follows:
2 1. Page 28, line 9, by inserting after the figure
3 "455B.200A." the following: "A person required to
4 submit a manure management plan must submit any
5 changes to the manure management plan to the
6 department as required by the department. The
7 department shall send or require the person to send a
8 copy of the changes to the county board of supervisors
9 in the county in this state where the confinement
10 feeding operation is located."

By SCHERRMAN of Dubuque

H-8249 FILED MARCH 5, 1998

lost 3/12/98
(p. 667)

HOUSE FILE 2494

H-8246

1 Amend House File 2494 as follows:

2 1. Page 24, by inserting before line 5, the
3 following:

4 "Sec. ____ . NEW SECTION. 455B.200C CLASSIFICATION
5 OF CHRONIC VIOLATORS.

6 1. A person shall be classified as a chronic
7 violator if the person has committed three or more
8 violations as described in this section prior to, on,
9 or after July 1, 1996. In addition, in relation to
10 each violation, the person must have been subject to
11 either of the following:

12 a. The assessment of a civil penalty by the
13 department or the commission in an amount equal to
14 three thousand dollars or more.

15 b. A court order or judgment for a legal action
16 brought by the attorney general after referral by the
17 department or commission.

18 2. Each violation must have occurred within five
19 years prior to the date of the latest violation,
20 counting any violation committed by a confinement
21 feeding operation in which the person holds a
22 controlling interest. A violation occurs on the date
23 the department issues an administrative order to the
24 person assessing a civil penalty of three thousand
25 dollars or more, or on the date the department
26 notifies a person in writing that the department will
27 recommend that the commission refer, or the commission
28 refers the case to the attorney general for legal
29 action, or the date of entry of the court order or
30 judgment, whichever occurs first. A violation under
31 this section shall not be counted if the civil penalty
32 ultimately imposed is less than three thousand
33 dollars, the department or commission does not refer
34 the action to the attorney general, the attorney
35 general does not take legal action, or a court order
36 or judgment is not entered against the person. A
37 person shall be removed from the classification of
38 chronic violator on the date on which the person and
39 all confinement feeding operations in which the person
40 holds a controlling interest have committed less than
41 three violations described in this section for the
42 prior five years.

43 3. For purposes of counting violations, a
44 continuing and uninterrupted violation shall be
45 considered as one violation. Different types of
46 violations shall be counted as separate violations
47 regardless of whether the violations were committed
48 during the same period. The violation must be a
49 violation of a state statute, or a rule adopted by the
50 department, which applies to a confinement feeding

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1 operation and any related animal feeding operation
2 structure, including an anaerobic lagoon, earthen
3 manure storage basin, formed manure storage structure,
4 or egg washwater storage structure, or any related
5 pollution control device or practice. The structure,
6 device, or practice must be part of the confinement
7 feeding operation. The violation must be one of the
8 following:

9 a. Constructing or operating a related animal
10 feeding operation structure or installing or using a
11 related pollution control device or practice, for
12 which the person must obtain a permit, in violation of
13 statute or rules adopted by the department, including
14 the terms or conditions of the permit.

15 b. Intentionally making a false statement or
16 misrepresenting information to the department as part
17 of an application for a construction permit for the
18 related animal feeding operation structure, or the
19 installation of the related pollution control device
20 or practice, for which the person must obtain a
21 construction permit from the department.

22 c. Failing to obtain a permit or approval by the
23 department for a permit to construct or operate a
24 confinement feeding operation or use a related animal
25 feeding operation structure or pollution control
26 device or practice, for which the person must obtain a
27 permit from the department.

28 d. Operating a confinement feeding operation,
29 including a related animal feeding operation structure
30 or pollution control device or practice, which causes
31 pollution to the waters of the state, if the pollution
32 was caused intentionally, or caused by a failure to
33 take measures required to abate the pollution which
34 resulted from an act of God.

35 e. Failing to submit a manure management plan as
36 required, or operating a confinement feeding operation
37 required to have a manure management plan without
38 having submitted the manure management plan."

39 2. Page 24, line 14, by striking the figure
40 "657.11" and inserting the following: "455B.200C".

41 3. Page 37, by inserting after line 24, the
42 following:

43 "Sec. __. Section 657.11, Code 1997, is repealed."

44 4. By renumbering as necessary.

By KOENIGS of Mitchell

H-8246 FILED MARCH 5, 1998

Not Germane

3/12/98

(p. 665)

HOUSE FILE 2494

H-8236

1 Amend House File 2494 as follows:
2 1. Page 6, line 21, by striking the words
3 "LIMITATIONS ON".
4 2. Page 6, line 22, by inserting after the word
5 "LEGISLATION" the following: "-- CONFINEMENT FEEDING
6 OPERATIONS".
7 3. By striking page 6, line 23, through page 7,
8 line 6, and inserting the following:
9 "1. As used in this section:
10 a. "Animal feeding operation structure" means the
11 same as defined in section 455B.161.
12 b. "Confinement feeding operation" means the same
13 as defined in section 455B.161.
14 c. "Small animal feeding operation" means the same
15 as defined in section 455B.161.
16 2. a. Notwithstanding section 335.2, a county may
17 adopt a confinement feeding operations siting
18 ordinance, pursuant to section 331.302. The purpose
19 of the ordinance shall be to designate appropriate
20 sites in the county where a confinement feeding
21 operation is authorized to be constructed, regardless
22 of whether the county has adopted an ordinance under
23 chapter 335. The ordinance shall authorize a person
24 to construct confinement feeding operation buildings
25 and related animal feeding operation structures in
26 appropriate locations in order to preserve and protect
27 natural resources, including water sources and fragile
28 environmental locations; lessen congestion and
29 overcrowding of confinement feeding operations,
30 especially near cities; and to protect the health and
31 welfare of the public. This section does not
32 authorize a county to restrict agricultural operations
33 within an agricultural area established pursuant to
34 section 352.6.
35 b. A confinement feeding operations siting
36 ordinance shall not apply to a proposed confinement
37 feeding operation or to the proposed expansion of a
38 confinement feeding operation, if the confinement
39 feeding operation is a small animal feeding
40 operation."
41 4. Page 21, line 20, by inserting after the word
42 "located." the following: "All of the following shall
43 apply, unless the county has adopted a confinement
44 feeding operation siting ordinance as provided in
45 section 331.304A:"

By FREVERT of Palo Alto

H-8236 FILED MARCH 4, 1998

Leet
3/12/98
(p. 687)

HOUSE FILE 2494

H-8253

1 Amend House File 2494 as follows:

2 1. Page 5, line 5, by striking the word and figure
3 "subsection 1," and inserting the following:
4 "subsections 1 and 2".

5 2. Page 5, line 5, by striking the word "is" and
6 inserting the following: "are".

7 3. Page 5, by inserting after line 16 the
8 following:

9 "2. The If a county provides cleanup under section
10 204.5 after acquiring real estate following nonpayment
11 of taxes, the department shall determine if a claim is
12 eligible to be satisfied under this section
13 subsection, and do one of the following:

14 a. Pay the amount of the claim required in this
15 section, based on the fixed amount specified in the
16 bid submitted by the county upon completion of the
17 work.

18 b. Obtain a lower fixed amount bid for the work
19 from another qualified person, other than a
20 governmental entity, and pay the amount of the claim
21 required in this section, based on the fixed amount in
22 this bid upon completion of the work. The department
23 is not required to comply with section 18.6 in
24 implementing this section.

25 2A. If a county provides cleanup of a condition
26 causing a clear, present, and impending danger to the
27 public health or environment, as provided in section
28 204.5, the county may make a claim against the fund to
29 pay cleanup costs incurred by the county, according to
30 procedures and requirements established by rules
31 adopted by the department. The department shall
32 determine if a claim is eligible to be satisfied under
33 this subsection, and pay the amount of the claim
34 required in this section."

35 4. Page 6, line 10, by striking the words "The
36 department" and inserting the following: "If the
37 department fails to provide cleanup within twenty-four
38 hours after being notified of a condition requiring
39 cleanup, the county may provide for the cleanup as
40 provided in this paragraph. The department or
41 county".

By MUNDIE of Webster

H-8253 FILED MARCH 5, 1998

adapted
3/12/98
(P. 685)

1/ JTW

HOUSE FILE 2494

H-8250

1 Amend House File 2494 as follows:

2 1. Page 35, by inserting after line 24 the
3 following:

4 "Sec. ____ . NEW SECTION. 455B.205A ENVIRONMENTAL
5 HEALTH SPECIALISTS.

6 1. The department shall contract with local boards
7 of health serving a county or district as provided in
8 chapter 137 in order to carry out this section. The
9 department shall enter into a contract with a local
10 board of health, if the agreement for the services is
11 cost-effective and the quality of the services
12 provided ensures compliance with requirements of this
13 chapter, including rules adopted by the department.
14 If a local board of health is acting in a manner that
15 is inconsistent with the provisions of this chapter or
16 the contract, the department may revoke the contract.

17 2. A local board of health which is a party to a
18 contract with the department shall designate
19 environmental health specialists who shall monitor
20 confinement feeding operations and the application of
21 manure on land within the board's jurisdiction,
22 according to procedures consistent with departmental
23 requirements. In conducting monitoring operations,
24 the environmental health specialists shall do all of
25 the following:

26 a. Ensure compliance with manure management plans
27 as provided in section 455B.203.

28 b. Inspect unformed manure storage structures. An
29 inspection shall include a visual determination
30 regarding a structure's freeboard level, seepage of
31 manure from the structure, erosion, adequate
32 vegetation cover, and the presence of an opening
33 allowing manure to drain from the structure.

34 c. Test drinking water wells which may be
35 contaminated by animal feeding operation structures.

36 3. An environmental health specialist shall be
37 deemed to be an agent of the department for the
38 purpose of carrying out duties under the contract,
39 including the inspection of premises. An
40 environmental health specialist shall have the same
41 authority under this chapter provided to the
42 department, unless the contract specifies otherwise.
43 In order to conduct monitoring, the environmental
44 health specialist must comply with standard
45 biosecurity requirements customarily required by the
46 confinement feeding operation."

47 2. By renumbering as necessary.

By SCHERRMAN of Dubuque

H-8250 FILED MARCH 5, 1998

WITHDRAWN 3/12/98 (p. 669)

HOUSE FILE 2494

H-8260

1 Amend House File 2494 as follows:

2 1. Page 24, by inserting before line 5, the
3 following:

4 "Sec. ____ . NEW SECTION. 455B.200C LEGAL ACTIONS.

5 1. Section 657.11 shall not apply to a person
6 receiving a permit for the construction of a
7 confinement feeding operation or a related animal
8 feeding operation structure under section 455B.200A.

9 2. In any nuisance action or proceeding against a
10 confinement feeding operation described in subsection
11 1, by or on behalf of a person whose date of ownership
12 of realty is subsequent to the established date of
13 operation of that confinement feeding operation, there
14 shall be an absolute defense to the claim of nuisance.
15 However, this subsection shall not apply to any of the
16 following:

17 a. A nuisance caused by a failure to comply with a
18 federal statute or regulation or a state statute or
19 rule which applies to the confinement feeding
20 operation, including requirements established in this
21 part.

22 b. Any period that the confinement feeding
23 operation or a person holding a controlling interest
24 in the confinement feeding operation is classified as
25 a chronic violator as defined in section 455B.202.

26 c. Notwithstanding section 335.2, the failure of a
27 confinement feeding operation to comply with zoning
28 requirements adopted by the county where the
29 confinement feeding operation is located. A zoning
30 requirement shall apply to a confinement feeding
31 operation with an established date of operation
32 subsequent to the effective date of the zoning
33 requirement."

34 2. By renumbering as necessary.

By KOENIGS of Mitchell

H-8260 FILED MARCH 5, 1998

TIW

WITHDRAWN

3/12/98

(R 665)

HOUSE FILE 2494

H-8255

1 Amend House File 2494 as follows:
 2 1. Page 7, by striking lines 2 and 3 and
 3 inserting the following: "regulating an agricultural
 4 operation. County legislation adopted in".
 5 2. Page 7, by inserting after line 6 the
 6 following:
 7 "____. This section shall not apply to county
 8 legislation which regulates an agricultural operation,
 9 if the regulation is expressly authorized by state
 10 law. However, regardless of whether the regulation is
 11 expressly authorized by state law, this section shall
 12 not apply to a county's jurisdiction and control over
 13 secondary roads, or the assessment or collection of
 14 moneys for costs associated with increased maintenance
 15 of the roads due to the use of the road by persons
 16 associated with animal feeding operations."

By KREIMAN of Davis

H-8255 FILED MARCH 5, 1998

WITHDRAWN 3/12/98 (p. 647)

HOUSE FILE 2494

H-8259

1 Amend House File 2494 as follows:
 2 1. Page 16, line 27, by striking the word and
 3 figure "subsection 5," and inserting the following:
 4 "subsections 2 and 5,".
 5 2. Page 16, line 27, by striking the word "is"
 6 and inserting the following: "are".
 7 3. Page 16, by inserting after line 28 the
 8 following:
 9 "2. A confinement feeding operation structure,
 10 ~~other-than-an-earthen-manure-storage-basin,~~ if the
 11 structure is part of a confinement feeding operation
 12 which qualifies as a small animal feeding operation.
 13 However, this subsection shall not apply if the
 14 confinement feeding operation structure is an earthen
 15 manure storage basin or a formed manure storage
 16 structure."

By MUNDIE of Webster

H-8259 FILED MARCH 5, 1998

*Adopted
 as amended
 3/12/98
 (p. 654)*

HOUSE FILE 2494

H-8265

1 Amend House File 2494 as follows:

2 1. Page 40, line 16, by striking the word "The".

3 2. Page 40, line 17, by inserting before the word

4 "members" the following:

5 "1. The".

6 3. Page 40, by inserting after line 21, the

7 following:

8 "2. Representatives of the following organizations

9 shall also be appointed as part of the animal

10 agriculture consulting organization: the Iowa

11 environmental council, the Iowa association of county

12 conservation boards, prairie fire, the Iowa farmers

13 union, and the Iowa Izaak Walton league of America."

By MUNDIE of Webster

H-8265 FILED MARCH 5, 1998

3/12/98 (p.680)

HOUSE FILE 2494

H-8267

1 Amend House File 2494 as follows:

2 1. Page 35, by inserting after line 5 the

3 following:

4 "____. A county may conduct samples of subsurface

5 water within a one-half-mile radius of an animal

6 feeding operation prior to its construction, according

7 to procedures adopted by the county. The county shall

8 as it determines feasible keep a record of the results

9 on file with the county."

By MUNDIE of Webster

H-8267 FILED MARCH 5, 1998

adapted 3/12/98 (p.668)

HOUSE FILE 2494

H-8261

1 Amend House File 2494 as follows:

2 1. Page 40, line 16, by striking the word "The".

3 2. Page 40, line 17, by inserting before the word

4 "members" the following:

5 "1. The".

6 3. Page 40, by inserting after line 21, the

7 following:

8 "2. Four members of the general assembly shall

9 serve as ex officio, nonvoting members of the animal

10 agriculture consulting organization. The legislative

11 members shall be appointed by the majority leader of

12 the senate, by the minority leader of the senate, by

13 the speaker of the house, and by the minority leader

14 of the house of representatives. Appointments under

15 this subsection shall comply with sections 69.16 and

16 69.16A. Vacancies shall be filled by the original

17 appointing authority and in the manner of the original

18 appointments. Legislative members shall serve terms

19 of two years and shall receive compensation pursuant

20 to section 2.12."

By MUNDIE of Webster

H-8261 FILED MARCH 5, 1998

3/12/98 (p.680)

ITV

HOUSE FILE 2494

H-8262

1 Amend House File 2494 as follows:

2 1. Page 36, line 1, by striking the word "estate"
3 and inserting the following: "property".

4 2. Page 36, by striking line 2 and inserting the
5 following: "if the acknowledgement is required to be
6 signed pursuant to section 558A.4A. The failure to".

7 3. Page 36, by striking lines 27 through 29 and
8 inserting the following:

9 "A person conveyed real property located within a
10 separation distance required between an animal feeding
11 operation and a residence pursuant to section 455B.162
12 must sign an".

13 4. Page 36, line 30, by inserting after the word
14 "acknowledgment." the following: "An acknowledgment
15 is not required for any type of conveyance to the same
16 extent that a disclosure is not required for a
17 transfer pursuant to section 558A.1, subsection 4,
18 paragraphs "a" through "h"."

19 5. Page 37, line 4, by inserting after the word
20 "AREAS." the following: "UNDER IOWA CODE SECTION
21 455B.165, AN ANIMAL FEEDING OPERATION MAY EXPAND
22 CLOSER TO A RESIDENCE IF THE ANIMAL FEEDING OPERATION
23 WAS ESTABLISHED BEFORE THE RESIDENCE WAS CONSTRUCTED.
24 THE ANIMAL FEEDING OPERATION MAY HAVE A LEGAL DEFENSE
25 FROM LAWSUITS INVOLVING ACTIVITIES CUSTOMARILY
26 ASSOCIATED WITH THE CARE AND FEEDING OF LIVESTOCK."

27 6. Page 37, by striking lines 13 and 14 and
28 inserting the following:

29 "2. A person conveyed real property may bring a
30 cause of action to invalidate the conveyance based on
31 a failure to file a signed acknowledgment with".

32 7. Page 37, line 19, by striking the words
33 "transfer of" and inserting the following:

34 "conveyance of real".

By HEATON of Henry

H-8262 FILED MARCH 5, 1998

Adopted 3/12/98 (P. 673)

HOUSE FILE 2494

H-8263

1 Amend House File 2494 as follows:

2 1. Page 20, by inserting after line 21 the
3 following:

4 " . The department shall not issue a permit for
5 the construction of an animal feeding operation
6 structure which is part of a confinement feeding
7 operation, unless the structure complies with a model
8 for the siting of animal feeding structures which
9 shall be developed by Iowa state university in
10 cooperation with the department."

By MUNDIE of Webster

H-8263 FILED MARCH 5, 1998

WITHDRAWN

*3/12/98
(P. 656)*

WITHDRAWN

HOUSE FILE 2494

H-8341

1 Amend House File 2494 as follows:

2 1. Page 16, by inserting before line 17 the
3 following:

4 ". The animal feeding operation was constructed
5 prior to the effective date of this Act and is
6 expanded by replacing one or more unformed manure
7 storage structures with one or more formed manure
8 storage structures, if all of the following apply:

9 a. The animal weight capacity is not increased for
10 that portion of the animal feeding operation that
11 utilizes all replacement formed manure storage
12 structures.

13 b. Use of each replaced unformed manure storage
14 structure is discontinued within one year after the
15 construction of the replacement formed manure storage
16 structure.

17 c. The capacity of all replacement formed manure
18 storage structures does not exceed the amount required
19 to store manure produced by that portion of the animal
20 feeding operation utilizing the formed manure storage
21 structures during any fourteen-month period.

22 d. No portion of the replacement formed manure
23 storage structure is closer to an object or location
24 for which separation is required under section
25 455B.162 than any other animal feeding operation
26 structure which is part of the operation."

27 2. By renumbering as necessary.

By CARROLL of Poweshiek

H-8341 FILED MARCH 11, 1998

adapted
3/12/98 (P. 653)

HOUSE FILE 2494

H-8325

- 1 Amend House File 2494 as follows:
- 2 1. Page 15, line 15, by striking the word and
- 3 figures "July 1, 1998," and inserting the following:
- 4 "the effective date of this Act,".
- 5 2. Page 15, line 26, by striking the word and
- 6 figures "July 1, 1998," and inserting the following:
- 7 "the effective date of this Act,".
- 8 3. Page 35, line 28, by striking the word and
- 9 figures "July 1, 1998" and inserting the following:
- 10 "the effective date of this Act".
- 11 4. Page 41, by striking lines 14 and 15 and
- 12 inserting the following:
- 13 "Sec. ____ EFFECTIVE DATE. This Act, being deemed
- 14 of immediate importance, takes effect upon enactment."
- By KOENIGS of Mitchell

H-8325 FILED MARCH 11, 1998

WITHDRAWN 3/12/98 (p.652)

HOUSE FILE 2494

H-8339

- 1 Amend House File 2494 as follows:
- 2 1. Page 6, line 26, by striking the words "but
- 3 not limited to".
- 4 2. Page 6, line 29, by striking the words "or
- 5 transportation".
- By ARNOLD of Lucas

H-8339 FILED MARCH 11, 1998

WITHDRAWN 3/12/98 (p.647)

HOUSE FILE 2494

H-8340

- 1 Amend House File 2494 as follows:
- 2 1. Page 7, by striking lines 2 and 3 and
- 3 inserting the following: "regulating an agricultural
- 4 operation. County legislation adopted in".
- 5 2. Page 7, by inserting after line 6 the
- 6 following:
- 7 "____. This section shall not apply to county
- 8 legislation which regulates an agricultural operation,
- 9 if the regulation is expressly authorized by state
- 10 law. However, regardless of whether the regulation is
- 11 expressly authorized by state law, this section shall
- 12 not apply to a county's jurisdiction and control over
- 13 secondary roads, or the assessment or collection of
- 14 moneys for costs associated with increased maintenance
- 15 of the roads due to the use of the roads by an animal
- 16 feeding operation."
- By KREIMAN of Davis

H-8340 FILED MARCH 11, 1998

WITHDRAWN 3/12/98
(p.687)

HOUSE FILE 2494

H-8343

- 1 Amend House File 2494 as follows:
2 1. Page 18, by striking line 25 and inserting the
3 following: "a system used for the application of
4 manure to land by use of equipment which may be either
5 of the following:
6 a. A tank containing more than one thousand
7 gallons of liquid manure which is mounted to a
8 vehicle, or a wagon pulled by a vehicle, including an
9 implement of husbandry as defined in section 321.1,
10 which is designed to mechanically apply the manure to
11 land.
12 b. Mechanical equipment used for the aerial
13 application of".

By MUNDIE of Webster

H-8343 FILED MARCH 11, 1998

adopted 3/12/98 (P.654)

HOUSE FILE 2494

H-8349

- 1 Amend House File 2494 as follows:
2 1. Page 24, by inserting before line 5, the
3 following:
4 "Sec. ____ . NEW SECTION. 455B.200C COUNTY
5 NOTIFICATION.
6 1. A person who constructs an animal feeding
7 operation structure which is part of a confinement
8 feeding operation, other than a small animal feeding
9 operation, shall notify the county board of
10 supervisors of the construction, if all of the
11 following apply:
12 a. The confinement feeding operation has two or
13 more buildings used to confine animals.
14 b. The confinement feeding operation utilizes a
15 formed manure storage structure which is not required
16 to be constructed pursuant to a permit under section
17 455B.200A.
18 2. The county may notify persons of the
19 construction and provide a forum for public comment,
20 including a public hearing."

By MUNDIE of Webster

H-8349 FILED MARCH 11, 1998

*Lost 3/12/98
(P.666)*

HOUSE FILE 2494

H-8342

1 Amend House File 2494 as follows:

2 1. Page 35, by inserting after line 24 the
3 following:

4 "Sec. ____ . NEW SECTION. 455B.205A ENVIRONMENTAL
5 HEALTH SPECIALISTS.

6 1. A local board of health serving a county or
7 district as provided in chapter 137 may contract with
8 the department in order to carry out this section.
9 The department shall enter into a contract with the
10 local board of health, if the agreement for the
11 services is cost-effective and the quality of the
12 services provided ensures compliance with requirements
13 of this chapter, including rules adopted by the
14 department. If the local board of health acts in a
15 manner that is inconsistent with the provisions of
16 this chapter or the contract, the department may
17 revoke the contract.

18 2. A local board of health which is a party to a
19 contract with the department shall designate
20 environmental health specialists who shall monitor
21 confinement feeding operations and the application of
22 manure on land within the board's jurisdiction,
23 according to procedures consistent with departmental
24 requirements. In conducting monitoring operations,
25 the environmental health specialists shall do all of
26 the following:

27 a. Ensure compliance with manure management plans
28 as provided in section 455B.203.

29 b. Inspect unformed manure storage structures. An
30 inspection shall include a visual determination
31 regarding a structure's freeboard level, seepage of
32 manure from the structure, erosion, adequate
33 vegetation cover, and the presence of an opening
34 allowing manure to drain from the structure.

35 c. Test drinking water wells which may be
36 contaminated by animal feeding operation structures.

37 3. An environmental health specialist shall be
38 deemed to be an agent of the department for the
39 purpose of carrying out duties under a contract,
40 including the inspection of premises. An
41 environmental health specialist shall have the same
42 authority under this chapter provided to the
43 department, unless the contract specifies otherwise.
44 In order to conduct monitoring, the environmental
45 health specialist must comply with standard
46 biosecurity requirements customarily required by the
47 confinement feeding operation."

48 2. By renumbering as necessary.

By SCHERRMAN of Dumas

H-8342 FILED MARCH 11, 1998

*Lost
3/12/98
(p. 670)*

HOUSE FILE 2494

H-8354

- 1 Amend House File 2494 as follows:
- 2 1. Page 7, line 19, by striking the word and
3 figure "division II," and inserting the following:
4 "division II; section 455B.200A;".
- 5 2. Page 9, by inserting after line 11 the
6 following:
7 "a. Both of the following apply:"
8 3. Page 9, line 12, by striking the letter "a."
9 and inserting the following: "(1)".
- 10 4. Page 9, by inserting after line 14 the
11 following:
12 "(2) The confinement feeding operations have a
13 combined animal weight capacity of less than six
14 hundred twenty-five thousand pounds for animals other
15 than bovine or less than one million six hundred
16 thousand pounds for bovine." *Div. A.*
- 17 5. Page 9, line 30, by inserting after the word
18 "feet" the following: "or less".
- 19 6. Page 10, line 6, by inserting after the word
20 "Act;" the following: "and".
- 21 7. Page 10, by striking lines 7 through 10, and
22 inserting the following: "expansion of structures
23 ~~constructed on or after May 31, 1995, or, except as~~
24 ~~provided in section 455B.163, to the expansion of~~
25 ~~structures constructed prior to May 31, 1995; the~~
26 effective date of this Act."
- 27 8. Page 14, line 16, by inserting after the word
28 "road" the following: ", street, bridge, or
29 thoroughfare".
- 30 9. Page 15, line 11, by striking the words and
31 figure "May 31, 1995" and inserting the following:
32 "the effective date of this Act".
- 33 10. Page 15, by striking line 15 and inserting
34 the following: "expanded on or after the effective
35 date of this Act,".
- 36 11. Page 15, by striking lines 20 through 29 and
37 inserting the following:
38 "a. No portion of the animal feeding operation
39 after expansion is closer than before expansion to a
40 location or object for which separation is required
41 under section 455B.162."
- 42 12. Page 15, by striking line 34 and inserting
43 the following: "feeding operating structure
44 constructed prior to the effective date of this Act,
45 or on the".
- 46 13. Page 16, by striking line 1 and inserting the
47 following: "structure constructed on or after the
48 effective date".
- 49 14. Page 16, line 13, by inserting after the
50 figure "455B.162" the following: ", subsections 1,

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Page 2

1 1B, and 1C".

2 15. Page 16, by striking lines 15 and 16, and
3 inserting the following: "operation as expanded is
4 not more than either of the following:

5 (1) Six hundred twenty-five thousand pounds for
6 animals other than bovine.

7 (2) One million six hundred thousand pounds for
8 bovine."

A 9 16. Page 17, line 31, by striking the word "an".

10 17. By striking page 17, line 32, through page
11 18, line 15, and inserting the following: "the same
12 as defined in section 455B.161."

B 13 18. Page 21, line 11, by inserting after the word
14 "permit." the following: "A completed application
15 which is not approved or denied within the sixty-day
16 period shall be approved by default."

17 19. Page 21, line 20, by inserting after the
18 words "permit is" the following: "proposed".

19 20. By striking page 23, line 27, through page
20 24, line 4, and inserting the following:

21 "Adjacency shall be determined under this part in
22 the same manner as determined pursuant to section
23 455B.161A."

24 21. Page 29, line 27, by inserting after the word
25 "site" the following: "other than a commercial manure
26 applicator".

A 27 22. Page 31, by striking lines 12 through 15 and
28 inserting the following: "program under this section,
29 and the department of agriculture and land stewardship
30 in administering the certification program for
31 pesticide applicators may cooperate together."

32 23. Page 31, line 34, by striking the words "in
33 sight or hearing" and inserting the following: "both
34 of the following:

35 a. Physically present at the site where the manure
36 is located.

37 b. ~~In sight or hearing".~~

38 24. Page 31, by inserting after line 35, the
39 following:

C 40 "8. If a certified commercial applicator applies
41 manure to land in a manner that causes a violation of
42 this part, any person who holds an interest in the
43 land or any person who owns or operates an animal
44 feeding operation where the manure originated shall
45 not be subject to an enforcement action under this
46 part, including the assessment of a civil penalty
47 under section 455B.191, arising out of the violation,
48 unless the person or the person's agent knew or
49 reasonably should have known of the violation and
50 failed to order its termination."

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-2-

A

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Page 3

- 1 25. Page 33, line 6, by striking the word
- 2 "wellhead" and inserting the following: "surface
- 3 intake, wellhead,".
- 4 26. Page 35, line 35, by striking the figure
- 5 "558A.4" and inserting the following: "558A.4A".
- 6 27. Page 37, line 16, by striking the figure
- 7 "614.29" and inserting the following: "614.28A".
- 8 28. Page 40, by inserting after line 15, the
- 9 following:

Div. A

10 "Sec. ____ . COUNTY APPEAL PROCESS. If the
 11 department of natural resources has not made a
 12 determination regarding the approval or denial of a
 13 permit for the construction of a confinement feeding
 14 operation or related animal feeding operation
 15 structure on the effective date of this Act, the
 16 department's decision to approve or disapprove the
 17 permit application may be contested by the county
 18 board of supervisors in the county where the
 19 confinement feeding operation or related animal
 20 feeding operation structure subject to the permit is
 21 proposed to be located, as provided in section
 22 455B.200A as enacted in this Act."

By TEIG of Hamilton

H-8354 FILED MARCH 11, 1998

- A. adopted 3-12-98 (p. 652)
- B. adopted 3-12-98 (p. 662)
- C. " 3-12-98 (p. 667)

HOUSE FILE 2494

H-8355

- 1 Amend House File 2494 as follows:
- 2 1. Page 28, by inserting after line 14 the
- 3 following:
- 4 "Sec. ____ . Section 455B.203, subsection 2,
- 5 paragraph a, Code 1997, is amended to read as follows:
- 6 a. Calculations necessary to determine the land
- 7 area required for the application of manure from a
- 8 confinement feeding operation. The calculations shall
- 9 be based on nitrogen use levels in order to obtain
- 10 optimum crop yields according to a crop schedule
- 11 specified in the plan; and. The calculations shall
- 12 also be based on phosphorus and potassium levels. The
- 13 calculations shall be made according to requirements
- 14 adopted by the department after receiving
- 15 recommendations from the animal agriculture consulting
- 16 organization provided for in 1995 Iowa Acts, chapter
- 17 195, section 37 Iowa state university."
- 18 2. By renumbering as necessary.

By FREVERT of Palo Alto

H-8355 FILED MARCH 11, 1998

*Last
3/12/98
(p. 667)*

HOUSE FILE 2494

H-8352

1 Amend House File 2494 as follows:

2 1. Page 21, by inserting after line 2 the
3 following:

4 " . The department shall approve or disapprove a
5 permit for the construction of a confinement feeding
6 operation or an associated animal feeding operation
7 structure, based on rules adopted by the department
8 which include consideration of the risk-based siting
9 analysis established pursuant to section 455B.200C."

10 2. Page 21, by inserting after line 23 the
11 following:

12 " . A county which has adopted an ordinance
13 establishing a confinement feeding operation siting
14 review board as provided in section 455B.200D shall
15 forward the application to the review board for
16 further consideration. The process for determining
17 siting shall proceed as provided in section 455B.200D.
18 The county board of supervisors may submit the report
19 of the confinement feeding operation siting review
20 board to the department."

21 3. Page 22, lines 6 and 7, by striking the word
22 "comments submitted" and inserting the following:
23 "submissions delivered".

24 4. Page 22, line 11, by striking the word
25 "comments" and inserting the following:
26 "submissions".

27 5. Page 24, by inserting before line 5 the
28 following:

29 "Sec. . NEW SECTION. 455B.200C SITING BASED ON
30 RISK-BASED ANALYSIS.

31 1. The department shall adopt rules establishing a
32 risk-based siting analysis according to
33 recommendations made to the department by a technical
34 advisory committee established pursuant to this
35 section. The technical advisory committee shall
36 compile data and develop, review, and update the
37 siting analysis used to determine appropriate
38 locations to construct an animal feeding operation
39 structure associated with a confinement feeding
40 operation, including its orientation to other objects
41 or locations for which separation distances are
42 required pursuant to section 455B.162. The siting
43 analysis shall provide a calculation of risks to the
44 natural environment and the public health, comfort,
45 and safety. The analysis shall be created as a
46 computer model which shall account for topography,
47 surface water drainage characteristics, seasonal air
48 flow, suitability of the soils and the hydrology of
49 the site, the population density of the area, the
50 character of residential development in the area and

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1 factors related to land use planning. The analysis
2 shall be designed to allow the department or a county
3 confinement feeding operation siting review board to
4 determine the appropriateness of the siting based on
5 degrees of risk to the natural environment or the use
6 of property by neighbors to the confinement feeding
7 operation, including the degree to which the
8 establishment of a conservation practice as provided
9 in section 455B.207 may mitigate the risk. The
10 analysis shall be used to determine whether there is a
11 high, medium, or de minimus risk.

12 2. The technical advisory committee shall be
13 composed of all of the following:

14 a. The presidents of the university of Iowa, Iowa
15 state university, and the university of northern Iowa,
16 or their designees.

17 b. The director of the Iowa department of public
18 health or a designee.

19 c. The director of the soil conservation division
20 of the department of agriculture and land stewardship,
21 or a designee.

22 d. The director of the center for agricultural
23 health and safety, or a designee.

24 e. The administrator of the energy and geological
25 resources division of the department of natural
26 resources or a designee who is responsible for the
27 administration of the geological survey.

28 f. The head of the waste reduction center at the
29 university of northern Iowa, or a designee.

30 g. The president of the Iowa groundwater
31 association or the president's designee who is a
32 ground water professional pursuant to section 455G.18.

33 h. The chairperson of the Iowa environmental
34 council, or the chairperson's designee.

35 i. An engineer employed by a city or county who is
36 appointed jointly by the Iowa league of cities and
37 Iowa state association of counties.

38 3. The members of the technical advisory committee
39 shall be reimbursed for their actual expenses in
40 accordance with section 7E.6, subsection 2, for
41 performing the official duties of the advisory
42 committee.

43 Sec. . NEW SECTION. 455B.200D COUNTY

44 CONFINEMENT FEEDING OPERATION SITING REVIEW BOARD.

45 1. Notwithstanding section 331.304A, a county may
46 adopt an ordinance to establish a confinement feeding
47 operation siting review board. The purpose of the
48 board shall be to review the appropriateness of siting
49 an animal feeding operation structure associated with
50 a confinement feeding operation at a proposed site in

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1 the county, prior to the approval of a permit by the
2 department for the construction of the structure, as
3 provided in section 455B.200A.

4 2. The board shall be composed of all of the
5 following:

6 a. A commissioner of the soil and water
7 conservation district in the county who shall be
8 appointed by the commissioners. If more than one
9 district is located in the county, the board of
10 supervisors for the county shall designate the
11 district to be represented on a rotating basis.

12 b. Two members of the board of supervisors of the
13 county who shall be appointed by the county board of
14 supervisors.

15 c. The county engineer for the county, or a
16 designee.

17 d. The head of the local board of health for the
18 county or a designee, which may be the county
19 sanitarian.

20 3. In performing the siting analysis, the board
21 shall determine whether the siting of the animal
22 feeding operation presents a high, medium, or de
23 minimus risk to the natural environment or the use of
24 property by neighbors to the confinement feeding
25 operation.

26 a. If the board determines that there is a high
27 risk, the board shall reject the proposed siting which
28 determination shall not be reversed by the department,
29 unless the department finds that the determination is
30 unreasonable, arbitrary, capricious, or otherwise
31 beyond the authority delegated to the board under this
32 section.

33 b. If the board determines that there is a medium
34 risk, the board shall reject the proposed siting which
35 determination may be reversed by the department, if
36 the department applies the siting analysis and
37 determines that there is a de minimus risk. The board
38 is not required to report its determination to the
39 county board of supervisors if the board agrees to
40 review an amended siting proposal submitted by the
41 applicant. The board and the applicant must execute
42 an agreement to suspend the time limits for delivering
43 submissions by the county to the department and for
44 departmental approval or disapproval of a construction
45 permit as required by section 455B.200A. The county
46 shall deliver the agreement to the department
47 according to procedures required by the department.
48 The time limits as provided in section 455B.200A shall
49 be suspended according to the terms and conditions
50 provided in the agreement. The review board may

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1 consider amendments which provide a different site,
2 the change in the orientation or size of the animal
3 feeding operation structure, or the installation of
4 conservation practices as provided in section
5 455B.207. The board shall not approve an amended
6 proposal unless the board determines that there is a
7 de minimus risk.

8 c. If the board determines that there is a de
9 minimus risk, the board shall approve the proposed
10 siting, which determination may be reversed by the
11 department, if the department finds that the
12 determination is unreasonable, arbitrary, capricious,
13 or otherwise beyond the authority delegated to the
14 board under this section."

15 6. Page 35, by inserting after line 29 the
16 following:

17 "Sec. . NEW SECTION. 455B.207 CONSERVATION
18 PRACTICES PROGRAM -- COST-SHARE MONEYS.

19 1. The division of soil conservation of the
20 department of agriculture and land stewardship shall
21 establish and administer a program to provide
22 financial incentives to support conservation practices
23 on land where confinement feeding operations are
24 located. A landowner who chooses to participate in
25 the program must establish the conservation practice
26 according to an agreement in which the landowner
27 promises to establish and maintain the conservation
28 practice in return for financial incentives.

29 2. A conservation practice includes any practice
30 which is designed to protect environmental quality
31 from activities associated with a confinement feeding
32 operation, including all of the following:

33 a. Water quality practices designed to protect
34 water sources, including but not limited to the stream
35 buffer strip establishment, erosion control structure
36 construction, the establishment of permanent grass and
37 buffer zones, filter strips, and erosion control
38 structures, and practices to mitigate the effects of
39 concentrated contamination on surface and subsurface
40 water quality from manure originating from confinement
41 feeding operations.

42 b. Air quality practices, including but not
43 limited to the establishment of stands of fast growing
44 trees or wind barriers around confinement feeding
45 operations and agricultural land where manure is
46 stored or applied.

47 3. The financial incentives shall be allocated by
48 the division on a cost-share basis which does not
49 exceed fifty percent of the estimated cost of
50 establishing the practices, or fifty percent of the

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Page 5

- 1 actual cost, whichever is less.
 2 4. The division shall adopt rules necessary to
 3 administer this section."
 4 7. Page 41, by inserting before line 14, the
 5 following:
 6 "Sec. ____ . STUDY. The university of Iowa, Iowa
 7 state university, and the university of northern Iowa,
 8 under the direction of the state board of regents,
 9 shall cooperate in performing a study of the social
 10 and economic impacts associated with the expansion of
 11 confinement feeding operations in this state. The
 12 universities shall prepare and submit a report to the
 13 general assembly not later than January 1, 2000."
 14 8. By renumbering as necessary.

By WITT of Black Hawk

H-8352 FILED MARCH 11, 1998

Just 3/12/98 (p. 660)

HOUSE FILE 2494

H-8350

- 1 Amend House File 2494 as follows:
 2 1. Page 35, line 28, by striking the word and
 3 figures "July 1, 1998" and inserting the following:
 4 "the effective date of this Act".
 5 2. Page 41, by striking lines 14 and 15 and
 6 inserting the following:
 7 "Sec. ____ . EFFECTIVE DATE. This Act, being deemed
 8 of immediate importance, takes effect upon enactment."

By KOENIGS of Mitchell

H-8350 FILED MARCH 11, 1998

WITHDRAWN
3-12-98 (p. 671)

HOUSE FILE 2494

H-8351

- 1 Amend House File 2494 as follows:
 2 1. Page 40, line 16, by striking the word "The".
 3 2. Page 40, line 17, by inserting before the word
 4 "members" the following:
 5 "1. The".
 6 3. Page 40, by inserting after line 21, the
 7 following:
 8 "2. Representatives of the following organizations
 9 shall also be appointed as part of the animal
 10 agriculture consulting organization: one member
 11 appointed by the Iowa association of county
 12 conservation boards, one member appointed by the Iowa
 13 environmental health association, and one member
 14 appointed jointly by prairie fire, the Iowa farmers
 15 union, and the national farmers organization."

By MUNDIE of Webster

H-8351 FILED MARCH 11, 1998

WITHDRAWN *3/12/98 (p. 680)*

HOUSE FILE 2494

H-8361

- 1 Amend the amendment, H-8152, to House File 2494 as
2 follows:
3 1. Page 1, by inserting after line 8 the
4 following:
5 "____. Page 7, by inserting after line 6 the
6 following:
7 "____. Regardless of whether the regulation is
8 expressly authorized by state law, this section shall
9 not apply to a county's jurisdiction and control over
10 secondary roads, or the assessment or collection of
11 moneys for costs associated with increased maintenance
12 of the roads due to the use of the roads by an animal
13 feeding operation.""
14 2. By renumbering as necessary.

By KREIMAN of Davis

H-8361, FILED MARCH 12, 1998

Order 3/12/98 (P. 687)

HOUSE FILE 2494

H-8366

- 1 Amend the amendment, H-8354, to House File 2494, as
2 follows:
3 1. Page 2, by striking lines 13 through 16, and
4 inserting the following:
5 "____. Page 21, by striking lines 11 through 14,
6 and inserting the following: "permit. All of the
7 following shall apply:
8 a. A completed application for which the
9 department has not taken final agency action by
10 approval or disapproval within the sixty-day period
11 shall be approved by default. The sixty-day
12 requirement shall not apply to an application if the
13 applicant is not required to obtain a permit in order
14 to construct an animal feeding operation structure or
15 to operate an animal feeding operation.
16 b. Judicial review of a final agency action for
17 the approval or disapproval of a permit shall be de
18 novo, regardless of whether an approval was
19 affirmatively made by the department or by default,
20 including judicial review of a contested case in which
21 the county board of supervisors is a party as provided
22 in this section.""

By MORELAND of Wapello

H-8366 FILED MARCH 12, 1998

ADOPTED

(P. 651)

HOUSE FILE 2494

H-8359

1 Amend the amendment, H-8177, to House File 2494 as
2 follows:

3 1. Page 2, by striking lines 21 through 39 and
4 inserting the following:

5 "Sec. _____. Section 657.11, subsection 4, Code
6 1997, is amended by striking the subsection.

7 Sec. _____. NEW SECTION. 657.11A CHRONIC
8 VIOLATORS.

9 1. As used in this section, unless the context
10 otherwise requires:

11 a. "Commission" means the environmental protection
12 commission created in section 455A.6.

13 b. "Confinement feeding operation" means the same
14 as defined in section 455B.161.

15 c. "Department" means the department of natural
16 resources.

17 d. "Suspect transaction" means a transaction in
18 which a person classified as a chronic violator under
19 this section does any of the following:

20 (1) Transfers a controlling interest in a
21 confinement feeding operation to any of the following:

22 (a) An employee of the chronic violator or
23 business in which the person holds a controlling
24 interest.

25 (b) A person who holds an interest in a business,
26 including a confinement feeding operation, in which
27 the chronic violator holds a controlling interest.

28 (c) A person related to the chronic violator as
29 spouse, parent, grandparent, lineal ascendant of a
30 grandparent or spouse and any other lineal descendant
31 of the grandparent or spouse, or a person acting in a
32 fiduciary capacity for a related person.

33 (2) Provides financing for the construction or
34 operation of a confinement feeding operation to any
35 person, including by providing a contribution, loan to
36 the person, or providing collateral for a contribution
37 or loan made by a third person.

38 2. The rebuttable presumption provided in section
39 657.11 does not apply to a person during any period
40 that the person is classified as a chronic violator
41 under this section as to any confinement feeding
42 operation in which the person holds a controlling
43 interest, as defined by rules adopted by the
44 department of natural resources. The rebuttable
45 presumption shall apply to the person on and after the
46 date that the person is removed from the
47 classification of chronic violator.

48 3. A person shall be classified as a chronic
49 violator if the person has committed three or more
50 violations as described in this subsection prior to,

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HOUSE FILE 2494

H-8369

1 Amend the amendment, H-8259, to House File 2494 as
 2 follows:
 3 1. Page 1, by striking lines 14 through 16 and
 4 inserting the following: "confinement feeding
 5 operation structure is an unformed manure storage
 6 structure."

By TEIG of Hamilton

H-8369 FILED MARCH 12, 1998

ADOPTED (P. 654)

HOUSE FILE 2494

H-8370

1 Amend the amendment, H-8350, to House File 2494 as
 2 follows:
 3 1. Page 1, line 7, by striking the word "This"
 4 and inserting the following: "Section 455B.206, as
 5 enacted in this".

By KOENIGS of Mitchell

H-8370 FILED MARCH 12, 1998

OUT OF ORDER

(P. 671)

HOUSE FILE 2494

H-8368

1 Amend the amendment, H-8354, to House File 2494 as
2 follows:
3 1. Page 2, by inserting after line 26 the
4 following:
5 "____. By striking page 29, line 34 through page
6 30, line 12, and inserting the following:
7 "3. a. A person required to be certified as a
8 commercial manure applicator must be certified by the
9 department each year. The person shall be certified
10 after completing an educational program which shall
11 consist of an examination required to be passed by the
12 person or three hours of continuing instructional
13 courses which the person must attend each year in lieu
14 of passing the examination.
15 b. A person required to be certified as a
16 confinement site manure applicator must be certified
17 by the department each three years. The person shall
18 be certified after completing an educational program
19 which shall consist of an examination required to be
20 passed by the person or two hours of continuing
21 instructional courses which the person must attend
22 each year in lieu of passing the examination."
23 2. Page 2, by inserting after line 50 the
24 following:
25 "The department may charge a fee for certifying
26 persons under this section. The fee for certification
27 shall be based on the costs of administering and
28 enforcing this section and paying the expenses of the
29 department relating to certification. The department
30 shall be reimbursed for all costs incurred. The
31 director shall set a fee for the examination which
32 shall be based upon the annual cost of administering
33 the examinations. All fees collected shall be
34 retained by the department for administration of the
35 certification program. However, a person required to
36 be certified as a commercial manure applicator shall
37 not be required to pay more than thirty dollars for
38 each certification, and a person required to be
39 certified as a confinement site manure applicator
40 shall not be required to pay more than fifteen dollars
41 for each certification."
42 3. By renumbering as necessary.

By MEYER of Sac

H-8368 FILED MARCH 12, 1998
ADOPTED

(p. 652)

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1 on, or after July 1, 1996. In addition, in relation
2 to each violation, the person must have been subject
3 to either of the following:

4 a. The assessment of a civil penalty by the
5 department or the commission in an amount equal to
6 three thousand dollars or more.

7 b. A court order or judgment for a legal action
8 brought by the attorney general after referral by the
9 department or commission.

10 4. Each violation must have occurred within five
11 years prior to the date of the latest violation,
12 counting any violation committed by a confinement
13 feeding operation in which the person holds a
14 controlling interest. A violation occurs on the date
15 the department issues an administrative order to the
16 person assessing a civil penalty of three thousand
17 dollars or more, or on the date the department
18 notifies a person in writing that the department will
19 recommend that the commission refer, or the commission
20 refers the case to the attorney general for legal
21 action, or the date of entry of the court order or
22 judgment, whichever occurs first. A violation under
23 this subsection shall not be counted if the civil
24 penalty ultimately imposed is less than three thousand
25 dollars, the department or commission does not refer
26 the action to the attorney general, the attorney
27 general does not take legal action, or a court order
28 or judgment is not entered against the person. A
29 person shall be removed from the classification of
30 chronic violator on the date on which the person and
31 all confinement feeding operations in which the person
32 holds a controlling interest have committed less than
33 three violations described in this subsection for the
34 prior five years.

35 5. For purposes of counting violations, a
36 continuing and uninterrupted violation shall be
37 considered as one violation. Different types of
38 violations shall be counted as separate violations
39 regardless of whether the violations were committed
40 during the same period. The violation must be a
41 violation of a state statute, or a rule adopted by the
42 department, which applies to a confinement feeding
43 operation and any related animal feeding operation
44 structure, including an anaerobic lagoon, earthen
45 manure storage basin, formed manure storage structure,
46 or egg washwater storage structure, or any related
47 pollution control device or practice. The structure,
48 device, or practice must be part of the confinement
49 feeding operation. The violation must be one of the
50 following:

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1 a. Constructing or operating a related animal
2 feeding operation structure or installing or using a
3 related pollution control device or practice, for
4 which the person must obtain a permit, in violation of
5 statute or rules adopted by the department, including
6 the terms or conditions of the permit.

7 b. Intentionally making a false statement or
8 misrepresenting information to the department as part
9 of an application for a construction permit for the
10 related animal feeding operation structure, or the
11 installation of the related pollution control device
12 or practice, for which the person must obtain a
13 construction permit from the department.

14 c. Failing to obtain a permit or approval by the
15 department for a permit to construct or operate a
16 confinement feeding operation or use a related animal
17 feeding operation structure or pollution control
18 device or practice, for which the person must obtain a
19 permit from the department.

20 d. Operating a confinement feeding operation,
21 including a related animal feeding operation structure
22 or pollution control device or practice, which causes
23 pollution to the waters of the state, if the pollution
24 was caused intentionally, or caused by a failure to
25 take measures required to abate the pollution which
26 resulted from an act of God.

27 e. Failing to submit a manure management plan as
28 required, or operating a confinement feeding operation
29 required to have a manure management plan without
30 having submitted the manure management plan.

31 6. A suspect transaction shall be presumed to be
32 made in order to avoid a cause of action for nuisance
33 brought against the person classified as a chronic
34 violator. The person receiving control of the
35 operation pursuant to the suspect transaction shall be
36 deemed to be an agent of the chronic violator, unless
37 the chronic violator and the person receiving the
38 controlling interest in the confinement feeding
39 operation because of the suspect transaction, prove by
40 clear and convincing evidence all of the following:

41 a. That the suspect transaction was for a
42 legitimate business purpose made by parties exercising
43 independent and reasonable judgment.

44 b. That the chronic violator does not exercise a
45 controlling influence over the business affairs of the
46 confinement feeding operation."

47 2. By renumbering as necessary.

By WISE of Lee

H-8359 FILED MARCH 12, 1998
WITHDRAWN

(p. 675)

3-3/19/98 without recommendation
5-3/24/98 Referred from Columbus
5-4-7-98 back to agric.
Do Pass

HOUSE FILE 2494
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 661)

(As Amended and Passed by the House, March 12, 1998)

Passed House, ^(P.1536) Date 4-13-98 Passed Senate, ^(P.1144) Date 4/6/98
Vote: Ayes 59 Nays 40 Vote: Ayes 36 Nays 14
Approved May 21, 1998

A BILL FOR

1 An Act regulating animal feeding operations and making penalties
2 applicable and providing an effective date.

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

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New Language _____

1 Section 1. NEW SECTION. 7D.10A ALLOCATION TO MANURE
2 STORAGE INDEMNITY FUND.

3 If moneys are not sufficient to support the manure storage
4 indemnity fund as provided in chapter 204, the executive
5 council may allocate from moneys in the general fund of the
6 state, which are not otherwise obligated or encumbered, an
7 amount to the manure storage indemnity fund as provided under
8 section 204.2. However, not more than a total of one million
9 dollars shall be allocated to the manure storage indemnity
10 fund at any time.

11 Sec. 2. Section 204.1, subsections 4, 8, and 9, Code 1997,
12 are amended to read as follows:

13 4. "Department" means the department of agriculture-and
14 land-stewardship natural resources.

15 8. "Manure storage structure" means ~~a-structure-used-to~~
16 ~~store-manure-as-part-of-a-confinement-feeding-operation~~
17 ~~subject-to-a-construction-permit-issued-by-the-department-of~~
18 ~~natural-resources-pursuant-to-section-455B.173.--A-manure~~
19 ~~storage-structure-includes-but-is-not-limited-to-an~~
20 ~~anaerobic-lagoon-formed-manure-storage-structure-or-earthen~~
21 ~~manure-storage-basin,~~ the same as defined in section 455B.161
22 455B.171.

23 9. "Permittee" means a person who, pursuant to section
24 455B.200A, obtains a permit for the construction of a manure
25 storage structure, or a confinement feeding operation, if a
26 manure storage structure is connected to the confinement
27 feeding operation.

28 Sec. 3. Section 204.2, subsections 2, 3, and 5, Code 1997,
29 are amended to read as follows:

30 2. The fund consists of moneys from indemnity fees
31 remitted by permittees to the department ~~of-natural-resources~~
32 ~~and-transferred-to-the-department-of-agriculture-and-land~~
33 ~~stewardship~~ as provided in section 204.3; moneys from
34 indemnity fees remitted by persons required to submit manure
35 management plans to the department pursuant to section 204.3A;

1 sums collected on behalf of the fund by the department through
2 legal action or settlement; moneys required to be repaid to
3 the department by a county pursuant to this chapter; civil
4 penalties assessed and collected by the department ~~of-natural~~
5 resources or the attorney general pursuant to chapter 455B,
6 against ~~permittees~~ animal feeding operations; moneys paid as a
7 settlement involving an enforcement action for a civil penalty
8 subject to assessment and collection against permittees by the
9 department ~~of-natural-resources~~ or the attorney general
10 pursuant to chapter 455B; interest, property, and securities
11 acquired through the use of moneys in the fund; or moneys
12 contributed to the fund from other sources.

13 3. The moneys collected under this section and shall be
14 deposited in the fund and shall be appropriated to the
15 department for the exclusive purpose of ~~indemnifying-a-county~~
16 ~~for-expenses-related-to-cleaning-up-the-site-of-the~~
17 ~~confinement-feeding-operation,-including-removing-and~~
18 ~~disposing-of-manure-from-a-manure-storage-structure~~ providing
19 moneys for cleanup of abandoned facilities as provided in
20 section 204.4, and to pay the department for costs related to
21 administering the provisions of this chapter. For each fiscal
22 year, the department shall not use more than one percent of
23 the total amount which is available in the fund or ten
24 thousand dollars, whichever is less, to pay for the costs of
25 administration. Moneys in the fund shall not be subject to
26 appropriation or expenditure for any other purpose than
27 provided in this section.

28 5. The following shall apply to moneys in the fund:

29 a. On August 31 following the close of each fiscal year,
30 moneys in the fund which are not obligated or encumbered on
31 June 30 of the past fiscal year, ~~less not counting the~~
32 department's estimate of the cost to the fund for pending or
33 unsettled claims and any amount required to be credited to the
34 general fund of the state under this subsection, and-which-are
35 in excess of ~~one~~ three million dollars, shall be deposited in

1 the organic nutrient management fund as created in section
2 161C.5 for purposes of supporting the organic nutrient
3 management program.

4 b. The executive council may allocate moneys from the
5 general fund of the state as provided in section 7D.10A in an
6 amount necessary to support the fund, including payment of
7 claims as provided in section 204.4. However, an allocation
8 of moneys from the general fund of the state shall be made
9 only if the amount of moneys in the fund, which are not
10 obligated or encumbered, and not counting the department's
11 estimate of the cost to the fund for pending or unsettled
12 claims and any amount required to be credited to the general
13 fund of the state under this subsection, is less than one
14 million dollars.

15 c. The department shall credit an amount to the general
16 fund of the state which is equal to an amount allocated to the
17 fund by the executive council under paragraph "b". The
18 department shall credit the moneys to the general fund of the
19 state, if the moneys in the fund which are not obligated or
20 encumbered, and not counting the department's estimate of the
21 cost to the fund for pending or unsettled claims and any
22 amount required to be transferred to the general fund under
23 this paragraph, are in excess of two million five hundred
24 thousand dollars. The department is not required to credit
25 the total amount to the general fund of the state during any
26 one fiscal year.

27 Sec. 4. Section 204.3, Code 1997, is amended to read as
28 follows:

29 204.3 FEES.

30 An indemnity fee shall be assessed upon permittees which
31 shall be paid to and collected by the department of natural
32 resources, prior to issuing a permit for the construction of a
33 confinement feeding operation as provided in section 455B-173
34 455B.200A. The amount of the fees shall be based on the
35 following:

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

4 a. For all animals other than poultry, the amount of the
5 fee shall be ~~five~~ ten cents per animal unit of capacity for
6 confinement feeding operations.

7 b. For poultry, the amount of the fee shall be ~~two~~ four
8 cents per animal unit of capacity for confinement feeding
9 operations.

10 2. If the confinement feeding operation has an animal
11 weight capacity of six hundred twenty-five thousand or more
12 pounds but less than one million two hundred fifty thousand
13 pounds, the following shall apply:

14 a. For all animals other than poultry, the amount of the
15 fee shall be ~~seven-and-one-half~~ fifteen cents per animal unit
16 of capacity for confinement feeding operations.

17 b. For poultry, the amount of the fee shall be ~~three~~ six
18 cents per animal unit of capacity for confinement feeding
19 operations.

20 3. If the confinement feeding operation has an animal
21 weight capacity of one million two hundred fifty thousand or
22 more pounds, the following shall apply:

23 a. For all animals other than poultry, the amount of the
24 fee shall be ~~ten~~ twenty cents per animal unit of capacity for
25 confinement feeding operations.

26 b. For poultry, the amount of the fee shall be ~~four~~ eight
27 cents per animal unit of capacity for confinement feeding
28 operations.

29 The department ~~of-natural-resources~~ shall deposit moneys
30 collected from the fees into the fund according to procedures
31 adopted by the department ~~of-agriculture-and-land-stewardship~~.

32 Sec. 5. NEW SECTION. 204.3A MANURE MANAGEMENT PLAN --
33 INDEMNITY FEE REQUIRED.

34 An indemnity fee shall be assessed upon persons required to
35 submit a manure management plan as provided in chapter 455B,

1 but not required to obtain a construction permit pursuant to
2 section 455B.200A. The amount of the fees shall be ten cents
3 per animal unit of capacity for confinement feeding
4 operations.

5 Sec. 6. Section 204.4, subsections 1 and 2 Code 1997, are
6 amended to read as follows:

7 1. A county that has acquired real estate containing a
8 manure storage structure following nonpayment of taxes
9 pursuant to section 446.19, may make a claim against the fund
10 to pay ~~the costs of cleaning up the site of the confinement~~
11 ~~feeding operation, including the costs of removing and~~
12 ~~disposing of the manure from a manure storage structure~~
13 cleanup costs incurred by the county as provided in section
14 204.5. Each claim shall include a bid by a qualified person,
15 other than a governmental entity, to remove and dispose of the
16 manure for a fixed amount specified in the bid.

17 2. ~~The~~ If a county provides cleanup under section 204.5
18 after acquiring real estate following nonpayment of taxes, the
19 department shall determine if a claim is eligible to be
20 satisfied under this section subsection, and do one of the
21 following:

22 a. Pay the amount of the claim required in this section,
23 based on the fixed amount specified in the bid submitted by
24 the county upon completion of the work.

25 b. Obtain a lower fixed amount bid for the work from
26 another qualified person, other than a governmental entity,
27 and pay the amount of the claim required in this section,
28 based on the fixed amount in this bid upon completion of the
29 work. The department is not required to comply with section
30 18.6 in implementing this section.

31 2A. If a county provides cleanup of a condition causing a
32 clear, present, and impending danger to the public health or
33 environment, as provided in section 204.5, the county may make
34 a claim against the fund to pay cleanup costs incurred by the
35 county, according to procedures and requirements established

1 by rules adopted by the department. The department shall
2 determine if a claim is eligible to be satisfied under this
3 subsection, and pay the amount of the claim required in this
4 section.

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

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

13 Sec. 8. Section 204.5, Code 1997, is amended to read as
14 follows:

15 204.5 SITE CLEANUP.

16 1. a. A county which that has acquired real estate
17 containing on which there is located a confinement feeding
18 operation structure,--as-defined-in-section-455B-161, following
19 the nonpayment of taxes pursuant to section 446.19, may clean
20 up-the-site provide for cleanup, including removing and
21 disposing of manure at any time, remediating contamination
22 which originates from the confinement feeding operation, or
23 demolishing and disposing of structures relating to the
24 confinement feeding operation. The county may seek
25 reimbursement including by bringing an action for the costs of
26 the ~~removal-and-disposal~~ cleanup from the person abandoning
27 the real estate.

28 b. If the confinement feeding operation has caused a
29 clear, present, and impending danger to the public health or
30 the environment, the department may clean up the confinement
31 feeding operation and remediate contamination which originates
32 from the confinement feeding operation, pursuant to sections
33 455B.381 through 455B.399. If the department fails to provide
34 cleanup within twenty-four hours after being notified of a
35 condition requiring cleanup, the county may provide for the

1 cleanup as provided in this paragraph. The department or
2 county may seek reimbursement including by bringing an action
3 for the costs of the cleanup from a person liable for causing
4 the condition.

5 2. A person cleaning up a site confinement feeding
6 operation located on real estate acquired by a county may
7 demolish or dispose of any building or equipment used-in of
8 the confinement feeding operation located on the land
9 according to rules adopted by the department ~~of-natural~~
10 ~~resources~~ pursuant to chapter 17A, which apply to the disposal
11 of farm buildings or equipment by an individual or business
12 organization.

13 Sec. 9. NEW SECTION. 331.304A LIMITATIONS ON COUNTY
14 LEGISLATION.

15 1. As used in this section:

16 a. "Agricultural operation" means a condition or activity
17 which occurs on land used for the production of agricultural
18 commodities, including but not limited to the raising,
19 harvesting, handling, drying, or storage of crops for feed,
20 food, seed, or fiber; the care or feeding of livestock; the
21 handling or transportation of crops or livestock; the storage,
22 treatment, or disposal of livestock manure; and the
23 application of fertilizers, soil conditioners, pesticides, and
24 herbicides on crops.

25 b. "County legislation" means any ordinance, motion,
26 resolution, or amendment adopted by a county pursuant to
27 section 331.302.

28 2. A county shall not adopt or enforce county legislation
29 regulating an agricultural operation unless expressly
30 authorized by state law. County legislation adopted in
31 violation of this section is void and unenforceable and any
32 enforcement activity conducted in violation of this section is
33 void.

34 Sec. 10. Section 455B.104, Code 1997, is amended to read
35 as follows:

1 455B.104 DEPARTMENTAL DUTIES -- PERMITS -- REQUIREMENTS
2 AND ASSISTANCE.

3 1. The department shall either approve or deny a permit to
4 a person applying for a permit under this chapter, within six
5 months from the date that the department receives a completed
6 application for the permit. An application which is not
7 approved or denied within the six-month period shall be
8 approved by default. The department shall issue a permit to
9 the applicant within ten days following the date of default
10 approval. However, this section subsection shall not apply to
11 applications for permits which are issued under division II7;
12 section 455B.200A; or division IV, parts 2 through 7.

13 2. The department shall not issue a permit to a person
14 under this chapter for five years after the date of the last
15 violation committed by the person or by a confinement feeding
16 operation in which the person holds a controlling interest
17 during which the person or operation was classified as a
18 habitual violator under section 455B.191.

19 3. The department shall assist persons applying for
20 assistance to establish and operate renewable fuel production
21 facilities pursuant to the value-added agricultural products
22 and processes financial assistance program established in
23 section 15E.111.

24 Sec. 11. Section 455B.161, Code 1997, is amended by adding
25 the following new subsections:

26 NEW SUBSECTION. 0A. "Actively engaged in farming" means
27 any of the following:

28 a. To be personally involved in the production of crops or
29 animals on a regular, continuous, and substantial basis.

30 However, a lessor, whether under a cash or a crop share lease,
31 is not actively engaged in farming on the area of the tract
32 covered by the lease. This provision applies to both written
33 and oral leases.

34 b. To regularly and frequently make or take an important
35 part in making management decisions substantially contributing

1 to or affecting the success of a farm operation.

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

7 NEW SUBSECTION. 13A. "Family-owned operation" means an
8 animal feeding operation in which all of the following apply:

9 a. The owner is any of the following:

10 (1) An individual.

11 (2) An interest holder in any of the following:

12 (a) A general partnership organized under chapter 486, if
13 all the partners are individuals related or formally related
14 to each other.

15 (b) A family farm corporation, family farm limited
16 liability company, family farm limited partnership, or family
17 trust, as defined in section 9H.1.

18 b. At least one individual who is an owner or an interest
19 holder must be actively engaged in farming on the land where
20 the animal feeding operation is located.

21 As used in this subsection, an interest holder means an
22 individual holding an interest as a partner in a general
23 partnership, a shareholder of a family farm corporation, a
24 member of a family farm limited liability company, a general
25 or limited partner in a family farm limited partnership, or a
26 beneficiary of a family trust.

27 NEW SUBSECTION. 21. "Unformed manure storage structure"
28 means a covered or uncovered animal feeding operation
29 structure, other than a formed manure storage structure, which
30 is an anaerobic lagoon, aerobic structure, or earthen manure
31 storage basin.

32 Sec. 12. NEW SECTION. 455B.161A CONFINEMENT FEEDING
33 OPERATIONS -- CALCULATING ADJACENCY.

34 For purposes of determining adjacency under this part all
35 of the following shall apply:

1 1. Except as provided in subsection 2, two or more
2 confinement feeding operations are adjacent if either of the
3 following applies:

4 a. Both of the following apply:

5 (1) The confinement feeding operations are separated at
6 their closest points by a distance of one thousand two hundred
7 fifty feet or less.

8 (2) The confinement feeding operations have a combined
9 animal weight capacity of less than six hundred twenty-five
10 thousand pounds for animals other than bovine or less than one
11 million six hundred thousand pounds for bovine.

12 b. All of the following apply:

13 (1) The confinement feeding operations are separated at
14 their closest points by two thousand five hundred feet or
15 less.

16 (2) The confinement feeding operations have a combined
17 animal weight capacity of six hundred twenty-five thousand
18 pounds or more for animals other than bovine or one million
19 six hundred thousand pounds or more for bovine.

20 2. Two or more confinement feeding operations which are
21 owned by one or more family-owned operations are adjacent only
22 if all of the following apply:

23 a. One of the confinement feeding operations was
24 constructed prior to May 31, 1995.

25 b. The confinement feeding operations are separated at
26 their closest points by a distance of seven hundred fifty feet
27 or less.

28 c. The confinement feeding operations have a combined
29 animal weight capacity of one million two hundred fifty
30 thousand pounds or more.

31 Sec. 13. Section 455B.162, unnumbered paragraph 1, Code
32 1997, is amended to read as follows:

33 The following shall apply to animal feeding operation
34 structures:

35 1. Except as provided in subsection 2, and sections

1 455B.163 and 455B.165, this subsection applies to animal
2 feeding operation structures constructed on or after May 31,
3 1995, but prior to the effective date of this Act; and to the
4 expansion of structures constructed on or after May 31, 1995;
5 or except as provided in section 455B.163, to the expansion
6 of structures constructed prior to May 31, 1995; the effective
7 date of this Act.

8 Sec. 14. Section 455B.162, subsection 1, Code 1997, is
9 amended to read as follows:

10 ~~1. Except as provided in subsection 2, the following table~~
11 ~~shall apply to animal feeding operation structures:~~

12 a. The following table represents the minimum separation
13 distance in feet required between an animal feeding operation
14 structure and a residence not owned by the owner of the animal
15 feeding operation, or a commercial enterprise, bona fide
16 religious institution, or an educational institution:

17		Minimum	
18		separation	
19		distance in	
20		feet for	
21		operations	
22	Minimum	having an	
23	separation	animal	Minimum
24	distance in	weight	separation
25	feet for	capacity of	distance in
26	operations	625,000 or	feet for
27	having an	more pounds	operations
28	animal	but less than	having an
29	weight	1,250,000	animal
30	capacity of	pounds for	weight
31	less than	animals other	capacity of
32	625,000	than bovine,	1,250,000 or
33	pounds for	or 1,600,000	more pounds
34	animals other	or more	for animals
35	than bovine,	pounds but	other than

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

	<u>feet for</u>	<u>operations</u>	<u>Minimum</u>
	<u>having an</u>	<u>animal</u>	<u>separation</u>
	<u>distance in</u>	<u>weight</u>	<u>separation</u>
	<u>feet for</u>	<u>capacity of</u>	<u>distance in</u>
	<u>operations</u>	<u>625,000 or</u>	<u>feet for</u>
	<u>having an</u>	<u>more pounds</u>	<u>operations</u>
	<u>animal</u>	<u>but less than</u>	<u>having an</u>
	<u>weight</u>	<u>1,250,000</u>	<u>animal</u>
	<u>capacity of</u>	<u>pounds for</u>	<u>weight</u>
	<u>less than</u>	<u>animals other</u>	<u>capacity of</u>
	<u>625,000</u>	<u>than bovine,</u>	<u>1,250,000 or</u>
	<u>pounds for</u>	<u>or 1,600,000</u>	<u>more pounds</u>
	<u>animals other</u>	<u>or more</u>	<u>for animals</u>
	<u>than bovine,</u>	<u>pounds but</u>	<u>other than</u>
	<u>or less than</u>	<u>less than</u>	<u>bovine, or</u>
	<u>1,600,000</u>	<u>4,000,000</u>	<u>4,000,000 or</u>
	<u>pounds for</u>	<u>pounds for</u>	<u>more pounds</u>
	<u>bovine</u>	<u>bovine</u>	<u>for bovine</u>
20	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>
21	<u>Anaerobic</u>		
22	<u>lagoon</u>	<u>1,250</u>	<u>1,875</u>
23	<u>Uncovered earthen</u>		<u>2,500</u>
24	<u>manure storage</u>		
25	<u>basin</u>	<u>1,250</u>	<u>1,875</u>
26	<u>Uncovered formed</u>		
27	<u>manure storage</u>		
28	<u>structure</u>	<u>1,250</u>	<u>1,500</u>
29	<u>Covered earthen</u>		
30	<u>manure storage</u>		
31	<u>basin</u>	<u>1,250</u>	<u>1,500</u>
32	<u>Covered formed</u>		
33	<u>manure storage</u>		
34	<u>structure</u>	<u>1,250</u>	<u>1,500</u>
35	<u>Confinement</u>		<u>1,875</u>

1		or less than	less than	bovine, or
2		1,600,000	4,000,000	4,000,000 or
3		pounds for	pounds for	more pounds
4	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>	<u>for bovine</u>
5	Animal feeding			
6	operation			
7	structure	1,250	1,875	2,500

8 1C. On and after the effective date of this Act an animal
9 feeding operation structure shall not be constructed or
10 expanded within one hundred fifty feet from a road, street,
11 bridge, or thoroughfare which is constructed or maintained by
12 the state or a political subdivision. However, a county where
13 the road, street, bridge, or thoroughfare is located may
14 reduce the number of feet required pursuant to this subsection
15 by county legislation as provided in section 331.302.

16 Sec. 15. Section 455B.162, subsection 2, paragraph a, Code
17 1997, is amended to read as follows:

18 a. As used in this subsection, a "qualified confinement
19 feeding operation" means a confinement feeding operation
20 having an animal weight capacity of two million or more pounds
21 for animals other than animals kept in a swine farrow-to-
22 finish operation or bovine kept in a confinement feeding
23 operation; a swine farrow-to-finish operation having an animal
24 weight capacity of two million five hundred thousand or more
25 pounds; or a confinement feeding operation having an animal
26 weight capacity of ~~six~~ eight million or more pounds for
27 bovine.

28 Sec. 16. Section 455B.163, Code 1997, is amended to read
29 as follows:

30 455B.163 SEPARATION DISTANCE REQUIREMENTS FOR ANIMAL
31 FEEDING OPERATIONS -- EXPANSION OF PRIOR CONSTRUCTED
32 STRUCTURES CONSTRUCTED PRIOR TO MAY 31, 1995.

33 An animal feeding operation constructed prior to the date
34 that a distance requirement became effective under section
35 455B.162 and which does not comply with the section's distance

1 ~~requirements of section 455B.162 on May 31, 1995,~~ requirements
2 may continue to operate regardless of those ~~separation~~
3 distances the distance requirements. The animal feeding
4 operation may be expanded ~~on or after May 31, 1995,~~ regardless
5 ~~of those separation distances,~~ if either any of the following
6 applies:

7 1. a. The An animal feeding operation structure as
8 constructed or expanded prior to the effective date of this
9 Act, complies with the distance requirements of applying to
10 that structure as provided in section 455B.162.

11 b. An animal feeding operation structure as constructed or
12 expanded on or after the effective date of this Act, complies
13 with the distance requirements applying to that structure as
14 provided in section 455B.162.

15 2. All of the following apply to the expansion of the
16 animal feeding operation:

17 a. No portion of the animal feeding operation after
18 expansion is closer than before expansion to a location or
19 object for which separation is required under section
20 455B.162.

21 b. The animal weight capacity of the animal feeding
22 operation as expanded is not more than the lesser of the
23 following:

24 (1) Double its capacity on May 31, 1995, for an animal
25 feeding operating structure constructed prior to the effective
26 date of this Act, or on the effective date of this Act, for an
27 animal feeding operation structure constructed on or after the
28 effective date of this Act.

29 (2) Either of the following:

30 (a) Six hundred twenty-five thousand pounds animal weight
31 capacity for animals other than bovine.

32 (b) One million six hundred thousand pounds animal weight
33 capacity for bovine.

34 3. All of the following apply to the expansion of a
35 family-owned operation constructed prior to May 31, 1995:

1 a. No portion of the family-owned operation after
2 expansion is closer than before expansion to a location or
3 object for which separation is required for the family-owned
4 operation under section 455B.162, subsections 1, 1B, and 1C.

5 b. The animal weight capacity of the family-owned
6 operation as expanded is not more than either of the
7 following:

8 (1) Six hundred twenty-five thousand pounds for animals
9 other than bovine.

10 (2) One million six hundred thousand pounds for bovine.

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

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

19 b. Use of each replaced unformed manure storage structure
20 is discontinued within one year after the construction of the
21 replacement formed manure storage structure.

22 c. The capacity of all replacement formed manure storage
23 structures does not exceed the amount required to store manure
24 produced by that portion of the animal feeding operation
25 utilizing the formed manure storage structures during any
26 fourteen-month period.

27 d. No portion of the replacement formed manure storage
28 structure is closer to an object or location for which
29 separation is required under section 455B.162 than any other
30 animal feeding operation structure which is part of the
31 operation.

32 Sec. 17. Section 455B.164, Code 1997, is amended to read
33 as follows:

34 455B.164 DISTANCE MEASUREMENTS.

35 All distances between locations or objects provided in this

1 part shall be measured from their closest points, as provided
2 by rules adopted by the department. However, a distance
3 between a road, street, or thoroughfare and an animal feeding
4 operation structure shall be measured from the portion of the
5 right-of-way which is closest to the animal feeding operation
6 structure.

7 Sec. 18. Section 455B.165, subsections 2 and 5, Code 1997,
8 are amended to read as follows:

9 2. A confinement feeding operation structure, other-than
10 an earthen manure storage basin, if the structure is part of a
11 confinement feeding operation which qualifies as a small
12 animal feeding operation. However, this subsection shall not
13 apply if the confinement feeding operation structure is an
14 unformed manure storage structure.

15 5. An animal feeding operation structure which is located
16 constructed or expanded within any distance from a residence,
17 educational institution, commercial enterprise, bona fide
18 religious institution, city, or public use area, if the
19 residence, educational institution, commercial enterprise, or
20 bona fide religious institution was constructed or expanded,
21 or the boundaries of the city or public use area were
22 expanded, after the date that the animal feeding operation was
23 established. The date the animal feeding operation was
24 established is the date on which the animal feeding operation
25 commenced operating. A change in ownership or expansion of
26 the animal feeding operation shall not change the established
27 date of operation.

28 Sec. 19. Section 455B.171, Code Supplement 1997, is
29 amended by adding the following new subsections:

30 NEW SUBSECTION. 0A. "Actively engaged in farming" means
31 any of the following:

32 a. To be personally involved in the production of crops or
33 animals on a regular, continuous, and substantial basis.
34 However, a lessor, whether under a cash or a crop share lease,
35 is not actively engaged in farming on the area of the tract

1 covered by the lease. This provision applies to both written
2 and oral leases.

3 b. To regularly and frequently make or take an important
4 part in making management decisions substantially contributing
5 to or affecting the success of a farm operation.

6 NEW SUBSECTION. 0B. "Aerobic structure" means the same as
7 defined in section 455B.161.

8 NEW SUBSECTION. 1A. "Anaerobic lagoon" means the same as
9 defined in section 455B.161.

10 NEW SUBSECTION. 2A. "Animal feeding operation structure"
11 means the same as defined in section 455B.161.

12 NEW SUBSECTION. 3A. "Commercial manure applicator" means
13 a person who engages in the business of and charges a fee for
14 applying manure on the land of another person.

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

17 NEW SUBSECTION. 8A. "Family-owned operation" means the
18 same as defined in section 455B.161.

19 NEW SUBSECTION. 12A. "Manure storage structure" means an
20 animal feeding operation structure used to store manure as
21 part of a confinement feeding operation, including but not
22 limited to a formed or unformed manure storage structure.

23 NEW SUBSECTION. 23A. "Restricted spray irrigation
24 equipment" means spray irrigation equipment which disperses
25 manure through an orifice at a rate of eighty pounds per
26 square inch or more.

27 NEW SUBSECTION. 31A. "Spray irrigation equipment" means
28 mechanical equipment used for the aerial application of
29 manure, if the equipment receives manure from a manure storage
30 structure during application via a pipe or hose connected to
31 the structure, and includes a type of equipment customarily
32 used for the aerial application of water to aid the growing of
33 general farm crops.

34 NEW SUBSECTION. 32A. "Unformed manure storage structure"
35 means the same as defined in section 455B.161.

1 Sec. 20. Section 455B.173, subsection 13, Code 1997, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 13. Adopt, modify, or repeal rules relating to the
5 construction or operation of animal feeding operations, as
6 provided in sections relating to animal feeding operations
7 provided in this part.

8 Sec. 21. Section 455B.191, subsection 7, unnumbered
9 paragraph 2, Code 1997, is amended to read as follows:

10 This subsection shall not apply unless the department of
11 natural resources has previously notified the person of the
12 person's classification as a habitual violator ~~as provided in~~
13 ~~section-455B-173.~~ The department shall notify persons
14 classified as habitual violators of their classification,
15 additional restrictions imposed upon the persons pursuant to
16 the classification, and special civil penalties that may be
17 imposed upon the persons. The notice shall be sent to the
18 persons by certified mail.

19 Sec. 22. NEW SECTION. 455B.200 GENERAL.

20 The commission shall establish by rule adopted pursuant to
21 chapter 17A, requirements relating to the construction,
22 including expansion, or operation of animal feeding
23 operations, including related animal feeding operation
24 structures. The requirements shall include but are not
25 limited to minimum manure control, the issuance of permits,
26 and departmental investigations, inspections, and testing.

27 Sec. 23. NEW SECTION. 455B.200A PERMIT REQUIREMENTS.

28 1. The department shall issue permits for the construction
29 of animal feeding operation structures, including structures
30 which are part of confinement feeding operations, as provided
31 by rules adopted pursuant to section 455B.200. The department
32 shall issue a permit to an animal feeding operation if an
33 application is submitted according to procedures required by
34 the department and the application meets standards established
35 by the department, regardless of whether the animal feeding

1 operation is required to obtain such a permit. The department
2 shall not require that a person obtain a permit for the
3 construction of an animal feeding operation structure if the
4 structure is part of a small animal feeding operation. For
5 purposes of this section, an animal feeding operation
6 structure includes a manure storage structure.

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

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

14 b. A manure management plan as provided in section
15 455B.203.

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

25 4. The department shall cooperate with the natural
26 resources conservation service of the United States department
27 of agriculture. To the extent allowed by the service, the
28 department shall consult with the service regarding the
29 proposed site of an animal feeding operation structure which
30 is part of a confinement feeding operation and may require
31 that an applicant submit an evaluation of the proposed site
32 prepared by the service.

33 The department may adopt a recommendation by the service
34 that an unformed manure storage structure be constructed with
35 a secondary containment barrier, unless the department

1 determines that the recommendation is unsupportable by any
2 scientific or engineering evidence. The department shall
3 require that a secondary containment barrier be constructed
4 with materials and according to specifications required by the
5 department.

6 5. An applicant for a construction permit shall not begin
7 construction at the location of a site planned for the
8 construction of an animal feeding operation structure until
9 the person has been granted a permit for the construction of
10 the structure by the department.

11 6. The department shall make a determination regarding the
12 approval or denial of a permit within sixty days from the date
13 that the department receives a completed application for a
14 permit. All of the following shall apply:

15 a. A completed application for which the department has
16 not taken final agency action by approval or disapproval
17 within the sixty-day period shall be approved by default. The
18 sixty-day requirement shall not apply to an application if the
19 applicant is not required to obtain a permit in order to
20 construct an animal feeding operation structure or to operate
21 an animal feeding operation.

22 b. Judicial review of a final agency action for the
23 approval or disapproval of a permit shall be de novo,
24 regardless of whether an approval was affirmatively made by
25 the department or by default, including judicial review of a
26 contested case in which the county board of supervisors is a
27 party as provided in this section.

28 7. The department shall deliver a copy or require the
29 applicant to deliver a copy of the application for a
30 construction permit and the applicant's manure management plan
31 to the county board of supervisors in the county where the
32 confinement feeding operation or related animal feeding
33 operation structure subject to the permit is proposed to be
34 located.

35 a. The department shall not approve the application until

1 thirty days following delivery of the application to the
2 county board of supervisors.

3 b. The county board of supervisors may hold a public
4 hearing to receive public comments regarding the application.
5 The county board of supervisors may submit comments by the
6 board and the public to the department as provided in this
7 section. The comments may include, but are not limited to,
8 any of the following:

9 (1) The existence of a structure or area not included in
10 the permit application which benefits from a separation
11 distance requirement as provided in section 455B.162 or
12 455B.204.

13 (2) The suitability of soils and the hydrology of the site
14 where construction is proposed.

15 (3) The availability of land for the application of manure
16 originating from the confinement feeding operation.

17 (4) The impact of construction upon established drainage
18 tile lines which cross the property boundaries of the site
19 where the construction is proposed.

20 c. The department shall consider and respond to comments
21 submitted by the county board of supervisors regarding
22 compliance by the applicant with the legal requirements for
23 approving the construction permit as provided in this chapter,
24 including rules adopted by the commission pursuant to this
25 chapter, if the comments are delivered to the department
26 within thirty days after receipt of the application by the
27 county board of supervisors.

28 d. The department shall notify the county board of
29 supervisors three days prior to conducting an inspection of
30 the site where the construction is proposed.

31 e. The department shall notify the county board of
32 supervisors of the department's decision to approve or
33 disapprove an application for a construction permit within
34 three days following the department's decision. The county
35 board of supervisors may contest the decision as provided by

1 rules adopted by the commission in conformance with chapter
2 17A. In contesting the decision, the county shall submit a
3 statement to the department, providing all reasons why the
4 application should be approved or disapproved according to
5 legal requirements provided in this chapter. The statement
6 shall include an evaluation of the construction permit
7 application by the field office of the natural resources and
8 conservation service of the United States department of
9 agriculture serving the county, to the extent that the natural
10 resources and conservation service agrees to assist the county
11 in preparing an evaluation.

12 (1) The county board of supervisors must contest the
13 decision within fourteen days following receipt of the
14 department's notice to approve or disapprove the application.

15 (2) The contested case shall be heard by an administrative
16 law judge who shall develop an expertise regarding legal
17 requirements necessary in order to approve an application and
18 issue a permit for the construction of an animal feeding
19 operation structure. The proposed decision of the
20 administrative law judge may be appealed to the commission for
21 final agency action.

22 8. Prior to issuing a permit to a person for the
23 construction of an animal feeding operation, the department
24 may require the installation and operation of a hydrological
25 monitoring system for an exclusively earthen manure storage
26 structure according to rules which shall be adopted by the
27 department.

28 9. a. The department shall not issue a permit to a person
29 under this section if an enforcement action by the department,
30 relating to a violation of this chapter concerning a
31 confinement feeding operation in which the person has an
32 interest, is pending.

33 b. The department shall not issue a permit to a person
34 under this section for five years after the date of the last
35 violation committed by a person or confinement feeding

1 operation in which the person holds a controlling interest
2 during which the person or operation was classified as a
3 habitual violator under section 455B.191.

4 Sec. 24. NEW SECTION. 455B.200B CONFINEMENT FEEDING
5 OPERATIONS -- CALCULATING ADJACENCY.

6 Adjacency shall be determined under this part in the same
7 manner as determined pursuant to section 455B.161A.

8 Sec. 25. Section 455B.201, subsection 4, Code 1997, is
9 amended by striking the subsection.

10 Sec. 26. Section 455B.202, Code Supplement 1997, is
11 amended to read as follows:

12 455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING ACTIONS
13 AND HABITUAL VIOLATORS.

14 1. As used in this section, "construction" unless the
15 context otherwise requires:

16 a. "Chronic violator" means the same as defined in section
17 657.11.

18 b. "Construction" means the same as defined by rules
19 adopted by the department applicable to the construction of
20 animal feeding operation structures as provided in this part.

21 c. "Habitual violator" means a person classified as a
22 habitual violator pursuant to section 455B.191.

23 d. "Operation of law" means a transfer by inheritance,
24 devise or bequest, court order, dissolution decree, order in
25 bankruptcy, insolvency, replevin, foreclosure, execution sale,
26 the execution of a judgment, the foreclosure of a real estate
27 mortgage, the forfeiture of a real estate contract, or a
28 transfer resulting from a decree for specific performance.

29 e. "Suspect site" means a confinement feeding operation or
30 land where a confinement feeding operation could be
31 constructed, if the site is subject to a suspect transaction.

32 f. "Suspect transaction" means a transaction in which a
33 habitual violator or chronic violator does any of the
34 following:

35 (1) Transfers a controlling interest in a suspect site to

1 any of the following:

2 (a) An employee of the habitual violator or chronic
3 violator or business in which the person holds a controlling
4 interest.

5 (b) A person who holds an interest in a business,
6 including a confinement feeding operation, in which the
7 habitual violator or chronic violator holds a controlling
8 interest.

9 (c) A person related to the habitual violator or chronic
10 violator as spouse, parent, grandparent, lineal ascendant of a
11 grandparent or spouse and any other lineal descendant of the
12 grandparent or spouse, or a person acting in a fiduciary
13 capacity for a related person. This paragraph does not apply
14 to a transaction completed by an operation of law.

15 (2) Provides financing for the construction or operation
16 of a confinement feeding operation to any person, by providing
17 a contribution or loan to the person, or providing cash or
18 other tangible collateral for a contribution or loan made by a
19 third person.

20 g. "Transaction" includes a transfer in any manner or by
21 any means, including any of the following:

22 (1) Delivery and acceptance between two parties, including
23 by contract or agreement with or without consideration,
24 including by sale, exchange, barter, or gift.

25 (2) An operation of law.

26 2. a. A person shall not construct or expand an animal
27 feeding operation structure which is part of a confinement
28 feeding operation, if the person is a any of the following:

29 (1) A party to a pending action for a violation of this
30 chapter concerning a confinement feeding operation in which
31 the person has a controlling interest and the action is
32 commenced in district court by the attorney general.

33 (2) A habitual violator or a chronic violator.

34 b. A person shall not construct or expand an animal
35 feeding operation structure which is part of a confinement

1 feeding operation for five years after the date of the last
2 violation committed by a person or confinement feeding
3 operation in which the person holds a controlling interest
4 during which the person or operation was classified as a
5 habitual violator ~~under-section-455B-191.~~

6 3- c. This section subsection shall not prohibit a person
7 from completing the construction or expansion of an animal
8 feeding operation structure, if any of the following apply:

9 a- (1) The person has an unexpired permit for the
10 construction or expansion of the animal feeding operation
11 structure.

12 b- (2) The person is not required to obtain a permit for
13 the construction or expansion of the animal feeding operation
14 structure.

15 d. For purposes of this subsection, "construct" or
16 "expand" includes financing and contracting to build an animal
17 feeding operations structure regardless of whether the person
18 subsequently leases, owns, or operates the animal feeding
19 operation structure.

20 3. A suspect transaction shall be presumed to be made in
21 order to avoid conditions and enhanced penalties imposed upon
22 a habitual violator or chronic violator pursuant to this
23 chapter. A person receiving control of a suspect site
24 pursuant to a suspect transaction shall be deemed to be an
25 agent of the habitual violator or chronic violator, unless the
26 habitual violator or chronic violator and the person receiving
27 the controlling interest in the a suspect site because of the
28 suspect transaction, both prove by clear and convincing
29 evidence all of the following:

30 a. That the suspect transaction was for a legitimate
31 business purpose made by parties exercising independent and
32 reasonable judgment.

33 b. That the habitual violator or chronic violator does not
34 exercise a controlling influence over the business affairs of
35 the confinement feeding operation.

1 If the person receiving control of a suspect site is deemed
2 to be an agent of a habitual violator or chronic violator, the
3 person shall not construct or expand an animal feeding
4 operation structure which is part of a confinement feeding
5 operation, for as long as the habitual violator or chronic
6 violator, including the agent, or the confinement feeding
7 operation is classified as a habitual violator or chronic
8 violator.

9 4. The department shall conduct an annual review of each
10 confinement feeding operation which is a habitual violator or
11 chronic violator and each confinement feeding operation in
12 which a habitual violator or chronic violator holds a
13 controlling interest.

14 Sec. 27. Section 455B.203, subsection 1, Code 1997, is
15 amended to read as follows:

16 1. ~~In order to receive~~ The following persons shall submit
17 a manure management plan to the department:

18 a. The owner of a confinement feeding operation, other
19 than a small animal feeding operation, if the animal feeding
20 operation was constructed or expanded after May 31, 1985,
21 regardless of whether the confinement feeding operation was
22 required to be constructed pursuant to a construction permit
23 approved by the department.

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

28 c. A person who owns a confinement feeding operation,
29 other than a small animal feeding operation, in another state
30 if the manure is applied on land located in this state.

31 1A. A person shall not remove manure from a manure storage
32 structure which is part of a confinement feeding operation for
33 which a manure management plan is required under this section,
34 unless the department approves a manure management plan
35 submitted by the owner of the confinement feeding operation as

1 provided by the department. The department may adopt rules
2 allowing a person to remove manure from a manure storage
3 structure until the manure management plan is approved or
4 disapproved by the department according to terms and
5 conditions required by the department. The department shall
6 not issue a permit for the construction of a confinement
7 feeding operation or a related animal feeding operation
8 structure unless the applicant submits a manure management
9 plan together with an application as provided in section
10 ~~455B.173, a person shall submit a manure management plan to~~
11 ~~the department together with the application for a~~
12 ~~construction permit~~ 455B.200A.

13 Sec. 28. Section 455B.203, subsection 2, unnumbered
14 paragraph 1, Code 1997, is amended to read as follows:

15 A manure management plan shall conform with the
16 requirements of section 455B.203B. The plan shall include all
17 of the following:

18 Sec. 29. Section 455B.203, subsection 3, Code 1997, is
19 amended to read as follows:

20 3. a. A person classified as a habitual violator or a
21 confinement feeding operation in which a habitual violator
22 owns a controlling interest, as provided in section 455B.191,
23 shall submit a manure management plan to the department on an
24 annual basis, which must be approved by the department for the
25 following year of operation.

26 b. A person receiving a controlling interest in a
27 confinement feeding operation pursuant to a suspect
28 transaction as provided in section 455B.202 must submit a
29 manure management plan to the department prior to taking
30 control of the confinement feeding operation. The department
31 shall not approve the manure management plan, if any of the
32 following applies:

33 (1) The person taking control of the confinement feeding
34 operation exercised managerial authority over a confinement
35 feeding operation and one of the following applies:

1 (a) The confinement feeding operation is classified as a
2 habitual violator or chronic violator.

3 (b) The person owning a controlling interest in the
4 confinement feeding operation is classified as a habitual
5 violator or chronic violator.

6 (2) The confinement feeding operation is subject to a
7 pending action for a violation of this chapter and the action
8 is commenced in district court by the attorney general.

9 (3) The department finds that the person is unwilling or
10 incapable of instituting changes necessary in order to ensure
11 that manure originating from the confinement feeding operation
12 is managed in a manner consistent with this chapter, including
13 rules adopted by the department. The person shall have the
14 burden of demonstrating by clear and convincing evidence that
15 the person is willing and capable of instituting the necessary
16 changes. The department shall consider the person's
17 experience and past history of controlling confinement feeding
18 operations.

19 Sec. 30. NEW SECTION. 455B.203A MANURE APPLICATORS
20 CERTIFICATION.

21 1. As used in this section, unless the context otherwise
22 requires:

23 a. "Commercial manure applicator" means the same as
24 defined in section 455B.171.

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

29 c. "Confinement site manure applicator" means a person who
30 applies manure stored at a confinement site other than a
31 commercial manure applicator.

32 2. a. A commercial manure applicator shall not apply
33 manure to land, unless the person is certified pursuant this
34 section.

35 b. A confinement site manure applicator shall not apply

1 manure to land, unless the person is certified pursuant to
2 this section.

3 3. a. A person required to be certified as a commercial
4 manure applicator must be certified by the department each
5 year. The person shall be certified after completing an
6 educational program which shall consist of an examination
7 required to be passed by the person or three hours of
8 continuing instructional courses which the person must attend
9 each year in lieu of passing the examination.

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

17 4. The department shall adopt, by rule, requirements for
18 the certification, including educational program requirements.
19 The department may establish different educational programs
20 designed for commercial manure applicators and confinement
21 site manure applicators. The department shall adopt rules
22 necessary to administer this section, including establishing
23 certification standards, which shall at least include
24 standards for the handling, application, and storage of
25 manure, the potential effects of manure upon surface water and
26 groundwater, and procedures to remediate the potential effects
27 on surface water or groundwater.

28 a. The department shall adopt by rule criteria for
29 allowing a person required to be certified to complete either
30 a written or oral examination.

31 b. The department shall administer the continuing
32 instructional courses, by either teaching the courses or
33 selecting persons to teach the courses, according to criteria
34 as provided by rules adopted by the department. The
35 department shall, to the extent possible, select persons to

1 teach the continuing instructional courses. The department is
2 not required to compensate persons to teach the continuing
3 instructional courses. In selecting persons, the department
4 shall consult with organizations interested in the application
5 of manure, including associations representing manure
6 applicators and associations representing agricultural
7 producers. The Iowa cooperative extension service in
8 agriculture and home economics of Iowa state university of
9 science and technology shall cooperate with the department in
10 administering the continuing instructional courses. The Iowa
11 cooperative extension service may teach continuing
12 instructional courses, train persons selected to teach
13 courses, or distribute informational materials to persons
14 teaching the courses.

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

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

22 a. Actively engaged in farming who trades work with
23 another such person.

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

27 c. Engaged in applying manure as an incidental part of a
28 custom farming operation.

29 d. Engaged in applying manure as an incidental part of a
30 person's duties as provided by rules adopted by the department
31 providing for an exemption.

32 6. A person is not required to be certified as a
33 commercial manure applicator to apply manure for a period of
34 thirty days from the date of initial employment as a
35 commercial manure applicator if the person applying the manure

1 is acting under the instructions and control of a certified
2 commercial manure applicator who is both of the following:

3 a. Physically present at the site where the manure is
4 located.

5 b. Insight or hearing distance of the supervised person.

6 7. If a certified commercial applicator applies manure to
7 land in a manner that causes a violation of this part, any
8 person who holds an interest in the land or any person who
9 owns or operates an animal feeding operation where the manure
10 originated shall not be subject to an enforcement action under
11 this part, including the assessment of a civil penalty under
12 section 455B.191, arising out of the violation, unless the
13 person or the person's agent knew or reasonably should have
14 known of the violation and failed to order its termination.

15 The department may charge a fee for certifying persons
16 under this section. The fee for certification shall be based
17 on the costs of administering and enforcing this section and
18 paying the expenses of the department relating to
19 certification. The department shall be reimbursed for all
20 costs incurred. The director shall set a fee for the
21 examination which shall be based upon the annual cost of
22 administering the examinations. All fees collected shall be
23 retained by the department for administration of the
24 certification program. However, a person required to be
25 certified as a commercial manure applicator shall not be
26 required to pay more than thirty dollars for each
27 certification, and a person required to be certified as a
28 confinement site manure applicator shall not be required to
29 pay more than fifteen dollars for each certification.

30 Sec. 31. NEW SECTION. 455B.203B APPLICATION
31 REQUIREMENTS.

32 1. The department of natural resources shall adopt rules
33 governing the application of manure originating from an
34 anaerobic lagoon or aerobic structure which is part of a
35 confinement feeding operation. The rules shall establish

1 application rates and practices to minimize groundwater or
2 surface water pollution resulting from application, including
3 pollution caused by runoff or other manure flow resulting from
4 precipitation events. The rules shall establish different
5 application rates and practices based on the water holding
6 capacity of the soil at the time of application.

7 2. A person shall not apply manure by spray irrigation
8 equipment, except as provided by rules adopted by the
9 department pursuant to chapter 17A. However, a person shall
10 not use restricted spray irrigation equipment to apply manure
11 originating from a confinement feeding operation, unless the
12 manure has been diluted as provided by rules adopted by the
13 department, including diluted by use of an anaerobic lagoon.

14 Sec. 32. Section 455B.204, Code 1997, is amended to read
15 as follows:

16 455B.204 DISTANCE REQUIREMENTS.

17 1. ~~An animal feeding operation structure shall be located~~
18 ~~at least five hundred feet away from the surface intake of an~~
19 ~~agricultural drainage well or known sinkhole, and at least two~~
20 ~~hundred feet away from~~ As used in this section, unless the
21 context otherwise requires:

22 a. "Major water source" means a lake, reservoir, river, or
23 stream located within the territorial limits of the state, any
24 marginal river area adjacent to the state, which can support a
25 floating vessel capable of carrying one or more persons during
26 a total of a six-month period in one out of ten years,
27 excluding periods of flooding which has been identified by
28 rules adopted by the commission.

29 b. "Watercourse" means the same as defined in section
30 455B.261.

31 2. Except as provided in subsection 3, the following shall
32 apply:

33 a. An animal feeding operation structure shall not be
34 constructed or expanded closer than five hundred feet away
35 from a surface intake, wellhead, or cistern of an agricultural

1 drainage well or known sinkhole.

2 b. An animal feeding operation structure shall not be
3 constructed or expanded if the animal feeding operation
4 structure as constructed or expanded is closer than any of the
5 following:

6 (1) Two hundred feet away from a watercourse other than a
7 major water source. The department may grant a variance to a
8 person constructing a manure storage structure with a
9 secondary containment barrier, if the design and construction
10 of the secondary containment barrier meet requirements
11 established by the department.

12 (2) Five hundred feet away from a major water source.

13 c. A watercourse, other than a major water source, shall
14 not be constructed, expanded, or diverted, if the watercourse
15 as constructed, expanded, or diverted is closer than two
16 hundred feet away from an animal feeding operation structure.

17 d. A major water source shall not be constructed,
18 expanded, or diverted, if the water source as constructed,
19 expanded, or diverted is closer than five hundred feet from an
20 animal feeding operation structure.

21 3. However, no No distance separation is required between
22 a location or object and a farm pond or privately owned lake,
23 as defined in section 462A.2.

24 4. All distances between locations or objects shall be
25 measured from their closest points, as provided by rules
26 adopted by the department.

27 ~~2. A person shall not dispose of manure closer to a~~
28 ~~designated area than provided in section 159-27.~~

29 5. A person shall not construct or expand an unformed
30 manure storage structure within an agricultural drainage well
31 area as provided in section 455I.5.

32 Sec. 33. NEW SECTION. 455B.205 MANURE STORAGE STRUCTURES
33 -- CONSTRUCTION STANDARDS -- INSPECTIONS.

34 1. The department shall establish by rule engineering
35 standards for the construction of manure storage structures.

1 2. The design standards for unformed manure storage
2 structures established by the department shall account for
3 special design characteristics of animal feeding operations,
4 including all of the following:

5 a. The lining of the structure shall be constructed with
6 materials deemed suitable by the department in order to
7 minimize seepage loss through the lining's seal.

8 b. The structure shall be constructed with materials
9 deemed suitable by the department in order to control erosion
10 on the structure's berm, side slopes, and base.

11 c. The structure shall be constructed to minimize seepage
12 into near-surface water sources.

13 d. The top of the floor of the structure's liner must be
14 above the groundwater table as determined by the department.
15 If the groundwater table is less than two feet below the top
16 of the liner's floor, the structure shall be installed with a
17 synthetic liner. If the department allows an unformed manure
18 storage structure to be located at a site by permanently
19 lowering the groundwater table, the department shall confirm
20 that the proposed system meets standards necessary to ensure
21 that the structure does not pollute groundwater sources. If
22 the department allows drain tile installed to lower a
23 groundwater table to remain where located, the department
24 shall require that a device be installed to allow monitoring
25 of the water in the drain tile line. The department shall
26 also require the installation of a device to allow shutoff of
27 the drain tile lines, if the drain tile lines do not have a
28 surface outlet accessible on the property where the structure
29 is located.

30 3. The department shall to every extent practical
31 cooperate with the state office and field offices of the
32 natural resources conservation service of the United States
33 department of agriculture in adopting construction standards
34 for anaerobic lagoons.

35 4. A county may conduct samples of subsurface water within

1 a one-half-mile radius of an animal feeding operation prior to
2 its construction, according to procedures adopted by the
3 county. The county shall as it determines feasible keep a
4 record of the results on file with the county.

5 5. The department shall inspect each unformed manure
6 storage structure at least once each year. An inspection
7 conducted pursuant to this subsection shall be limited to a
8 visual inspection of the site where the unformed manure
9 storage structure is located. The department shall inspect
10 the site at a reasonable time after providing at least twenty-
11 four hours' notice to the person owning or managing the
12 confinement feeding operation. However, in order to inspect
13 the premises the departmental inspector must comply with
14 standard biosecurity requirements customarily required by the
15 operation. The visual inspection shall include, but not be
16 limited to, determining whether any of the following exists:

- 17 a. An adequate freeboard level.
18 b. The seepage of manure from the unformed manure storage
19 structure.
20 c. Erosion.
21 d. Inadequate vegetation cover.
22 e. The presence of an opening allowing manure to drain
23 from the unformed manure storage structure.

24 Sec. 34. NEW SECTION. 455B.206 CONSTRUCTION OF EARTHEN
25 MANURE STORAGE BASIN -- MORATORIUM.

26 1. A person shall not construct or expand an earthen
27 manure storage basin on or after July 1, 1998.

28 2. This section is repealed on July 1, 2001.

29 Sec. 35. Section 558A.2, subsection 3, Code 1997, is
30 amended to read as follows:

31 3. The disclosure statement may be filed with the county
32 recorder with instruments affecting the transfer of real
33 estate. ~~However, the~~ An acknowledgment as provided in section
34 558A.4A must be filed with the county recorder with any form
35 of instrument conveying real property as provided in chapter

1 558 if the acknowledgement is required to be signed pursuant
2 to section 558A.4A. The failure to file the disclosure
3 statement or acknowledgment shall not cause a defect in the
4 title to the property, except as provided in section 558A.8.

5 Sec. 36. Section 558A.4, subsection 1, Code 1997, is
6 amended to read as follows:

7 1. The disclosure statement shall include information all
8 of the following:

9 a. Information relating to the condition and important
10 characteristics of the property and structures located on the
11 property, including significant defects in the structural
12 integrity of the structure, as provided in rules which shall
13 be adopted by the real estate commission pursuant to section
14 543B.9. ~~The disclosure statement shall also include whether~~

15 b. Whether the property is located in a real estate
16 improvement district and the amount of any special assessment
17 against the property under chapter 358C.

18 c. Any acknowledgment which is required as provided in
19 section 558A.4A.

20 2. The rules may require the disclosure to include
21 information relating to the property's zoning classification;
22 the condition of plumbing, heating, or electrical systems; or
23 the presence of pests.

24 Sec. 37. NEW SECTION. 558A.4A ANIMAL FEEDING OPERATIONS
25 DISCLOSURE ACKNOWLEDGEMENT.

26 A person conveyed real property located within a separation
27 distance required between an animal feeding operation and a
28 residence pursuant to section 455B.162 must sign an
29 acknowledgment. An acknowledgment is not required for any
30 type of conveyance to the same extent that a disclosure is not
31 required for a transfer pursuant to section 558A.1, subsection
32 4, paragraphs "a" through "h". The acknowledgement shall be
33 in a form prescribed by the commission. The acknowledgment
34 shall state the following:

35

NOTICE

1 THE PROPERTY YOU ARE PURCHASING IS LOCATED WITHIN A
2 SEPARATION DISTANCE AS REQUIRED BY IOWA CODE SECTION 455B.162
3 BETWEEN ANIMAL FEEDING OPERATION STRUCTURES AND RESIDENCES.
4 SEPARATION DISTANCES ALSO APPLY TO COMMERCIAL ENTERPRISES,
5 BONA FIDE RELIGIOUS INSTITUTIONS, EDUCATIONAL INSTITUTIONS,
6 AND PUBLIC USE AREAS. UNDER IOWA CODE SECTION 455B.165, AN
7 ANIMAL FEEDING OPERATION MAY EXPAND CLOSER TO A RESIDENCE IF
8 THE ANIMAL FEEDING OPERATION WAS ESTABLISHED BEFORE THE
9 RESIDENCE WAS CONSTRUCTED. THE ANIMAL FEEDING OPERATION MAY
10 HAVE A LEGAL DEFENSE FROM LAWSUITS INVOLVING ACTIVITIES
11 CUSTOMARILY ASSOCIATED WITH THE CARE AND FEEDING OF LIVESTOCK.

12 YOU ARE ADVISED TO SEEK THE COUNSEL OF AN ATTORNEY.

13 Sec. 38. Section 558A.8, Code 1997, is amended to read as
14 follows:

15 558A.8 VALIDITY OF A TRANSFER.

16 1. A Except as provided in subsection 2, a transfer under
17 this chapter shall not be invalidated solely because of a
18 failure of a person to comply with a provision of this
19 chapter.

20 2. A person conveyed real property may bring a cause of
21 action to invalidate the conveyance based on a failure to file
22 a signed acknowledgment with the county as provided in section
23 558A.2. The cause of action shall be limited as provided in
24 section 614.28A.

25 Sec. 39. NEW SECTION. 514.28A FAILURE TO FILE
26 ACKNOWLEDGMENTS REGARDING ANIMAL FEEDING OPERATIONS.

27 An action based upon a claim to invalidate a conveyance of
28 real property as provided in section 558A.3 shall not be
29 maintained, either at law or in equity, in any court if the
30 claim is brought after one hundred twenty days after the
31 instrument conveying the property is filed with the county
32 recorder as provided in chapter 558.

33 Sec. 40. 1995 Iowa Acts, chapter 195, section 38, is
34 amended to read as follows:

35 SEC. 38. INDEMNITY FEES -- PRIOR PERMITTEES.

1 1. The indemnity fee imposed upon permittees pursuant to
2 section 204.3, as enacted in this Act, shall be imposed upon
3 all persons who have received a permit by the department of
4 natural resources for the construction of a confinement
5 feeding operation with a manure storage structure as defined
6 in section ~~455B-161~~ 204.1, as enacted in this Act, prior to
7 the effective date of this Act. However, an indemnity fee
8 shall not be imposed upon ~~a person~~ the following persons:

9 a. A person who has received a construction permit more
10 than ten years prior to the effective date of this Act.

11 b. A person who has received a construction permit within
12 ten years prior to May 31, 1995, if the confinement feeding
13 operation was not constructed under the permit and the permit
14 has expired.

15 2. To every extent possible, the department of natural
16 resources shall notify all persons required to pay the fee.
17 The notice shall be in writing. The department shall
18 establish a date when the fees must be paid to the department,
19 which shall be not less than three months after the delivery
20 of the notice. If a person is delinquent in paying the
21 indemnity fee when due, or if upon examination, an
22 underpayment of the fee is found by the department, the person
23 is subject to a penalty of ten dollars or an amount equal to
24 the amount of deficiency for each day of the delinquency,
25 whichever is less. ~~After the date required for payment, the~~
26 ~~department shall transfer all outstanding claims to the~~
27 ~~department of agriculture and land stewardship.~~

28 3. The department of natural resources shall ~~deliver to~~
29 receive from the department of agriculture and land
30 stewardship the most current available information regarding
31 the persons required to pay the fee and any delinquency
32 ~~penalty, including the names and addresses of the persons, and~~
33 ~~the capacity of the confinement feeding operations subject to~~
34 ~~the permit.~~ The department of agriculture and land
35 stewardship natural resources, in cooperation with the

1 attorney general, may bring a court action in order to collect
2 indemnity fees and delinquency penalties required to be paid
3 under this section.

4 Sec. 41. AMNESTY PERIOD. Notwithstanding 1995 Iowa Acts,
5 chapter 195, section 38, a person who has not paid an
6 indemnity fee as required by that Act, as amended by this Act,
7 shall not be subject to a delinquency penalty as provided in
8 that Act, if the person pays the full amount of the indemnity
9 fee to the department of agriculture and land stewardship on
10 or before December 31, 1998, as required by the department.

11 Sec. 42. EFFECT OF THIS ACT -- REFUND. Nothing in this
12 Act requires the department of natural resources or the
13 department of agriculture and land stewardship to refund an
14 indemnity fee or delinquency penalty payment paid by
15 permittees pursuant to 1995 Iowa Acts, chapter 195, section
16 38.

17 Sec. 43. INDEMNITY FEES -- PRIOR MANURE MANAGEMENT PLAN
18 SUBMITTEES.

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

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

1 or an amount equal to the amount of deficiency for each day of
2 the delinquency, whichever is less.

3 Sec. 44. INDEMNITY FEES -- PRIOR CONSTRUCTION PERMITTEES.

4 The department of agriculture and land stewardship shall
5 deliver to the department of natural resources the most
6 current available information regarding persons required to
7 pay the indemnity fee imposed pursuant to 1995 Iowa Acts,
8 chapter 195, section 38. The department of natural resources,
9 in cooperation with the attorney general, may bring a court
10 action in order to collect indemnity fees and delinquency
11 penalties as provided in that Act for deposit into the manure
12 storage indemnity fund as created in section 204.2.

13 Sec. 45. MANURE MANAGEMENT PLAN SUBMISSIONS. All persons
14 required to submit a manure management plan pursuant to
15 section 455B.203 as amended by this Act shall submit a manure
16 management plan according to the same requirements, as
17 provided in that section or rules adopted by the department
18 pursuant to that section. Persons who have submitted a manure
19 management plan that complies with those requirements are not
20 required to submit a new manure management plan. Persons who
21 have not submitted a manure management plan that complies with
22 those requirements shall not be required to submit a new
23 manure management plan until July 1, 1999.

24 Sec. 46. COUNTY APPEAL PROCESS. If the department of
25 natural resources has not made a determination regarding the
26 approval or denial of a permit for the construction of a
27 confinement feeding operation or related animal feeding
28 operation structure on the effective date of this Act, the
29 department's decision to approve or disapprove the permit
30 application may be contested by the county board of
31 supervisors in the county where the confinement feeding
32 operation or related animal feeding operation structure
33 subject to the permit is proposed to be located, as provided
34 in section 455B.200A as enacted in this Act.

35 Sec. 47. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The

1 members of the animal agriculture consulting organization
2 shall consult with the department of natural resources
3 regarding this Act, rules adopted pursuant to this Act, and
4 the Act's implementation, to the same extent and in the same
5 manner as required in 1995 Iowa Acts, chapter 195, section 37.

6 Sec. 48. DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES
7 -- RULEMAKING. The department of natural resources is
8 required to adopt rules under this Act, including adopting new
9 rules or amending existing rules, only to the extent that
10 rules must be adopted in order to comply with the requirements
11 of this Act. This section shall not be construed to limit the
12 authority of the department to adopt rules under this Act or
13 other statutory authority which the department determines is
14 necessary or advisable.

15 Sec. 49. DIRECTIONS TO IOWA CODE EDITOR.

16 1. The Iowa Code editor is directed to transfer chapter
17 204, as amended by this Act, to a chapter determined
18 appropriate by the Iowa Code editor. The Iowa Code editor
19 shall correct internal references as necessary.

20 2. The Iowa Code editor is directed to transfer section
21 159.27 to or near section 455B.204A.

22 Sec. 50. TRANSFER OF PROVISIONS. The transfer of
23 provisions from one section to another section does not affect
24 the effect or applicability of rules adopted by the department
25 of natural resources, except as required by the provisions of
26 this Act.

27 Sec. 51. SEVERABILITY. If any provision of this Act or
28 the application of this Act to any person or circumstance is
29 held invalid, the invalidity shall not affect other provisions
30 or applications of this Act which shall be given effect
31 without the invalid provision or application, and to this end
32 the provisions of this Act are severable.

33 Sec. 52. Sections 40 through 42 of this Act, being deemed
34 of immediate importance, take effect upon enactment.

35

APRIL 8, 1998

HOUSE FILE 2494

S-5543

1 Amend House File 2494, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 7D.10A ALLOCATION TO
6 MANURE STORAGE INDEMNITY FUND.

7 If moneys are not sufficient to support the manure
8 storage indemnity fund as provided in chapter 204, the
9 executive council may allocate from moneys in the
10 general fund of the state, which are not otherwise
11 obligated or encumbered, an amount to the manure
12 storage indemnity fund as provided under section
13 204.2. However, not more than a total of one million
14 dollars shall be allocated to the manure storage
15 indemnity fund at any time.

16 Sec. 2. Section 204.1, subsections 4, 8, and 9,
17 Code 1997, are amended to read as follows:

18 4. "Department" means the department of
19 ~~agriculture-and-land-stewardship~~ natural resources.

20 8. "Manure storage structure" means ~~a-structure~~
21 ~~used-to-store-manure-as-part-of-a-confinement-feeding~~
22 ~~operation-subject-to-a-construction-permit-issued-by~~
23 ~~the-department-of-natural-resources-pursuant-to~~
24 ~~section-455B:173---~~ A manure storage structure
25 ~~includes,-but-is-not-limited-to,-an-anaerobic-lagoon,~~
26 ~~formed-manure-storage-structure,-or-earthen-manure~~
27 ~~storage-basin,~~ the same as defined in section 455B:161
28 455B.171.

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

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

37 2. The fund consists of moneys from indemnity fees
38 remitted by permittees to the ~~department of-natural~~
39 ~~resources-and-transferred-to-the-department-of~~
40 ~~agriculture-and-land-stewardship~~ as provided in
41 section 204.3; moneys from indemnity fees remitted by
42 persons required to submit manure management plans to
43 the department pursuant to section 204.3A; sums
44 collected on behalf of the fund by the department
45 through legal action or settlement; moneys required to
46 be repaid to the department by a county pursuant to
47 this chapter; civil penalties assessed and collected
48 by the ~~department of-natural-resources~~ or the attorney
49 general pursuant to chapter 455B, against permittees
50 animal feeding operations; moneys paid as a settlement

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1 involving an enforcement action for a civil penalty
2 subject to assessment and collection against
3 permittees by the department of ~~natural resources~~ or
4 the attorney general pursuant to chapter 455B;
5 interest, property, and securities acquired through
6 the use of moneys in the fund; or moneys contributed
7 to the fund from other sources.

8 3. The moneys collected under this section and
9 shall be deposited in the fund and shall be
10 appropriated to the department for the exclusive
11 purpose of indemnifying a county for expenses related
12 to cleaning up the site of the confinement feeding
13 operation, including removing and disposing of manure
14 from a manure storage structure providing moneys for
15 cleanup of abandoned facilities as provided in section
16 204.4, and to pay the department for costs related to
17 administering the provisions of this chapter. For
18 each fiscal year, the department shall not use more
19 than one percent of the total amount which is
20 available in the fund or ten thousand dollars,
21 whichever is less, to pay for the costs of
22 administration. Moneys in the fund shall not be
23 subject to appropriation or expenditure for any other
24 purpose than provided in this section.

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

27 a. On August 31 following the close of each fiscal
28 year, moneys in the fund which are not obligated or
29 encumbered on June 30 of the past fiscal year, ~~less~~
30 not counting the department's estimate of the cost to
31 the fund for pending or unsettled claims and any
32 amount required to be credited to the general fund of
33 the state under this subsection, and which are in
34 excess of one three million dollars, shall be
35 deposited in the organic nutrient management fund as
36 created in section 161C.5 for purposes of supporting
37 the organic nutrient management program.

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

50 c. The department shall credit an amount to the

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

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

15 204.3 FEES.

16 An indemnity fee shall be assessed upon permittees
17 which shall be paid to and collected by the department
18 ~~of natural resources~~, prior to issuing a permit for
19 the construction of a confinement feeding operation as
20 provided in section ~~455B-173~~ 455B.200A. The amount of
21 the fees shall be based on the following:

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

26 a. For all animals other than poultry, the amount
27 of the fee shall be five ten cents per animal unit of
28 capacity for confinement feeding operations.

29 b. For poultry, the amount of the fee shall be two
30 four cents per animal unit of capacity for confinement
31 feeding operations.

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

37 a. For all animals other than poultry, the amount
38 of the fee shall be ~~seven-and-one-half~~ fifteen cents
39 per animal unit of capacity for confinement feeding
40 operations.

41 b. For poultry, the amount of the fee shall be
42 three six cents per animal unit of capacity for
43 confinement feeding operations.

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

48 a. For all animals other than poultry, the amount
49 of the fee shall be ten twenty cents per animal unit
50 of capacity for confinement feeding operations.

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1 b. For poultry, the amount of the fee shall be
2 ~~four~~ eight cents per animal unit of capacity for
3 confinement feeding operations.

4 The department ~~of-natural-resources~~ shall deposit
5 moneys collected from the fees into the fund according
6 to procedures adopted by the department ~~of-agriculture~~
7 ~~and-land-stewardship~~.

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

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

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

19 1. A county that has acquired real estate
20 containing a manure storage structure following
21 nonpayment of taxes pursuant to section 446.19, may
22 make a claim against the fund to pay ~~the-costs-of~~
23 ~~cleaning-up-the-site-of-the-confinement-feeding~~
24 ~~operation,-including-the-costs-of-removing-and~~
25 ~~disposing-of-the-manure-from-a-manure-storage~~
26 structure cleanup costs incurred by the county as
27 provided in section 204.5. Each claim shall include a
28 bid by a qualified person, other than a governmental
29 entity, to remove and dispose of the manure for a
30 fixed amount specified in the bid.

31 2. The If a county provides cleanup under section
32 204.5 after acquiring real estate following nonpayment
33 of taxes, the department shall determine if a claim is
34 eligible to be satisfied under this section
35 subsection, and do one of the following:

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

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

47 2A. If a county provides cleanup of a condition
48 causing a clear, present, and impending danger to the
49 public health or environment, as provided in section
50 204.5, the county may make a claim against the fund to

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pay cleanup costs incurred by the county, according to procedures and requirements established by rules adopted by the department. The department shall determine if a claim is eligible to be satisfied under this subsection, and pay the amount of the claim required in this section.

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

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

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

18 204.5 SITE CLEANUP.

19 1. a. A county which that has acquired real
20 estate containing on which there is located a
21 confinement feeding operation structure, as defined in
22 section 455B.161, following the nonpayment of taxes
23 pursuant to section 446.19, may clean-up-the-site
24 provide for cleanup, including removing and disposing
25 of manure at any time, remediating contamination which
26 originates from the confinement feeding operation, or
27 demolishing and disposing of structures relating to
28 the confinement feeding operation. The county may
29 seek reimbursement including by bringing an action for
30 the costs of the removal-and-disposal cleanup from the
31 person abandoning the real estate.

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

46 2. A person cleaning up a site confinement feeding
47 operation located on real estate acquired by a county
48 may demolish or dispose of any building or equipment
49 used-in of the confinement feeding operation located
50 on the land according to rules adopted by the

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1 department ~~of-natural-resources~~ pursuant to chapter
2 17A, which apply to the disposal of farm buildings or
3 equipment by an individual or business organization.

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

6 1. As used in this section:

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

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

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

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

31 455B.104 DEPARTMENTAL DUTIES -- PERMITS --
32 REQUIREMENTS AND ASSISTANCE.

33 1. The department shall either approve or deny a
34 permit to a person applying for a permit under this
35 chapter, within six months from the date that the
36 department receives a completed application for the
37 permit. An application which is not approved or
38 denied within the six-month period shall be approved
39 by default. The department shall issue a permit to
40 the applicant within ten days following the date of
41 default approval. However, this section subsection
42 shall not apply to applications for permits which are
43 issued under division II, or division IV, parts 2
44 through 7.

45 2. The department shall not issue a new permit to
46 and may revoke or refuse to renew an existing permit
47 held by a person under this chapter during a period of
48 five years after the date of the last violation
49 committed by the person or by a confinement feeding
50 operation in which the person holds a controlling

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interest during the period for which the person or operation was classified as a habitual violator under section 455B.191.

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

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

455B.110 ANIMAL FEEDING OPERATIONS --COMMISSION APPROVAL-OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

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

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

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

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

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

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

(1) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the

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1 case, including the severity of a threat to the
2 quality of surface or subsurface water.

3 (2) The department shall notify the county board
4 of supervisors in the county where the violation is
5 alleged to occur prior to investigating the premises
6 of the alleged violation. However, the department is
7 not required to provide notice if the department
8 determines that a clear, present, and impending danger
9 to the public health or environment requires immediate
10 action.

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

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

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

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

40 3. The department shall not initiate an
41 enforcement action in response to a violation by an
42 animal feeding operation as provided in this chapter
43 or a rule adopted pursuant to this chapter, or request
44 the commencement of legal action by the attorney
45 general pursuant to section 455B.141, unless the
46 commission has approved the intended action. This
47 section subsection shall not apply to an enforcement
48 action in which the department enforces a civil
49 penalty of three thousand dollars or less. This
50 section subsection shall also not apply to an order to

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terminate an emergency issued by the director pursuant to section 455B.175.

3 Sec. 12. Section 455B.161, Code 1997, is amended
4 by adding the following new subsections:

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

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

16 Sec. 13. NEW SECTION. 455B.161A CONFINEMENT
17 FEEDING OPERATIONS -- SPECIAL TERMS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Sec. 14. Section 455B.162, unnumbered paragraph 1,
32 Code 1997, is amended to read as follows:

33 The following shall apply to animal feeding
34 operation structures:

35 1. Except as provided in subsection 2, and
36 sections 455B.163 and 455B.165, this subsection
37 applies to animal feeding operation structures
38 constructed on or after May 31, 1995, but prior to the
39 effective date of this section; and to the expansion
40 of structures constructed on-or-after-May-31, 1995,
41 or, except as provided in section 455B.163, to the
42 expansion of structures constructed prior to May 31,
43 1995; the effective date of this section.

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

46 ~~1. Except as provided in subsection 2, the~~
47 ~~following table shall apply to animal feeding~~
48 ~~operation structures:~~

49 a. The following table represents the minimum
50 separation distance in feet required between an animal

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1 on or after the effective date of this section. The
 2 following table represents the minimum separation
 3 distance in feet required between an animal feeding
 4 operation structure and a residence not owned by the
 5 owner of the animal feeding operation, or a commercial
 6 enterprise, bona fide religious institution, or an
 7 educational institution:

	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of more than 625,000 pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of more than 4,000,000 pounds for bovine
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29			
30	Type of structure		
31	<u>Anaerobic</u>		
32	lagoon	1,250	1,875 2,500
33	<u>Uncovered earthen</u>		
34	<u>manure storage</u>		
35	basin	1,250	1,875 2,500
36	<u>Uncovered formed</u>		
37	<u>manure storage</u>		
38	structure	1,250	1,500 2,000
39	<u>Covered earthen</u>		
40	<u>manure storage</u>		
41	basin	1,000	1,250 1,875
42	<u>Covered formed</u>		
43	<u>manure storage</u>		
44	structure	1,000	1,250 1,875
45	<u>Confinement</u>		
46	building	1,000	1,250 1,875
47	<u>Egg washwater</u>		
48	<u>storage</u>		
49	structure	750	1,000 1,500

50 b- 1B. Except as provided in subsection 2, and

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

	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 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 625,000 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 for animals other than bovine, or 4,000,000 or more pounds for bovine
Type of structure	1,250	1,875	2,500
Animal feeding operation structure			

1C. Except as provided in section 455B.165, on and after the effective date of this section an animal feeding operation structure shall not be constructed or expanded within one hundred feet from a thoroughfare, including a road, street, or bridge which is constructed or maintained by the state or a political subdivision.

1D. Except as provided in section 455B.165, a person shall not apply liquid manure from a confinement feeding operation on land located within seven hundred fifty feet from a residence not owned by

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1 the titleholder of the land, a commercial enterprise,
2 a bona fide religious institution, an educational
3 institution, or a public use area.

4 Sec. 16. Section 455B.162, subsection 2, paragraph
5 a, Code 1997, is amended to read as follows:

6 a. As used in this subsection, a "qualified
7 confinement feeding operation" means a confinement
8 feeding operation having an animal weight capacity of
9 two million or more pounds for animals other than
10 animals kept in a swine farrow-to-finish operation or
11 bovine kept in a confinement feeding operation; a
12 swine farrow-to-finish operation having an animal
13 weight capacity of two million five hundred thousand
14 or more pounds; or a confinement feeding operation
15 having an animal weight capacity of ~~six~~ eight million
16 or more pounds for bovine.

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

19 455B.163 SEPARATION DISTANCE REQUIREMENTS FOR
20 ANIMAL FEEDING OPERATIONS -- EXPANSION OF STRUCTURES
21 ~~CONSTRUCTED PRIOR TO MAY 31, 1995~~ PRIOR CONSTRUCTED
22 OPERATIONS.

23 An animal feeding operation constructed or expanded
24 prior to the date that a distance requirement became
25 effective under section 455B.162 and which does not
26 comply with the section's distance requirements of
27 ~~section 455B.162 on May 31, 1995,~~ requirement may
28 continue to operate regardless of those separation
29 distances the distance requirement. The animal
30 feeding operation may be expanded ~~on or after May 31,~~
31 ~~1995, regardless of those separation distances,~~ if
32 either any of the following applies:

33 1. a. The An animal feeding operation structure
34 as constructed or expanded prior to the effective date
35 of this section, complies with the distance
36 requirements of applying to that structure as provided
37 in section 455B.162.

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

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

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

49 b. The animal weight capacity of the animal
50 feeding operation as expanded is not more than the

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1 lesser of the following:

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

8 (2) Either of the following:

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

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

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

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

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

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

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

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

38 455B.164 DISTANCE MEASUREMENTS.

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

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

49 2. A confinement feeding operation structure,
50 ~~other than an earthen manure storage basin,~~ if the

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

6 3. a. An animal feeding operation structure which
7 is constructed or expanded, if the titleholder of the
8 land benefiting from the distance separation
9 requirement executes a written waiver with the
10 titleholder of the land where the structure is
11 located⁷. If an animal feeding operation structure is
12 constructed or expanded within the separation distance
13 required between an animal feeding operation structure
14 and a thoroughfare as required pursuant to section
15 455B.162, the state or a political subdivision
16 constructing or maintaining the thoroughfare
17 benefiting from the distance separation requirement
18 may execute a written waiver with the titleholder of
19 the land where the structure is located. The animal
20 feeding operation structure shall be constructed or
21 expanded under such terms and conditions that the
22 parties negotiate.

23 b. The A written waiver under this subsection
24 becomes effective only upon the recording of the
25 waiver in the office of the recorder of deeds of the
26 county in which the benefited land is located. The
27 filed waiver shall preclude enforcement by the state
28 of this-part section 455B.162 as it relates to a
29 distance requirement between the animal feeding
30 operation structure and the location or object
31 benefiting from the separation distance requirement.

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

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

49 NEW SUBSECTION. 3A. An animal feeding operation
50 structure which is constructed or expanded within a

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1 separation distance required between an animal feeding
2 operation structure and a thoroughfare as required
3 pursuant to section 455B.162, if permanent vegetation
4 stands between the animal feeding operation structure
5 and that part of the right-of-way from which the
6 separation distance is measured as provided in section
7 455B.164. The permanent vegetation must stand along
8 the full length of the animal feeding operation
9 structure. The permanent vegetation must be at least
10 seedlings and have a mature predicted height of at
11 least twenty feet. The department shall adopt rules
12 to carry out this subsection.

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

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

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

26 Sec. 21. Section 455B.171, Code Supplement 1997,
27 is amended by adding the following new subsections:

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

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

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

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

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

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

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

50 NEW SUBSECTION. 31A. "Spray irrigation equipment"

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

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

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

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

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

21 This subsection shall not apply unless the
22 department of natural resources has previously
23 notified the person of the person's classification as
24 a habitual violator ~~as provided in section 455B.173.~~
25 The department shall notify persons classified as
26 habitual violators of their classification, additional
27 restrictions imposed upon the persons pursuant to
28 their classification, and special civil penalties that
29 may be imposed upon the persons. The notice shall be
30 sent to the persons by certified mail.

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

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

40 Sec. 25. NEW SECTION. 455B.200A PERMIT
41 REQUIREMENTS.

42 1. The department shall issue permits for the
43 construction, including the expansion, of animal
44 feeding operation structures, including structures
45 which are part of confinement feeding operations, as
46 provided by rules adopted pursuant to section
47 455B.200. The department shall issue a permit to an
48 animal feeding operation if an application is
49 submitted according to procedures required by the
50 department and the application meets standards

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1 established by the department, regardless of whether
2 the animal feeding operation is required to obtain
3 such a permit. The department shall not require that
4 a person obtain a permit for the construction of an
5 animal feeding operation structure if the structure is
6 part of a small animal feeding operation. For
7 purposes of this section, an animal feeding operation
8 structure includes a manure storage structure.

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

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

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

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

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

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

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

45 7. The department shall deliver a copy or require
46 the applicant to deliver a copy of the application for
47 a construction permit for the construction of a
48 confinement feeding operation or related animal
49 feeding operation structure, including supporting
50 documents, to the county board of supervisors in the

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1 county where the confinement feeding operation or
2 related animal feeding operation structure subject to
3 the permit is proposed to be constructed.

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (d) Whether the construction or expansion of a
49 proposed animal feeding operation structure will
50 impede drainage through established tile lines,

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1 laterals, or other improvements which are constructed
2 to facilitate the drainage of land not owned by the
3 person applying for the construction permit.

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

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

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

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

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

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1 application.

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

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

17 b. The department shall not issue a permit to a
18 person under this section for five years after the
19 date of the last violation committed by a person or
20 confinement feeding operation in which the person
21 holds a controlling interest during which the person
22 or operation was classified as a habitual violator
23 under section 455B.191.

24 Sec. 26. NEW SECTION. 455B.200B CONFINEMENT
25 FEEDING OPERATIONS -- SPECIAL TERMS.

26 For purposes of this part, all of the following
27 shall apply:

28 1. Two or more confinement feeding operations are
29 adjacent if any of the following apply:

30 a. All of the following apply:

31 (1) An animal feeding operation structure which is
32 part of one confinement feeding operation is located
33 within one thousand two hundred fifty feet from an
34 animal feeding operation structure which is part of
35 the other confinement feeding operation.

36 (2) The confinement feeding operations have a
37 combined animal weight capacity of the following:

38 (a) For animals other than bovine, less than six
39 hundred twenty-five thousand pounds.

40 (b) For bovine, less than one million six hundred
41 thousand pounds.

42 (3) An animal feeding operation structure subject
43 to the distance requirements of this paragraph must be
44 constructed or expanded on or after the effective date
45 of this section.

46 b. All of the following apply:

47 (1) An animal feeding operation structure which is
48 part of one confinement feeding operation is located
49 within two thousand five hundred feet from an animal
50 feeding operation structure which is part of the other

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1 confinement feeding operation.

2 (2) The confinement feeding operations have a
3 combined animal weight capacity of the following:

4 (a) For animals other than bovine, six hundred
5 twenty-five thousand pounds or more.

6 (b) For bovine, one million six hundred thousand
7 pounds or more.

8 (3) An animal feeding operation structure subject
9 to the distance requirements of this paragraph must be
10 constructed on or after the effective date of this
11 section.

12 2. An animal feeding operation structure is
13 "constructed" in the same manner as provided in
14 section 455B.161A.

15 Sec. 27. Section 445B.201, subsection 4, Code
16 1997, is amended by striking the subsection.

17 Sec. 28. Section 455B.202, Code Supplement 1997,
18 is amended to read as follows:

19 455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING
20 ACTIONS AND HABITUAL VIOLATORS.

21 1. As used in this section, "~~construction~~" means
22 ~~the same as defined by rules adopted by the department~~
23 ~~applicable to the construction of animal feeding~~
24 ~~operation structures as provided in this part unless~~
25 ~~the context otherwise requires:-~~

26 a. "Habitual violator" means a person classified
27 as a habitual violator pursuant to section 455B.191.

28 b. "Operation of law" means a transfer by
29 inheritance, devise or bequest, court order,
30 dissolution decree, order in bankruptcy, insolvency,
31 replevin, foreclosure, execution sale, the execution
32 of a judgment, the foreclosure of a real estate
33 mortgage, the forfeiture of a real estate contract, or
34 a transfer resulting from a decree for specific
35 performance.

36 c. "Suspect site" means a confinement feeding
37 operation or land where a confinement feeding
38 operation could be constructed, if the site is subject
39 to a suspect transaction.

40 d. "Suspect transaction" means a transaction in
41 which a habitual violator does any of the following:

42 (1) Transfers a controlling interest in a suspect
43 site to any of the following:

44 (a) An employee of the habitual violator or
45 business in which the person holds a controlling
46 interest.

47 (b) A person who holds an interest in a business,
48 including a confinement feeding operation, in which
49 the habitual violator holds a controlling interest.

50 (c) A person related to the habitual violator as

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1 spouse, parent, grandparent, lineal ascendant of a
2 grandparent or spouse and any other lineal descendant
3 of the grandparent or spouse, or a person acting in a
4 fiduciary capacity for a related person. This
5 paragraph does not apply to a transaction completed by
6 an operation of law.

7 (2) Provides financing for the construction or
8 operation of a confinement feeding operation to any
9 person, by providing a contribution or loan to the
10 person, or providing cash or other tangible collateral
11 for a contribution or loan made by a third person.

12 e. "Transaction" includes a transfer in any manner
13 or by any means, including any of the following:

14 (1) Delivery and acceptance between two parties,
15 including by contract or agreement with or without
16 consideration, including by sale, exchange, barter, or
17 gift.

18 (2) An operation of law.

19 2. a. A person shall not construct or expand an
20 animal feeding operation structure which is part of a
21 confinement feeding operation, if the person is a any
22 of the following:

23 (1) A party to a pending action for a violation of
24 this chapter concerning a confinement feeding
25 operation in which the person has a controlling
26 interest and the action is commenced in district court
27 by the attorney general.

28 (2) A habitual violator.

29 b. A person shall not construct or expand an
30 animal feeding operation structure which is part of a
31 confinement feeding operation for five years after the
32 date of the last violation committed by a person or
33 confinement feeding operation in which the person
34 holds a controlling interest during which the person
35 or operation was classified as a habitual violator
36 ~~under-section-455B-191.~~

37 3. c. This section subsection shall not prohibit a
38 person from completing the construction or expansion
39 of an animal feeding operation structure, if any of
40 the following apply:

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

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

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

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

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

18 Sec. 29. Section 455B.203, subsection 1, Code
19 1997, is amended to read as follows:

20 1. ~~in-order-to-receive~~ The following persons shall
21 submit a manure management plan to the department:

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

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

33 c. A person who applies manure from a confinement
34 feeding operation, other than a small animal feeding
35 operation, which is located in another state, if the
36 manure is applied on land located in this state.

37 1A. A person shall not remove manure from a manure
38 storage structure which is part of a confinement
39 feeding operation for which a manure management plan
40 is required under this section, unless the department
41 approves a manure management plan submitted by the
42 owner of the confinement feeding operation as provided
43 by the department on forms prescribed by the
44 department. The department may adopt rules allowing a
45 person to remove manure from a manure storage
46 structure until the manure management plan is approved
47 or disapproved by the department according to terms
48 and conditions required by rules adopted by the
49 department. The department shall approve or
50 disapprove a manure management plan within sixty days

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1 of the date that the department receives a completed
2 plan. The department shall not issue a permit for the
3 construction of a confinement feeding operation or a
4 related animal feeding operation structure unless the
5 applicant submits a manure management plan together
6 with an application as provided in section 455B.1737-a
7 ~~person shall submit a manure management plan to the~~
8 ~~department together with the application for a~~
9 ~~construction permit 455B.200A.~~

10 Sec. 30. Section 455B.203, subsection 4,
11 unnumbered paragraph 1, Code 1997, is amended to read
12 as follows:

13 A person ~~receiving a permit for the construction of~~
14 ~~a confinement feeding operation~~ required to submit a
15 manure management plan to the department shall
16 maintain a current manure management plan and maintain
17 records sufficient to demonstrate compliance with the
18 manure management plan. Chapter 22 shall not apply to
19 the records which shall be kept confidential by the
20 department and its agents and employees. The contents
21 of the records are not subject to disclosure except as
22 follows:

23 Sec. 31. Section 455B.203, subsection 5, Code
24 1997, is amended to read as follows:

25 5. The department may inspect the confinement
26 feeding operation at any time during normal working
27 hours, and may inspect records required to be
28 maintained as part of the manure management plan. The
29 department shall regularly inspect a confinement
30 feeding operation if the operation or a person holding
31 a controlling interest in the operation is classified
32 as a habitual violator pursuant to section 455B.191.
33 The department shall assess and the confinement
34 feeding operation shall pay the actual costs of the
35 inspection. ~~However, in order to access the~~
36 ~~operation, the departmental inspector must comply with~~
37 ~~standard disease control restrictions customarily~~
38 ~~required by the operation. The department shall~~
39 ~~comply with section 455B.103 in conducting an~~
40 ~~investigation of the premises where the animals are~~
41 ~~kept.~~

42 Sec. 32. NEW SECTION. 455B.203A MANURE
43 APPLICATORS CERTIFICATION.

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

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

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

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1 animal feeding operation.

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

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

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

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

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

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

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

43 b. The department shall administer the continuing
44 instructional courses, by either teaching the courses
45 or selecting persons to teach the courses, according
46 to criteria as provided by rules adopted by the
47 department. The department shall, to the extent
48 possible, select persons to teach the continuing
49 instructional courses. The department is not required
50 to compensate persons to teach the continuing

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1 instructional courses. In selecting persons, the
2 department shall consult with organizations interested
3 in the application of manure, including associations
4 representing manure applicators and associations
5 representing agricultural producers. The Iowa
6 cooperative extension service in agriculture and home
7 economics of Iowa state university of science and
8 technology shall cooperate with the department in
9 administering the continuing instructional courses.
10 The Iowa cooperative extension service may teach
11 continuing instructional courses, train persons
12 selected to teach courses, or distribute informational
13 materials to persons teaching the courses.

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

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

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

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

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

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

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

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

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

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

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

47 (1) The person is a part-time employee of a
48 confinement site manure applicator.

49 (2) The person is acting under the instructions
50 and control of a certified commercial manure

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1 applicator who is both of the following:

2 (a) Physically present at the site where the
3 manure is located.

4 (b) In sight or hearing distance of the supervised
5 person.

6 6. a. The department may charge a fee for
7 certifying persons under this section. The fee for
8 certification shall be based on the costs of
9 administering and enforcing this section and paying
10 the expenses of the department relating to
11 certification.

12 b. All moneys received by the department under the
13 provisions of this chapter shall be handled in the
14 same manner as repayment receipts, as defined in
15 section 8.2, and shall be used solely for the
16 administration and enforcement of this chapter.

17 Sec. 33. NEW SECTION. 455B.203B APPLICATION
18 REQUIREMENTS.

19 1. The department shall adopt rules governing the
20 application of manure originating from an anaerobic
21 lagoon or aerobic structure which is part of a
22 confinement feeding operation. The rules shall
23 establish application rates and practices to minimize
24 groundwater or surface water pollution resulting from
25 application, including pollution caused by runoff or
26 other manure flow resulting from precipitation events.
27 The rules shall establish different application rates
28 and practices based on the water holding capacity of
29 the soil at the time of application.

30 2. A person shall not apply manure by spray
31 irrigation equipment, except as provided by rules
32 adopted by the department pursuant to chapter 17A.
33 However, a person shall not use restricted spray
34 irrigation equipment to apply manure originating from
35 a confinement feeding operation, unless the manure has
36 been diluted as provided by rules adopted by the
37 department, including diluted by use of an anaerobic
38 lagoon.

39 Sec. 34. Section 455B.204, Code 1997, is amended
40 to read as follows:

41 455B.204 DISTANCE REQUIREMENTS.

42 1. ~~An animal feeding operation structure shall be~~
43 ~~located at least five hundred feet away from the~~
44 ~~surface intake of an agricultural drainage well or~~
45 ~~known sinkhole, and at least two hundred feet away~~
46 ~~from~~ As used in this section, unless the context
47 otherwise requires:

48 a. "Major water source" means a lake, reservoir,
49 river, or stream located within the territorial limits
50 of the state, any marginal river area adjacent to the

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1 state, which can support a floating vessel capable of
2 carrying one or more persons during a total of a six-
3 month period in one out of ten years, excluding
4 periods of flooding which has been identified by rules
5 adopted by the commission.

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

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

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

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

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

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

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

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

35 3. However, no distance A separation is distance
36 required between-a in this section shall not apply to
37 any of the following:

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

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

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

48 ~~2. A person shall not dispose of manure closer to~~
49 ~~a designated area than provided in section 159.27.~~

50 5. A person shall not construct or expand an

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

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

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

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

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

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

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

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

43 3. The department shall inspect each unformed
44 manure storage structure at least once each year. An
45 inspection conducted pursuant to this subsection shall
46 be limited to a visual inspection of the site where
47 the unformed manure storage structure is located. The
48 department shall inspect the site at a reasonable time
49 after providing at least twenty-four hours' notice to
50 the person owning or managing the confinement feeding

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1 operation. The visual inspection shall include, but
2 not be limited to, determining whether any of the
3 following exists:

4 a. An adequate freeboard level.

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

7 c. Erosion.

8 d. Inadequate vegetation cover.

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

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

13 1. As used in this section, "research college"
14 means an accredited public or private college or
15 university, including but not limited to a university
16 under the control of the state board of regents as
17 provided in chapter 262, or a community college under
18 the jurisdiction of a board of directors for a merged
19 area as provided in chapter 260C, if the college or
20 university performs research or experimental
21 activities regarding animal agriculture or agronomy.

22 2. The requirements of this part which regulate
23 animal feeding operations, including rules adopted by
24 the department pursuant to section 455B.200, shall not
25 apply to research activities and experiments performed
26 under the authority and regulations of a research
27 college, if the research activities and experiments
28 relate to animal feeding operations, including but not
29 limited to the confinement of animals and the storage
30 and disposal of manure originating from animal feeding
31 operations.

32 3. This section shall not apply to requirements
33 provided in any of the following:

34 a. Section 455B.201, including rules adopted by
35 the department under that section.

36 b. Section 455B.204, including rules adopted by
37 the department under that section.

38 Sec. 37. Section 657.11, subsections 2, 3, 5, 6,
39 7, and 8, Code 1997, are amended to read as follows:

40 2. ~~If a person has received all permits required~~
41 ~~pursuant to chapter 455B for an animal feeding~~
42 ~~operation, as defined in section 455B.161, there shall~~
43 ~~be a rebuttable presumption that an~~ An animal feeding
44 operation is, as defined in section 455B.161, shall
45 not be found to be a public or private nuisance under
46 this chapter or under principles of common law, and
47 that the animal feeding operation ~~does~~ shall not
48 ~~unreasonably and continuously be found to interfere~~
49 with another person's comfortable use and enjoyment of
50 the person's life or property under any other cause of

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~~1 action. The-rebuttable-presumption-also-applies-to~~
~~2 persons-who-are-not-required-to-obtain-a-permit~~
~~3 pursuant-to-chapter-455B-for-an-animal-feeding~~
~~4 operation-as-defined-in-section-455B:161.--The~~
5 rebuttable-presumption However, this section shall not
6 apply if the person bringing the action proves that an
7 injury to a the person or damage to the person's
8 property is proximately caused by a either of the
9 following:

10 a. The failure to comply with a federal statute or
11 regulation or a state statute or rule which applies to
12 the animal feeding operation.

13 ~~b. 3.--The-rebuttable-presumption-may-be-overcome~~
~~14 by-clear-and-convincing-evidence-of-both~~ Both of the
15 following:

16 a. (1) The animal feeding operation unreasonably
17 and continuously for substantial periods of time
18 interferes with another the person's comfortable use
19 and enjoyment of the person's life or property.

20 ~~b. (2) The-injury-or-damage-is-proximately-caused~~
~~21 by-the-negligent-operation-of-the~~ animal feeding
22 operation failed to use existing prudent generally
23 accepted management practices reasonable for the
24 operation.

25 ~~5. The-rebuttable-presumption-created-by-this~~ This
26 section shall apply regardless of the established date
27 of operation or expansion of the animal feeding
28 operation. The-rebuttable-presumption A defense
29 against a cause of action provided in this section
30 includes, but is not limited to, a defense for actions
31 arising out of the care and feeding of animals; the
32 handling or transportation of animals; the treatment
33 or disposal of manure resulting from animals; the
34 transportation and application of animal manure; and
35 the creation of noise, odor, dust, or fumes arising
36 from an animal feeding operation.

37 ~~6. An-animal-feeding-operation-that-complies-with~~
~~38 the-requirements-in-chapter-455B-for-animal-feeding~~
~~39 operations-shall-be-deemed-to-meet-any-common-law~~
~~40 requirements-regarding-the-standard-of-a-normal-person~~
~~41 living-in-the-locality-of-the-operation.~~

42 ~~7.--A~~ If a court determines that a claim is
43 frivolous, a person who brings the claim as part of a
44 losing cause of action against a person for-whom-the
45 rebuttable-presumption-created who may raise a defense
46 under this section is-not-rebutted, shall be liable to
47 the person against whom the action was brought for all
48 costs and expenses incurred in the defense of the
49 ~~action,-if-the-court-determines-that-a-claim-is~~
50 frivolous.

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1 ~~8 7. The-rebuttable-presumption-created-in-this~~
2 This section does not apply to an injury to a person
3 or damages to property caused by the animal feeding
4 operation before May-31, 1995 the effective date of
5 this Act.

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

8 SEC. 38. INDEMNITY FEES -- PRIOR PERMITTEES.

9 1. The indemnity fee imposed upon permittees
10 pursuant to section 204.3, as enacted in this Act,
11 shall be imposed upon all persons who have received a
12 permit by the department of natural resources for the
13 construction of a confinement feeding operation with a
14 manure storage structure as defined in section
15 455B-161 204.1, as enacted in this Act, prior to the
16 effective date of this Act. However, an indemnity fee
17 shall not be imposed upon a-person the following
18 persons:

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

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

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

41 3. The department of natural resources shall
42 deliver-to receive from the department of agriculture
43 and land stewardship the most current available
44 information regarding the persons required to pay the
45 fee and any delinquency penalty,-including-the-names
46 and-addresses-of-the-persons,-and-the-capacity-of-the
47 confinement-feeding-operations-subject-to-the-permit.
48 The department of agriculture-and-land-stewardship
49 natural resources, in cooperation with the attorney
50 general, may bring a court action in order to collect

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1 indemnity fees and delinquency penalties required to
2 be paid under this section.

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

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

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

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

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

42 Sec. 42. INDEMNITY FEES -- PRIOR CONSTRUCTION
43 PERMITTEES. The department of agriculture and land
44 stewardship shall deliver to the department of natural
45 resources the most current available information
46 regarding persons required to pay the indemnity fee
47 imposed pursuant to 1995 Iowa Acts, chapter 195,
48 section 38. The department of natural resources, in
49 cooperation with the attorney general, may bring a
50 court action in order to collect indemnity fees and

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1 delinquency penalties as provided in that Act for
2 deposit into the manure storage indemnity fund as
3 created in section 204.2.

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

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

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

37 Sec. 46. DIRECTIONS TO IOWA CODE EDITOR.

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

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

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

50 Sec. 48. SEVERABILITY. If any provision of this

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

7 Sec. 49. EFFECTIVE DATES.

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

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

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

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

18 "effective dates".

By COMMITTEE ON AGRICULTURE
WILMER RENSINK, Chairperson

S-5543 FILED APRIL 7, 1998

Adopted
4-11-98
(P. 1143)

HOUSE FILE 2494

S-5573

1 Amend the amendment, S-5543, to House File 2494, as
 2 amended, passed, and reprinted by the Senate, as
 3 follows:

4 1. Page 30, line 36, by striking the words "this
 5 section" and inserting the following: "subsection 2".

6 2. Page 30, by inserting after line 44 the
 7 following:

8 "3A. A person shall not construct a confinement
 9 feeding operation, including a related animal feeding
 10 operation structure, within two miles of a water
 11 impoundment, including a lake or reservoir, if water
 12 is drawn from the water impoundment to supply drinking
 13 water to human populations."

By JOHN P. KIBBIE
 DICK L. DEARDEN
 BILL FINK
 ELAINE SZYMONIAK
 MARY NEUHAUSER
 MIKE CONNOLLY
 ROBERT E. DVORSKY

PATRICIA HARPER
 STEVEN D. HANSEN
 TOM FLYNN
 EUGENE S. FRAISE
 DENNIS H. BLACK
 PATRICK J. DELUHERY

S-5573 FILED APRIL 8, 1998

LOST (p. 1143)

HOUSE FILE 2494

S-5567

1 Amend the amendment, S-5543, to House File 2494, as
 2 amended, passed, and reprinted by the House, as
 3 follows:

4 1. Page 17, by inserting after line 25 the
 5 following:

6 "____. The liquid manure originates from a small
 7 animal feeding operation."

By JERRY BEHN
 STEWART IVERSON, Jr.
 WILMER RENSINK

H. KAY HEDGE
 MERLIN E. BARTZ
 JOHN P. KIBBIE

S-5567 FILED APRIL 7, 1998

Adopted 4-8-98
 (p. 1142)

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1 manure through an orifice at a rate of not more than
2 twenty-five pounds per square inch.

3 (3) The liquid manure is not applied within two
4 hundred fifty feet from a residence not owned by the
5 titleholder of the land, a commercial enterprise, a
6 bona fide religious institution, an educational
7 institution, or a public use area."

8 8. Page 21, line 11, by striking the word "site"
9 and inserting the following: "site's real estate".

10 9. Page 22, line 6, by striking the word "thirty"
11 and inserting the following: "thirty-five".

12 10. Page 30, line 36, by striking the words "this
13 section" and inserting the following: "subsection 2".

14 11. Page 31, by striking line 43, and inserting
15 the following:

16 "3. a. The department shall conduct a routine
17 inspection of each unformed".

18 12. Page 31, line 44, by striking the word "An"
19 and inserting the following: "A routine".

20 13. Page 32, line 4, by striking the word "a."
21 and inserting the following: "(1)".

22 14. Page 32, line 5, by striking the word "b."
23 and inserting the following: "(2)".

24 15. Page 32, line 7, by striking the word "c."
25 and inserting the following: "(3)".

26 16. Page 32, line 8, by striking the word "d."
27 and inserting the following: "(4)".

28 17. Page 32, line 9, by striking the word "e."
29 and inserting the following: "(5)".

30 18. Page 32, by inserting after line 10, the
31 following:

32 "b. Nothing in this subsection restricts the
33 department from conducting an inspection of an animal
34 feeding operation which is not routine."

35 19. Page 34, line 5, by striking the word "Act"
36 and inserting the following: "section".

37 20. Page 34, by inserting before line 6 the
38 following:

39 "Sec. 100. Section 657.11, subsection 4,
40 unnumbered paragraph 1, Code 1997, is amended to read
41 as follows:

42 ~~The-rebuttable-presumption~~ This section does not
43 apply to a person during any period that the person is
44 classified as a chronic violator under this subsection
45 as to any confinement feeding operation in which the
46 person holds a controlling interest, as defined by
47 rules adopted by the department of natural resources.

48 ~~The-rebuttable-presumption~~ This section shall apply to
49 the person on and after the date that the person is
50 removed from the classification of chronic violator.

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1 For purposes of this subsection, "confinement feeding
2 operation" means an animal feeding operation in which
3 animals are confined to areas which are totally
4 roofed, and which are regulated by the department of
5 natural resources or the environmental protection
6 commission."

7 21. Page 34, by inserting before line 6 the
8 following:

9 "Sec. 101. 1995 Iowa Acts, chapter 195, section
10 37, is amended to read as follows:

11 SEC. 37. ANIMAL AGRICULTURE CONSULTING
12 ORGANIZATION. The department of natural resources
13 shall request that the Iowa pork producers
14 association, the Iowa cattlemen's association, the
15 Iowa poultry association, the Iowa dairy products
16 association, ~~an organization representing agricultural~~
17 ~~producers generally~~, Iowa state university, the soil
18 conservation division of the department of agriculture
19 and land stewardship, ~~and~~ the natural resources
20 conservation service of the United States department
21 of agriculture, and after the effective date of this
22 section of this Act as amended by 1998 Iowa Acts,
23 House File 2494, two organizations representing
24 agricultural producers generally each appoint one
25 member to consult with the department regarding. The
26 appointees shall consult with the department regarding
27 this Act, rules adopted pursuant to this Act, and the
28 Act's implementation. The department shall consult
29 with representatives in meetings which shall be
30 conducted by the department, upon the call of the
31 director of the department or the director's designee,
32 or upon the request to the department of any three
33 members. The department shall request that the
34 representatives provide the department with
35 recommendations regarding the adoption of rules
36 required to administer this Act. This section is
37 repealed on March 31, 2005."

38 22. Page 36, by inserting after line 16 the
39 following:

40 "Sec. ____ . MANURE APPLICATOR CERTIFICATION --
41 DELAYED APPLICABILITY. A person shall not be required
42 to be certified as a commercial manure applicator or a
43 confinement site manure applicator as required
44 pursuant to section 455B.203A, as enacted in this Act,
45 for sixty days following the effective date of that
46 section of this Act."

47 23. Page 36, line 24, by inserting after the
48 figure "37" the following: ", as amended by this
49 Act".

50 24. Page 37, line 8, by striking the figure "37"

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- 1 and inserting the following: "37, 100, 101".
- 2 25. By renumbering and correcting internal
- 3 references as necessary.

By WILMER RENSINK
 PATTY JUDGE
 JOHN P. KIBBIE

S-5581 FILED APRIL 8, 1998

ADOPTED

(p. 1139)

HOUSE FILE 2494

S-5583

- 1 Amend the amendment, S-5543, to House File 2494, as
- 2 amended, passed, and reprinted by the House, as
- 3 follows:
- 4 1. Page 14, by striking lines 4 through 16.
- 5 2. By renumbering as necessary.

By MARY A. LUNDBY

S-5583 FILED APRIL 8, 1998

LOST

(p. 1142)

HOUSE FILE 2494

S-5584

- 1 Amend the amendment, S-5543, to House File 2494, as
- 2 amended, passed, and reprinted by the House, as
- 3 follows:
- 4 1. By striking page 32, line 38, through page 34,
- 5 line 5, and inserting the following:
- 6 "Sec. 37. Section 657.11, Code 1997, is repealed."
- 7 3. By renumbering as necessary.

By TOM VILSACK
 MIKE CONNOLLY
 MARY NEUHAUSER
 ROBERT E. DVORSKY
 EUGENE S. FRAISE
 JOHN P. KIBBIE

JOHNIE HAMMOND
 PATRICIA HARPER
 DICK L. DEARDEN
 BILL FINK
 ELAINE SZYMONIAK

S-5584 FILED APRIL 8, 1998

LOST

(p. 1143)

HOUSE FILE 2494

S-5575

1 Amend the amendment, S-5543, to House File 2494, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 6, by inserting before line 29, the
5 following:

6 "Sec. ____ . NEW SECTION. 331.304B CONFINEMENT
7 FEEDING OPERATIONS -- SITING ORDINANCE.

8 1. As used in this section, unless the context
9 otherwise requires:

10 a. "Animal feeding operation structure" means the
11 same as defined in section 455B.161.

12 b. "Animal weight capacity" means the same as
13 defined in section 455B.161.

14 c. "Confinement feeding operation" means the same
15 as defined in section 455B.161.

16 d. "Small animal feeding operation" means the same
17 as defined in section 455B.161.

18 2. A county may adopt a confinement feeding
19 operations siting ordinance pursuant to section
20 331.302. The purpose of the ordinance shall be to
21 allow approval of the siting of a confinement feeding
22 operation regardless of chapter 335. The ordinance
23 shall authorize a county board of supervisors to
24 approve the site of the construction of a confinement
25 feeding operation, including a related animal feeding
26 operation structure, pursuant to a plan adopted by the
27 county board of supervisors. The ordinance shall
28 provide for methods and procedures required for
29 submission of proposals, review of proposals, and
30 approval of a site. The plan adopted under this
31 section shall provide for all of the following:

32 a. The preservation and availability of
33 agricultural land reserved for confinement feeding
34 operations, including for the construction of
35 confinement feeding operations and related animal
36 feeding operation structures.

37 b. Encouraging efficient urban development
38 patterns that do not burden agricultural land reserved
39 under the plan for confinement feeding operations.

40 c. Preserving and protecting natural resources,
41 including water sources and fragile environmental
42 locations.

43 d. Lessening congestion and overcrowding of
44 confinement feeding operations, especially near
45 cities.

46 3. This section does not authorize a county board
47 of supervisors to adopt an ordinance which applies to
48 any of the following:

49 a. Standards or requirements relating to the
50 design or construction of animal feeding operation

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1 structures, including requirements established under
 2 chapter 455B, including rules adopted by the
 3 department of natural resources under that chapter.

4 b. The siting of a small animal feeding
 5 operation."

6 2. By renumbering as necessary.

By TOM VILSACK
 MIKE CONNOLLY
 ROBERT E. DVORSKY
 PATRICIA HARPER
 TOM FLYNN
 STEVEN D. HANSEN
 EUGENE S. FRAISE

PATRICK J. DELUHERY
 JOHN P. KIBBIE
 DICK L. DEARDEN
 BILL FINK
 ELAINE SZYMONIAK
 MARY NEUHAUSER
 JOHNIE HAMMOND

S-5575 FILED APRIL 8, 1998
 WITHDRAWN

(P. 1143)

HOUSE FILE 2494

S-5577

1 Amend the amendment, S-5543, House File 2494, as
 2 amended, passed, and reprinted by the House, as
 3 follows:

4 1. Page 12, by striking lines 31 through 49 and
 5 inserting the following:

6	<u>"Anaerobic</u>			
7	lagoon	1,250	1,875	2,500
8	<u>Uncovered earthen</u>			
9	<u>manure storage</u>			
10	basin	1,250	1,875	2,500
11	<u>Uncovered formed</u>			
12	<u>manure storage</u>			
13	structure	1,250	1,500	2,000
14	<u>Covered earthen</u>			
15	<u>manure storage</u>			
16	basin	1,250	1,500	1,875
17	<u>Covered formed</u>			
18	<u>manure storage</u>			
19	structure	1,250	1,500	1,875
20	<u>Confinement</u>			
21	building	1,250	1,500	1,875
22	<u>Egg washwater</u>			
23	<u>storage</u>			
24	structure	1,250	1,500	1,875"

25 2. Page 13, line 43, by inserting after the word
 26 "hundred" the following: "and fifty".

By MARY A. LUNDBY
 ANDY MCKEAN

S-5577 FILED APRIL 8, 1998
 LOST

(P. 1142)

HOUSE FILE 2494

S-5574

1 Amend the amendment, S-5543, to House File 2494, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 9, by inserting after line 9 the
5 following:

6 "NEW SUBSECTION. 5A. "Cemetery" means a space
7 held for the purpose of permanent burial, entombment,
8 or interment of human remains that is owned or managed
9 by a political subdivision or private entity, or a
10 cemetery regulated pursuant to chapter 523I or 566A.
11 However, "cemetery" does not include a pioneer
12 cemetery as defined in section 331.325."

13 2. Page 9, by inserting after line 15 the
14 following:

15 "Sec. 101. Section 455B.161, subsection 17, Code
16 1997, is amended to read as follows:

17 17. "Public use area" means that any of the
18 following:

19 a. A portion of land owned by the United States,
20 the state, or a political subdivision with facilities
21 which attract the public to congregate and remain in
22 the area for significant periods of time, as provided
23 by rules which shall be adopted by the department
24 pursuant to chapter 17A.

25 b. A cemetery."

26 3. Page 17, by inserting after line 25 the
27 following:

28 "NEW SUBSECTION. 7. The distance between an
29 animal feeding operation structure and a cemetery, if
30 any of the following applies:

31 a. The animal feeding operation structure was
32 constructed or expanded prior to the effective date of
33 this section of this Act.

34 b. The construction or expansion of the animal
35 feeding operation structure began prior to the
36 effective date of this section of this Act."

37 4. Page 37, line 11, by inserting after the
38 figure "11," the following: "101,".

By JOHN P. KIBBIE

DICK L. DEARDEN

BILL FINK

DENNIS H. BLACK

PATTY JUDGE

MICHAEL E. GRONSTAL

EUGENE S. FRAISE

WALLY E. HORN

ELAINE SZYMONIAK

MARY NEUHAUSER

MATT McCOY

MIKE CONNOLLY

ROBERT E. DVORSKY

PATRICIA HARPER

PATRICK J. DELUHERY

TOM FLYNN

STEVEN D. HANSEN

JOHNIE HAMMOND

S-5574 FILED APRIL 8, 1998
ADOPTED

(P.1142)

HOUSE FILE 2494

S-5585

1 Amend the amendment, S-5543, to House File 2494, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, by inserting after line 15 the
5 following:

6 "Sec. ____ . NEW SECTION. 172C.1 DEFINITIONS.

7 1. "Livestock" means live cattle, swine, or sheep.

8 2. "Packer" means a person who is engaged in the
9 business of slaughtering livestock or receiving,
10 purchasing, or soliciting livestock for slaughtering,
11 the meat products of which are directly or indirectly
12 to be offered for resale or for public consumption.

13 As used in this chapter, "packer" includes an agent of
14 the packer engaged in buying or soliciting livestock
15 for slaughter on behalf of a packer. "Packer" does
16 not include any of the following:

17 a. A cold storage plant regulated under chapter
18 171.

19 b. A frozen food locker plant regulated under
20 chapter 172.

21 c. A livestock market as defined in section
22 455B.161.

23 Sec. ____ . NEW SECTION. 172C.2 PRICE
24 DISCRIMINATION -- PROHIBITION.

25 1. Except as provided in subsection 2, a packer
26 purchasing or soliciting livestock for slaughter in
27 this state shall not discriminate in prices paid or
28 offered to be paid to sellers of that livestock.

29 2. This section shall not apply to any of the
30 following:

31 a. A person exempted from the license and
32 financial responsibility provisions of chapter 172A
33 pursuant to section 172A.6.

34 b. The sale and purchase of livestock if all of
35 the following requirements are met:

36 (1) The price differential is based on one of the
37 following:

38 (a) The quality of the livestock, if the packer
39 purchases or solicits the livestock based upon a
40 payment method specifying prices paid for criteria
41 relating to carcass merit.

42 (b) Actual and quantifiable costs related to
43 transporting and acquiring the livestock by the
44 packer.

45 (c) An agreement for the delivery of livestock at
46 a specified date or time.

47 (2) After making a differential payment to a
48 seller, the packer publishes information relating to
49 the differential pricing, including the payment method
50 for carcass merit, transportation and acquisition

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1 pricing, and an offer to enter into an agreement for
2 the delivery of livestock at a specified date or time
3 according to the same terms and conditions offered to
4 other sellers.

5 3. A packer shall provide all sellers with the
6 same terms and conditions offered to a seller who
7 receives a differential price based on any of the
8 criteria described in subsection 2, paragraph "b",
9 subparagraph (1).

10 4. The packer shall, at the beginning of each day
11 in which livestock are purchased, post in a
12 conspicuous place at the point of delivery, all prices
13 for livestock to be paid that day.

14 5. An agreement made by a packer in violation of
15 this section is voidable.

16 6. A packer acting in violation of this section is
17 guilty of a fraudulent practice as provided in chapter
18 714.

19 7. The attorney general shall enforce this
20 section. The department shall refer any violations of
21 this chapter to the attorney general. The attorney
22 general or any person injured by a violation of this
23 section may bring an action in district court to
24 restrain a packer from violating this section. A
25 seller who receives a discriminatory price or who is
26 offered only a discriminatory price for livestock
27 based upon a violation of this section by a packer,
28 has a civil cause of action against the packer and, if
29 successful, shall be awarded treble damages.

30 Sec. ____ . NEW SECTION. 172C.3 REPORTING
31 REQUIREMENTS.

32 1. A packer shall make available for publication
33 and to a board of trade approved by the department, a
34 daily report setting forth information regarding
35 prices paid for livestock, under each contract in
36 force, in which the packer and an Iowa resident are
37 parties for the purchase of the livestock by the
38 packer, and which sets a date for delivery more than
39 twenty days after the making of the contract.

40 2. The reports shall be completed on forms
41 prepared by the department for comparison with cash
42 market prices for livestock according to procedures
43 required by the department. However, a report shall
44 not include information regarding the identity of a
45 seller.

46 3. The failure of a packer to report as required
47 by this section is punishable by a civil penalty not
48 to exceed one thousand dollars for each day that a
49 timely or truthful report is not published. The
50 department shall refer to the attorney general any

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1 packer or packer's agent who the department believes
2 is in violation of this section. The attorney general
3 may, upon referral from the department, file an action
4 in district court to enforce this section."

5 2. Page 37, line 15, by striking the word
6 "production," and inserting the following:
7 "industry,".

8 3. By renumbering as necessary.

By TOM VILSACK

JOHN P. KIBBIE

S-5585 FILED APRIL 8, 1998
RULED OUT OF ORDER

(p. 1139)

HOUSE FILE 2494

S-5581

1 Amend the amendment, S-5543, to House File 2494, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 5, line 38, by striking the word
5 "provide" and inserting the following: "commence".

6 2. By striking page 6, line 45, through page 7,
7 line 3, and inserting the following:

8 "2. For five years after the date of the last
9 violation of this chapter committed by a person or by
10 a confinement feeding operation in which the person
11 holds a controlling interest during which the person
12 or confinement feeding operation was classified as a
13 habitual violator under section 455B.191, all of the
14 following shall apply:

15 a. The department may not issue a new permit under
16 this chapter to the person or confinement feeding
17 operation.

18 b. The department may revoke or refuse to renew an
19 existing permit issued under this chapter, to the
20 person or confinement feeding operation, if the permit
21 relates to a confinement feeding operation, and the
22 department determines that the continued operation of
23 the confinement feeding operation under the existing
24 permit constitutes a clear, present, and impending
25 danger to the public health or environment."

26 3. Page 7, line 39, by inserting after the word
27 "complaint" the following: "as provided in this
28 section".

29 4. Page 7, line 43, by striking the word
30 "complaint" and inserting the following: "complaint,
31 if the department determines that the complaint is
32 legally sufficient and an investigation is justified".

33 5. Page 8, line 15, by inserting before the word
34 "premises" the following: "real estate of the".

35 6. Page 9, by inserting after line 9, the
36 following:

37 "NEW SUBSECTION. 19A. "Spray irrigation
38 equipment" means the same as defined in section
39 455B.171."

40 7. Page 17, by inserting after line 25, the
41 following:

42 ". The liquid manure is applied by spray
43 irrigation equipment using a center pivot mechanism as
44 provided by rules adopted by the department, if all of
45 the following apply:

46 (1) The spray irrigation equipment uses hoses
47 which discharge the liquid manure in a downward
48 direction at a height of not more than nine feet above
49 the soil.

50 (2) The spray irrigation equipment disperses

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HOUSE FILE 2494

S-5588

1 Amend the amendment, S-5543, to House File 2494, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 6, by inserting before line 29, the
5 following:

6 "Sec. ____ . NEW SECTION. 331.304B CONFINEMENT
7 FEEDING OPERATIONS -- SITING ORDINANCE.

8 1. As used in this section, unless the context
9 otherwise requires:

10 a. "Animal feeding operation structure" means the
11 same as defined in section 455B.161.

12 b. "Animal weight capacity" means the same as
13 defined in section 455B.161.

14 c. "Confinement feeding operation" means the same
15 as defined in section 455B.161.

16 d. "Small animal feeding operation" means the same
17 as defined in section 455B.161.

18 2. a. A county may adopt a confinement feeding
19 operations siting ordinance pursuant to section
20 331.302. The purpose of the ordinance shall be to
21 allow approval of the siting of a confinement feeding
22 operation regardless of chapter 335.

23 b. The ordinance shall establish a confinement
24 feeding operations siting commission which shall
25 function as provided in this section. The board shall
26 appoint seven members to the commission who reside in
27 the county, representing urban and rural interests.
28 The ordinance shall authorize a county to review and
29 approve or disapprove the site of the construction of
30 a confinement feeding operation, including a related
31 animal feeding operation structure, pursuant to a plan
32 developed by the commission and adopted by the county
33 board of supervisors. The ordinance shall provide for
34 methods and procedures required for submission of
35 proposals, review of proposals, and approval of a
36 site.

37 c. The plan adopted under this section shall
38 provide for all of the following:

39 (1) Ensuring the preservation and availability of
40 agricultural land reserved for confinement feeding
41 operations, including for the construction of
42 confinement feeding operations and related animal
43 feeding operation structures.

44 (2) Encouraging efficient urban development
45 patterns that do not burden agricultural land reserved
46 under the plan for confinement feeding operations.

47 (3) Preserving and protecting natural resources,
48 including water sources and fragile environmental
49 locations.

50 (4) Lessening congestion and overcrowding of

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1 confinement feeding operations, especially near
2 cities.

3 d. The confinement feeding operations siting
4 commission shall review each proposal for the
5 construction or expansion of a confinement feeding
6 operation, and recommend to the county board of
7 supervisors that the board approve or disapprove the
8 proposal based on the plan provided under this
9 section. The commission shall make its recommendation
10 to the board within forty-five days after the date the
11 board receives a complete proposal. The board shall
12 approve or disapprove a proposal within forty-five
13 days after the date that the board receives the
14 commission's recommendation.

15 3. This section does not authorize a county board
16 of supervisors to adopt an ordinance which applies to
17 any of the following:

18 a. Standards or requirements relating to the
19 design or construction of animal feeding operation
20 structures, including requirements established under
21 chapter 455B, including rules adopted by the
22 department of natural resources under that chapter.

23 b. The siting of a small animal feeding
24 operation."

25 2. By renumbering as necessary.

By TOM VILSACK

MIKE CONNOLLY

BILL FINK

DICK L. DEARDEN

MARY NEUHAUSER

ROBERT E. DVORSKY

EUGENE S. FRAISE

JOHNIE HAMMOND

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STEVEN D. HANSEN

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JOHN P. KIBBIE

PATRICK J. DELUHERY

S-5588 FILED APRIL 8, 1998

LOST

SENATE AMENDMENT TO HOUSE FILE 2494

H-9048

1 Amend House File 2494, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. NEW SECTION. 7D.10A ALLOCATION TO
6 MANURE STORAGE INDEMNITY FUND.

7 If moneys are not sufficient to support the manure
8 storage indemnity fund as provided in chapter 204, the
9 executive council may allocate from moneys in the
10 general fund of the state, which are not otherwise
11 obligated or encumbered, an amount to the manure
12 storage indemnity fund as provided under section
13 204.2. However, not more than a total of one million
14 dollars shall be allocated to the manure storage
15 indemnity fund at any time.

16 Sec. 2. Section 204.1, subsections 4, 8, and 9,
17 Code 1997, are amended to read as follows:

18 4. "Department" means the department of
19 ~~agriculture and land stewardship~~ natural resources.

20 8. "Manure storage structure" means ~~a structure~~
21 ~~used to store manure as part of a confinement feeding~~
22 ~~operation subject to a construction permit issued by~~
23 ~~the department of natural resources pursuant to~~
24 ~~section 455B.173. A manure storage structure~~
25 ~~includes, but is not limited to, an anaerobic lagoon,~~
26 ~~formed manure storage structure, or earthen manure~~
27 ~~storage basin; the same as defined in section 455B.161~~
28 455B.171.

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

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

37 2. The fund consists of moneys from indemnity fees
38 remitted by permittees to the department ~~of natural~~
39 ~~resources and transferred to the department of~~
40 ~~agriculture and land stewardship~~ as provided in
41 section 204.3; moneys from indemnity fees remitted by
42 persons required to submit manure management plans to
43 the department pursuant to section 204.3A; sums
44 collected on behalf of the fund by the department
45 through legal action or settlement; moneys required to
46 be repaid to the department by a county pursuant to
47 this chapter; civil penalties assessed and collected
48 by the department ~~of natural resources~~ or the attorney
49 general pursuant to chapter 455B, against permittees
50 animal feeding operations; moneys paid as a settlement

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1 involving an enforcement action for a civil penalty
2 subject to assessment and collection against
3 permittees by the department of natural resources or
4 the attorney general pursuant to chapter 455B;
5 interest, property, and securities acquired through
6 the use of moneys in the fund; or moneys contributed
7 to the fund from other sources.

8 3. The moneys collected under this section and
9 shall be deposited in the fund and shall be
10 appropriated to the department for the exclusive
11 purpose of indemnifying a county for expenses related
12 to cleaning up the site of the confinement feeding
13 operation, including removing and disposing of manure
14 from a manure storage structure providing moneys for
15 cleanup of abandoned facilities as provided in section
16 204.4, and to pay the department for costs related to
17 administering the provisions of this chapter. For
18 each fiscal year, the department shall not use more
19 than one percent of the total amount which is
20 available in the fund or ten thousand dollars,
21 whichever is less, to pay for the costs of
22 administration. Moneys in the fund shall not be
23 subject to appropriation or expenditure for any other
24 purpose than provided in this section.

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

27 a. On August 31 following the close of each fiscal
28 year, moneys in the fund which are not obligated or
29 encumbered on June 30 of the past fiscal year, less
30 not counting the department's estimate of the cost to
31 the fund for pending or unsettled claims and any
32 amount required to be credited to the general fund of
33 the state under this subsection, and which are in
34 excess of one three million dollars, shall be
35 deposited in the organic nutrient management fund as
36 created in section 161C.5 for purposes of supporting
37 the organic nutrient management program.

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

50 c. The department shall credit an amount to the

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

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

15 204.3 FEES.

16 An indemnity fee shall be assessed upon permittees
17 which shall be paid to and collected by the department
18 ~~of-natural-resources~~, prior to issuing a permit for
19 the construction of a confinement feeding operation as
20 provided in section ~~455B-173~~ 455B.200A. The amount of
21 the fees shall be based on the following:

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

26 a. For all animals other than poultry, the amount
27 of the fee shall be ~~five~~ ten cents per animal unit of
28 capacity for confinement feeding operations.

29 b. For poultry, the amount of the fee shall be ~~two~~
30 four cents per animal unit of capacity for confinement
31 feeding operations.

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

37 a. For all animals other than poultry, the amount
38 of the fee shall be ~~seven-and-one-half~~ fifteen cents
39 per animal unit of capacity for confinement feeding
40 operations.

41 b. For poultry, the amount of the fee shall be
42 ~~three~~ six cents per animal unit of capacity for
43 confinement feeding operations.

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

48 a. For all animals other than poultry, the amount
49 of the fee shall be ~~ten~~ twenty cents per animal unit
50 of capacity for confinement feeding operations.

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1 b. For poultry, the amount of the fee shall be
2 ~~four~~ eight cents per animal unit of capacity for
3 confinement feeding operations.

4 The department of ~~natural-resources~~ shall deposit
5 moneys collected from the fees into the fund according
6 to procedures adopted by the department of ~~agriculture~~
7 ~~and-land-stewardship~~.

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

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

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

19 1. A county that has acquired real estate
20 containing a manure storage structure following
21 nonpayment of taxes pursuant to section 446.19, may
22 make a claim against the fund to pay ~~the-costs-of~~
23 ~~cleaning-up-the-site-of-the-confinement-feeding~~
24 ~~operation,-including-the-costs-of-removing-and~~
25 ~~disposing-of-the-manure-from-a-manure-storage~~
26 structure cleanup costs incurred by the county as
27 provided in section 204.5. Each claim shall include a
28 bid by a qualified person, other than a governmental
29 entity, to remove and dispose of the manure for a
30 fixed amount specified in the bid.

31 2. The If a county provides cleanup under section
32 204.5 after acquiring real estate following nonpayment
33 of taxes, the department shall determine if a claim is
34 eligible to be satisfied under this section
35 subsection, and do one of the following:

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

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

47 2A. If a county provides cleanup of a condition
48 causing a clear, present, and impending danger to the
49 public health or environment, as provided in section
50 204.5, the county may make a claim against the fund to

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1 pay cleanup costs incurred by the county, according to
2 procedures and requirements established by rules
3 adopted by the department. The department shall
4 determine if a claim is eligible to be satisfied under
5 this subsection, and pay the amount of the claim
6 required in this section.

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

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

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

18 204.5 SITE CLEANUP.

19 1. a. A county which that has acquired real
20 estate containing on which there is located a
21 confinement feeding operation ~~structure, as defined in~~
22 ~~section 455B.161,~~ following the nonpayment of taxes
23 pursuant to section 446.19, may ~~clean-up-the-site~~
24 provide for cleanup, including removing and disposing
25 of manure at any time, remediating contamination which
26 originates from the confinement feeding operation, or
27 demolishing and disposing of structures relating to
28 the confinement feeding operation. The county may
29 seek reimbursement including by bringing an action for
30 the costs of the ~~removal-and-disposal~~ cleanup from the
31 person abandoning the real estate.

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

46 2. A person cleaning up a site confinement feeding
47 operation located on real estate acquired by a county
48 may ~~demolish or~~ dispose of any building or equipment
49 ~~used-in~~ of the confinement feeding operation located
50 on the land according to rules adopted by the

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1 department ~~of-natural-resources~~ pursuant to chapter
2 17A, which apply to the disposal of farm buildings or
3 equipment by an individual or business organization.

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

6 1. As used in this section:

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

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

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

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

31 455B.104 DEPARTMENTAL DUTIES -- PERMITS --

32 REQUIREMENTS AND ASSISTANCE.

33 1. The department shall either approve or deny a
34 permit to a person applying for a permit under this
35 chapter, within six months from the date that the
36 department receives a completed application for the
37 permit. An application which is not approved or
38 denied within the six-month period shall be approved
39 by default. The department shall issue a permit to
40 the applicant within ten days following the date of
41 default approval. However, this ~~section~~ subsection
42 shall not apply to applications for permits which are
43 issued under division II, or division IV, parts 2
44 through 7.

45 2. For five years after the date of the last
46 violation of this chapter committed by a person or by
47 a confinement feeding operation in which the person
48 holds a controlling interest during which the person
49 or confinement feeding operation was classified as a
50 habitual violator under section 455B.191, all of the

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1 following shall apply:

2 a. The department may not issue a new permit under
3 this chapter to the person or confinement feeding
4 operation.

5 b. The department may revoke or refuse to renew an
6 existing permit issued under this chapter, to the
7 person or confinement feeding operation, if the permit
8 relates to a confinement feeding operation, and the
9 department determines that the continued operation of
10 the confinement feeding operation under the existing
11 permit constitutes a clear, present, and impending
12 danger to the public health or environment.

13 3. The department shall assist persons applying
14 for assistance to establish and operate renewable fuel
15 production facilities pursuant to the value-added
16 agricultural products and processes financial
17 assistance program established in section 15E.111.

18 Sec. 11. Section 455B.110, Code 1997, is amended
19 to read as follows:

20 455B.110 ANIMAL FEEDING OPERATIONS --COMMISSION
21 APPROVAL-OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

22 1. A person may file a complaint alleging that an
23 animal feeding operation is in violation of this
24 chapter, including rules adopted by the department, or
25 environmental standards or regulations subject to
26 federal law and enforced by the department.

27 a. The complaint may be filed with the department
28 according to procedures required by the department or
29 with the county board of supervisors in the county
30 where the violation is alleged to have occurred,
31 according to procedures required by the board. The
32 county auditor may accept the complaint on behalf of
33 the board.

34 b. If the county board of supervisors receives a
35 complaint, it shall conduct a review to determine if
36 the allegation contained in the complaint constitutes
37 a violation, without investigating whether the facts
38 supporting the allegation are true or untrue.

39 (1) If the county board of supervisors determines
40 that the allegation does not constitute a violation,
41 it shall notify the complainant, the animal feeding
42 operation which is the subject of the complaint, and
43 the department, according to rules adopted by the
44 department.

45 (2) If the county board of supervisors determines
46 that the allegation constitutes a violation, it shall
47 forward the complaint to the department which shall
48 investigate the complaint as provided in this section.

49 c. If the department receives a complaint from a
50 complainant or a county forwarding a complaint, the

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1 department shall conduct an investigation of the
2 complaint, if the department determines that the
3 complaint is legally sufficient and an investigation
4 is justified. The department shall receive a
5 complaint filed by a complainant, regardless of
6 whether the complainant has filed a complaint with a
7 county board of supervisors.

8 (1) The department in its discretion shall
9 determine the urgency of the investigation, and the
10 time and resources required to complete the
11 investigation, based upon the circumstances of the
12 case, including the severity of a threat to the
13 quality of surface or subsurface water.

14 (2) The department shall notify the county board
15 of supervisors in the county where the violation is
16 alleged to occur prior to investigating the premises
17 of the alleged violation. However, the department is
18 not required to provide notice if the department
19 determines that a clear, present, and impending danger
20 to the public health or environment requires immediate
21 action.

22 (3) The county board of supervisors may designate
23 a county employee to accompany a departmental official
24 during the investigation of the premises of a
25 confinement feeding operation. The county designee
26 shall have the same right of access to the real estate
27 of the premises as the departmental official
28 conducting the inspection during the period that the
29 county accompanies the departmental official.

30 (4) Upon the completion of an investigation, the
31 department shall notify the complainant of the results
32 of the investigation, including any anticipated,
33 pending, or completed enforcement action arising from
34 the investigation. The department shall deliver a
35 copy of the notice to the animal feeding operation
36 that is the subject of the complaint and the board of
37 supervisors of the county where the violation is
38 alleged to have occurred.

39 d. A county board of supervisors or the department
40 is not required to divulge information regarding the
41 identity of the complainant.

42 2. When entering the premises of an animal feeding
43 operation, a person who is a departmental official, an
44 agent of the department, or a person accompanying the
45 departmental official or agent shall comply with
46 section 455B.103. The person shall also comply with
47 standard biosecurity requirements customarily required
48 by the animal feeding operation which are necessary in
49 order to control the spread of disease among an animal
50 population.

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1 3. The department shall not initiate an
2 enforcement action in response to a violation by an
3 animal feeding operation as provided in this chapter
4 or a rule adopted pursuant to this chapter, or request
5 the commencement of legal action by the attorney
6 general pursuant to section 455B.141, unless the
7 commission has approved the intended action. This
8 section subsection shall not apply to an enforcement
9 action in which the department enforces a civil
10 penalty of three thousand dollars or less. This
11 section subsection shall also not apply to an order to
12 terminate an emergency issued by the director pursuant
13 to section 455B.175.

14 Sec. 12. Section 455B.161, Code 1997, is amended
15 by adding the following new subsections:

16 NEW SUBSECTION. 0A. "Aerobic structure" means an
17 animal feeding operation structure other than an egg
18 washwater storage structure which employs bacterial
19 action which is maintained by the utilization of air
20 or oxygen and which includes aeration equipment.

21 NEW SUBSECTION. 5A. "Cemetery" means a space held
22 for the purpose of permanent burial, entombment, or
23 interment of human remains that is owned or managed by
24 a political subdivision or private entity, or a
25 cemetery regulated pursuant to chapter 523I or 566A.
26 However, "cemetery" does not include a pioneer
27 cemetery as defined in section 331.325.

28 NEW SUBSECTION. 19A. "Spray irrigation equipment"
29 means the same as defined in section 455B.171.

30 NEW SUBSECTION. 21. "Unformed manure storage
31 structure" means a covered or uncovered animal feeding
32 operation structure in which manure is stored, other
33 than a formed manure storage structure, which is an
34 anaerobic lagoon, aerobic structure, or earthen manure
35 storage basin.

36 Sec. 13. Section 455B.161, subsection 17, Code
37 1997, is amended to read as follows:

38 17. "Public use area" means that any of the
39 following:

40 a. A portion of land owned by the United States,
41 the state, or a political subdivision with facilities
42 which attract the public to congregate and remain in
43 the area for significant periods of time, as provided
44 by rules which shall be adopted by the department
45 pursuant to chapter 17A.

46 b. A cemetery.

47 Sec. 14. NEW SECTION. 455B.161A CONFINEMENT
48 FEEDING OPERATIONS -- SPECIAL TERMS.

49 For purposes of this part, all of the following
50 shall apply:

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

3 a. An animal feeding operation structure which is
4 part of one confinement feeding operation is located
5 within the following distance from an animal feeding
6 operation structure which is part of the other
7 confinement feeding operation:

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

10 (a) Confinement feeding operations having an
11 animal weight capacity of less than one million two
12 hundred fifty thousand pounds for animals other than
13 bovine.

14 (b) Confinement feeding operations having an
15 animal weight capacity of less than four million
16 pounds for bovine.

17 (2) One thousand five hundred feet for all of the
18 following:

19 (a) Confinement feeding operations having an
20 animal weight capacity of one million two hundred
21 fifty thousand pounds or more but less than two
22 million pounds for animals other than swine kept in a
23 farrow-to-finish operation or bovine.

24 (b) Confinement feeding operations having an
25 animal weight capacity of one million two hundred
26 fifty thousand pounds or more but less than two
27 million five hundred thousand pounds for swine kept in
28 a farrow-to-finish operation.

29 (c) Confinement feeding operations having an
30 animal weight capacity of four million or more pounds
31 but less than six million pounds for bovine.

32 (3) Two thousand five hundred feet for all of the
33 following:

34 (a) Confinement feeding operations having an
35 animal weight capacity of two million pounds or more
36 for animals other than swine kept in a farrow-to-
37 finish operation or bovine.

38 (b) Confinement feeding operations having an
39 animal weight capacity of two million five hundred
40 thousand pounds for swine kept in a farrow-to-finish
41 operation.

42 (c) Confinement feeding operations having an
43 animal weight capacity of six million or more pounds
44 for bovine.

45 b. An animal feeding operation structure subject
46 to the distance requirements of this subsection is
47 constructed after March 20, 1996.

48 2. An animal feeding operation structure is
49 "constructed" when any of the following occurs:

50 a. Excavation for a proposed animal feeding

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1 operation structure or proposed expansion of an
2 existing animal feeding operation structure, including
3 excavation for the footings of the animal feeding
4 operation structure.

5 b. Forms for concrete are installed for a proposed
6 animal feeding operation structure or the proposed
7 expansion of an existing animal feeding operation
8 structure.

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

12 Sec. 15. Section 455B.162, unnumbered paragraph 1,
13 Code 1997, is amended to read as follows:

14 The following shall apply to animal feeding
15 operation structures:

16 1. Except as provided in subsection 2, and
17 sections 455B.163 and 455B.165, this subsection
18 applies to animal feeding operation structures
19 constructed on or after May 31, 1995, but prior to the
20 effective date of this section; and to the expansion
21 of structures constructed on-or-after-May-31,-1995;
22 or, except as provided in section 455B.163, to the
23 expansion of structures constructed prior to May 31,
24 1995; the effective date of this section.

25 Sec. 16. Section 455B.162, subsection 1, Code
26 1997, is amended to read as follows:

27 ~~1. Except as provided in subsection 2, the~~
28 ~~following table shall apply to animal feeding~~
29 ~~operation structures:~~

30 a. The following table represents the minimum
31 separation distance in feet required between an animal
32 feeding operation structure and a residence not owned
33 by the owner of the animal feeding operation, or a
34 commercial enterprise, bona fide religious
35 institution, or an educational institution:

36		Minimum	
37		separation	
38		distance in	
39		feet for	
40		operations	
41	Minimum	having an	
42	separation	animal	Minimum
43	distance in	weight	separation
44	feet for	capacity of	distance in
45	operations	625,000 or	feet for
46	having an	more pounds	operations
47	animal	but less than	having an
48	weight	1,250,000	animal
49	capacity of	pounds for	weight
50	less than	animals other	capacity of

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	625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for bovine	1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
9 Anaerobic			
10 lagoon	1,250	1,875	2,500
11 Uncovered earthen			
12 manure storage			
13 basin	1,250	1,875	2,500
14 Uncovered formed			
15 manure storage			
16 structure	1,000	1,500	2,000
17 Covered earthen			
18 manure storage			
19 basin	750	1,000	1,500
20 Covered formed			
21 manure storage			
22 structure	750	1,000	1,500
23 Confinement			
24 building	750	1,000	1,500
25 Egg washwater			
26 storage structure	750	1,000	1,500

27 1A. Except as provided in subsection 2, and
 28 sections 455B.163 and 455B.165, this subsection
 29 applies to animal feeding operation structures
 30 constructed on or after the effective date of this
 31 section and to the expansion of structures constructed
 32 on or after the effective date of this section. The
 33 following table represents the minimum separation
 34 distance in feet required between an animal feeding
 35 operation structure and a residence not owned by the
 36 owner of the animal feeding operation, or a commercial
 37 enterprise, bona fide religious institution, or an
 38 educational institution:

	<u>Minimum</u> <u>separation</u> <u>distance in</u> <u>feet for</u> <u>operations</u> <u>having an</u> <u>animal</u> <u>weight</u> <u>capacity of</u> <u>625,000 or</u> <u>more pounds</u> <u>but less than</u>	<u>Minimum</u> <u>separation</u> <u>distance in</u> <u>feet for</u> <u>operations</u> <u>having an</u>
39		
40		
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1		weight	1,250,000	animal
2		capacity of	pounds for	weight
3		less than	animals other	capacity of
4		625,000	than bovine,	1,250,000 or
5		pounds for	or 1,600,000	more pounds
6		animals other	or more	for animals
7		than bovine,	pounds but	other than
8		or less than	less than	bovine, or
9		1,600,000	4,000,000	4,000,000 or
10		pounds for	pounds for	more pounds
11	Type of structure	bovine	bovine	for bovine
12	<u>Anaerobic</u>			
13	lagoon	1,250	1,875	2,500
14	<u>Uncovered earthen</u>			
15	manure storage			
16	basin	1,250	1,875	2,500
17	<u>Uncovered formed</u>			
18	manure storage			
19	structure	1,250	1,500	2,000
20	<u>Covered earthen</u>			
21	manure storage			
22	basin	1,000	1,250	1,875
23	<u>Covered formed</u>			
24	manure storage			
25	structure	1,000	1,250	1,875
26	<u>Confinement</u>			
27	building	1,000	1,250	1,875
28	<u>Egg washwater</u>			
29	storage			
30	structure	750	1,000	1,500

31 b- 1B. Except as provided in subsection 2, and
 32 sections 455B.163 and 455B.165, this subsection
 33 applies to animal feeding operation structures
 34 constructed on or after May 31, 1995; to the expansion
 35 of structures constructed on or after May 31, 1995;
 36 and to the expansion of structures constructed prior
 37 to May 31, 1995. The following table represents the
 38 minimum separation distance in feet required between
 39 animal feeding operation structures and a public use
 40 area or a residence not owned by the owner of the
 41 animal feeding operation, a commercial enterprise, a
 42 bona fide religious institution, or an educational
 43 institution located within the corporate limits of a
 44 city:

45		Minimum
46		separation
47		distance in
48		feet for
49		operations
50	Minimum	having an

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1	separation	animal	Minimum
2	distance in	weight	separation
3	feet for	capacity of	distance in
4	operations	625,000 or	feet for
5	having an	more pounds	operations
6	animal	but less than	having an
7	weight	1,250,000	animal
8	capacity of	pounds for	weight
9	less than	animals other	capacity of
10	625,000	than bovine,	1,250,000 or
11	pounds for	or 1,600,000	more pounds
12	animals other	or more	for animals
13	than bovine,	pounds but	other than
14	or less than	less than	bovine, or
15	1,600,000	4,000,000	4,000,000 or
16	pounds for	pounds for	more pounds
17	Type of structure	bovine	bovine
18	Animal feeding		for bovine
19	operation		
20	structure	1,250	1,875
21			2,500

18 Animal feeding
 19 operation
 20 structure 1,250 1,875 2,500
 21 1C. Except as provided in section 455B.165, on and

22 after the effective date of this section an animal
 23 feeding operation structure shall not be constructed
 24 or expanded within one hundred feet from a
 25 thoroughfare, including a road, street, or bridge
 26 which is constructed or maintained by the state or a
 27 political subdivision.

28 1D. Except as provided in section 455B.165, a
 29 person shall not apply liquid manure from a
 30 confinement feeding operation on land located within
 31 seven hundred fifty feet from a residence not owned by
 32 the titleholder of the land, a commercial enterprise,
 33 a bona fide religious institution, an educational
 34 institution, or a public use area.

35 Sec. 17. Section 455B.162, subsection 2, paragraph
 36 a, Code 1997, is amended to read as follows:

37 a. As used in this subsection, a "qualified
 38 confinement feeding operation" means a confinement
 39 feeding operation having an animal weight capacity of
 40 two million or more pounds for animals other than
 41 animals kept in a swine farrow-to-finish operation or
 42 bovine kept in a confinement feeding operation; a
 43 swine farrow-to-finish operation having an animal
 44 weight capacity of two million five hundred thousand
 45 or more pounds; or a confinement feeding operation
 46 having an animal weight capacity of ~~six~~ eight million
 47 or more pounds for bovine.

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

50 455B.163 SEPARATION DISTANCE REQUIREMENTS FOR
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1 ANIMAL FEEDING OPERATIONS -- EXPANSION OF STRUCTURES
2 ~~CONSTRUCTED PRIOR TO MAY 31, 1995~~ PRIOR CONSTRUCTED
3 OPERATIONS.

4 An animal feeding operation constructed or expanded
5 prior to the date that a distance requirement became
6 effective under section 455B.162 and which does not
7 comply with the section's distance requirements of
8 section 455B.162 on May 31, 1995, requirement may
9 continue to operate regardless of those separation
10 distances the distance requirement. The animal
11 feeding operation may be expanded on or after May 31,
12 1995, regardless of those separation distances, if
13 either any of the following applies:

14 1. a. The An animal feeding operation structure
15 as constructed or expanded prior to the effective date
16 of this section, complies with the distance
17 requirements of applying to that structure as provided
18 in section 455B.162.

19 b. An animal feeding operation structure as
20 constructed or expanded on or after the effective date
21 of this section complies with the distance
22 requirements applying to that structure as provided in
23 section 455B.162.

24 2. All of the following apply to the expansion of
25 the animal feeding operation:

26 a. No portion of the animal feeding operation
27 after expansion is closer than before expansion to a
28 location or object for which separation is required
29 under section 455B.162.

30 b. The animal weight capacity of the animal
31 feeding operation as expanded is not more than the
32 lesser of the following:

33 (1) Double its capacity on May 31, 1995, for an
34 animal feeding operation structure constructed prior
35 to the effective date of this section, or on the
36 effective date of this section, for an animal feeding
37 operation structure constructed on or after the
38 effective date of this section.

39 (2) Either of the following:

40 (a) Six hundred twenty-five thousand pounds animal
41 weight capacity for animals other than bovine.

42 (b) One million six hundred thousand pounds animal
43 weight capacity for bovine.

44 3. The animal feeding operation was constructed
45 prior to the effective date of this section and is
46 expanded by replacing one or more unformed manure
47 storage structures with one or more formed manure
48 storage structures, if all of the following apply:

49 a. The animal weight capacity is not increased for
50 that portion of the animal feeding operation that

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1 utilizes all replacement formed manure storage
2 structures.

3 b. Use of each replaced unformed manure storage
4 structure is discontinued within one year after the
5 construction of the replacement formed manure storage
6 structure.

7 c. The capacity of all replacement formed manure
8 storage structures does not exceed the amount required
9 to store manure produced by that portion of the animal
10 feeding operation utilizing the formed manure storage
11 structures during any fourteen-month period.

12 d. No portion of the replacement formed manure
13 storage structure is closer to an object or location
14 for which separation is required under section
15 455B.162 than any other animal feeding operation
16 structure which is part of the operation.

17 Sec. 19. Section 455B.164, Code 1997, is amended
18 to read as follows:

19 455B.164 DISTANCE MEASUREMENTS.

20 All distances between locations or objects provided
21 in this part shall be measured from their closest
22 points, as provided by rules adopted by the
23 department. However, a distance between a
24 thoroughfare and an animal feeding operation structure
25 shall be measured from the portion of the right-of-way
26 which is closest to the animal feeding operation
27 structure.

28 Sec. 20. Section 455B.165, subsections 2, 3, and
29 5, Code 1997, are amended to read as follows:

30 2. A confinement feeding operation structure,
31 ~~other than an earthen manure storage basin,~~ if the
32 structure is part of a confinement feeding operation
33 which qualifies as a small animal feeding operation.
34 However, this subsection shall not apply if the
35 confinement feeding operation structure is an unformed
36 manure storage structure.

37 3. a. An animal feeding operation structure which
38 is constructed or expanded, if the titleholder of the
39 land benefiting from the distance separation
40 requirement executes a written waiver with the
41 titleholder of the land where the structure is
42 located. If an animal feeding operation structure is
43 constructed or expanded within the separation distance
44 required between an animal feeding operation structure
45 and a thoroughfare as required pursuant to section
46 455B.162, the state or a political subdivision
47 constructing or maintaining the thoroughfare
48 benefiting from the distance separation requirement
49 may execute a written waiver with the titleholder of
50 the land where the structure is located. The animal

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1 feeding operation structure shall be constructed or
2 expanded under such terms and conditions that the
3 parties negotiate.

4 b. The A written waiver under this subsection
5 becomes effective only upon the recording of the
6 waiver in the office of the recorder of deeds of the
7 county in which the benefited land is located. The
8 filed waiver shall preclude enforcement by the state
9 of this-part section 455B.162 as it relates to a
10 distance requirement between the animal feeding
11 operation structure and the location or object
12 benefiting from the separation distance requirement.

13 5. An animal feeding operation structure which is
14 located constructed or expanded within any distance
15 from a residence, educational institution, commercial
16 enterprise, bona fide religious institution, city, or
17 public use area, if the residence, educational
18 institution, commercial enterprise, or bona fide
19 religious institution was constructed or expanded, or
20 the boundaries of the city or public use area were
21 expanded, after the date that the animal feeding
22 operation was established. The date the animal
23 feeding operation was established is the date on which
24 the animal feeding operation commenced operating. A
25 change in ownership or expansion of the animal feeding
26 operation shall not change the established date of
27 operation.

28 Sec. 21. Section 455B.165, Code 1997, is amended
29 by adding the following new subsections:

30 NEW SUBSECTION. 3A. An animal feeding operation
31 structure which is constructed or expanded within a
32 separation distance required between an animal feeding
33 operation structure and a thoroughfare as required
34 pursuant to section 455B.162, if permanent vegetation
35 stands between the animal feeding operation structure
36 and that part of the right-of-way from which the
37 separation distance is measured as provided in section
38 455B.164. The permanent vegetation must stand along
39 the full length of the animal feeding operation
40 structure. The permanent vegetation must be at least
41 seedlings and have a mature predicted height of at
42 least twenty feet. The department shall adopt rules
43 to carry out this subsection.

44 NEW SUBSECTION. 6. The application of liquid
45 manure on land within a separation distance required
46 between the applied manure and an object or location
47 for which separation is required under section
48 455B.162, if any of the following apply:

49 a. The liquid manure is injected into the soil or
50 incorporated within the soil not later than twenty-

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1 four hours from the original application, as provided
2 by rules adopted by the commission.

3 b. The titleholder of the land benefiting from the
4 separation distance requirement executes a written
5 waiver with the titleholder of the land where the
6 manure is applied.

7 c. The liquid manure originates from a small
8 animal feeding operation.

9 d. The liquid manure is applied by spray
10 irrigation equipment using a center pivot mechanism as
11 provided by rules adopted by the department, if all of
12 the following apply:

13 (1) The spray irrigation equipment uses hoses
14 which discharge the liquid manure in a downward
15 direction at a height of not more than nine feet above
16 the soil.

17 (2) The spray irrigation equipment disperses
18 manure through an orifice at a rate of not more than
19 twenty-five pounds per square inch.

20 (3) The liquid manure is not applied within two
21 hundred fifty feet from a residence not owned by the
22 titleholder of the land, a commercial enterprise, a
23 bona fide religious institution, an educational
24 institution, or a public use area.

25 NEW SUBSECTION. 7. The distance between an animal
26 feeding operation structure and a cemetery, if any of
27 the following applies:

28 a. The animal feeding operation structure was
29 constructed or expanded prior to the effective date of
30 this section of this Act.

31 b. The construction or expansion of the animal
32 feeding operation structure began prior to the
33 effective date of this section of this Act.

34 Sec. 22. Section 455B.171, Code Supplement 1997,
35 is amended by adding the following new subsections:

36 NEW SUBSECTION. 0A. "Aerobic structure" means the
37 same as defined in section 455B.161.

38 NEW SUBSECTION. 1A. "Anaerobic lagoon" means the
39 same as defined in section 455B.161.

40 NEW SUBSECTION. 2A. "Animal feeding operation
41 structure" means the same as defined in section
42 455B.161.

43 NEW SUBSECTION. 3A. "Commercial manure
44 applicator" means a person who engages in the business
45 of and charges a fee for applying manure on the land
46 of another person.

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

49 NEW SUBSECTION. 12A. "Manure storage structure"
50 means an animal feeding operation structure used to

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1 store manure as part of a confinement feeding
2 operation, including but not limited to a formed or
3 unformed manure storage structure.

4 NEW SUBSECTION. 23A. "Restricted spray irrigation
5 equipment" means spray irrigation equipment which
6 disperses manure through an orifice at a rate of
7 eighty pounds per square inch or more.

8 NEW SUBSECTION. 31A. "Spray irrigation equipment"
9 means mechanical equipment used for the aerial
10 application of manure, if the equipment receives
11 manure from a manure storage structure during
12 application via a pipe or hose connected to the
13 structure, and includes a type of equipment
14 customarily used for the aerial application of water
15 to aid the growing of general farm crops.

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

19 Sec. 23. Section 455B.173, subsection 13, Code
20 1997, is amended by striking the subsection and
21 inserting in lieu thereof the following:

22 13. Adopt, modify, or repeal rules relating to the
23 construction or operation of animal feeding
24 operations, as provided in sections relating to animal
25 feeding operations provided in this part.

26 Sec. 24. Section 455B.191, subsection 7,
27 unnumbered paragraph 2, Code 1997, is amended to read
28 as follows:

29 This subsection shall not apply unless the
30 department of natural resources has previously
31 notified the person of the person's classification as
32 a habitual violator ~~as provided in section 455B.173.~~
33 The department shall notify persons classified as
34 habitual violators of their classification, additional
35 restrictions imposed upon the persons pursuant to
36 their classification, and special civil penalties that
37 may be imposed upon the persons. The notice shall be
38 sent to the persons by certified mail.

39 Sec. 25. NEW SECTION. 455B.200 GENERAL.

40 The commission shall establish by rule adopted
41 pursuant to chapter 17A, requirements relating to the
42 construction, including expansion, or operation of
43 animal feeding operations, including related animal
44 feeding operation structures. The requirements shall
45 include but are not limited to minimum manure control,
46 the issuance of permits, and departmental
47 investigations, inspections, and testing.

48 Sec. 26. NEW SECTION. 455B.200A PERMIT
49 REQUIREMENTS.

50 1. The department shall issue permits for the

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1 construction, including the expansion, of animal
2 feeding operation structures, including structures
3 which are part of confinement feeding operations, as
4 provided by rules adopted pursuant to section
5 455B.200. The department shall issue a permit to an
6 animal feeding operation if an application is
7 submitted according to procedures required by the
8 department and the application meets standards
9 established by the department, regardless of whether
10 the animal feeding operation is required to obtain
11 such a permit. The department shall not require that
12 a person obtain a permit for the construction of an
13 animal feeding operation structure if the structure is
14 part of a small animal feeding operation. For
15 purposes of this section, an animal feeding operation
16 structure includes a manure storage structure.

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

21 a. An indemnity fee as provided in section 204.3
22 which the department shall deposit into the manure
23 storage indemnity fund created in section 204.2.

24 b. A manure management plan as provided in section
25 455B.203.

26 3. The department shall not issue a permit for the
27 construction of three or more animal feeding operation
28 structures unless the applicant files a statement
29 approved by a professional engineer registered
30 pursuant to chapter 542B certifying that the
31 construction of the animal feeding operation
32 structures will not impede the drainage through
33 established drainage tile lines which cross property
34 boundary lines unless measures are taken to
35 reestablish the drainage prior to completion of
36 construction.

37 4. Prior to issuing a permit to a person for the
38 construction of an animal feeding operation, the
39 department may require the installation and operation
40 of a hydrological monitoring system for an exclusively
41 earthen manure storage structure according to rules
42 which shall be adopted by the department.

43 5. An applicant for a construction permit shall
44 not begin construction at the location of a site
45 planned for the construction of an animal feeding
46 operation structure until the person has been granted
47 a permit for the construction of the animal feeding
48 operation structure by the department.

49 6. The department shall make a determination
50 regarding the approval or denial of a permit within

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1 sixty days from the date that the department receives
2 a completed application for a permit.

3 7. The department shall deliver a copy or require
4 the applicant to deliver a copy of the application for
5 a construction permit for the construction of a
6 confinement feeding operation or related animal
7 feeding operation structure, including supporting
8 documents, to the county board of supervisors in the
9 county where the confinement feeding operation or
10 related animal feeding operation structure subject to
11 the permit is proposed to be constructed.

12 The county auditor may accept the application on
13 behalf of the board. If the department requires the
14 applicant to deliver a copy of the application to the
15 county board of supervisors, the county shall notify
16 the department that it has received the application
17 according to procedures required by the department.

18 a. The county board of supervisors shall provide
19 for comment as follows:

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

24 (a) The name of the person applying to receive the
25 construction permit.

26 (b) The name of the township where the confinement
27 feeding operation or animal feeding operation is to be
28 constructed or expanded.

29 (c) Each type of animal feeding operation proposed
30 to be constructed or expanded.

31 (d) The animal weight capacity of the confinement
32 feeding operation if the construction permit is
33 approved.

34 (e) The time when and the place where the
35 application may be examined as provided in section
36 22.2.

37 (f) Procedures for providing public comments to
38 the board of supervisors, as provided by the board.

39 (2) The board may hold a public hearing to receive
40 public comments regarding the application for the
41 construction permit. The county board of supervisors
42 may submit comments by the board and the public to the
43 department as provided in this section, including but
44 not limited to all of the following:

45 (a) The existence of an object or location not
46 included in the construction permit application which
47 benefits from a separation distance requirement as
48 provided in section 455B.162 or 455B.204.

49 (b) The suitability of soils and the hydrology of
50 the site where construction or expansion of a

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1 confinement feeding operation or related animal
2 feeding operation structure is proposed.

3 (c) The availability of land for the application
4 of manure originating from the confinement feeding
5 operation.

6 (d) Whether the construction or expansion of a
7 proposed animal feeding operation structure will
8 impede drainage through established tile lines,
9 laterals, or other improvements which are constructed
10 to facilitate the drainage of land not owned by the
11 person applying for the construction permit.

12 b. The department shall notify the county board of
13 supervisors at least three days prior to conducting an
14 inspection of the site that the construction is
15 proposed in the permit application. The county board
16 of supervisors may designate a county employee to
17 accompany a departmental official during the site
18 inspection. The county designee shall have the same
19 right to access to the site's real estate as the
20 departmental official conducting the inspection during
21 the period that the county designee accompanies the
22 departmental official.

23 c. The department shall not approve the
24 application until thirty days following delivery of
25 the application to the county board of supervisors.

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

39 8. The department shall notify the county board of
40 supervisors of the county where a confinement feeding
41 operation or related animal feeding operation
42 structure subject to a construction permit is proposed
43 to be constructed. The notice shall state the
44 department's decision to approve or disapprove an
45 application for the construction permit. The notice
46 shall be delivered to the county within three days
47 following the department's decision. The county board
48 of supervisors may contest the decision by filing a
49 demand for a hearing before the commission as provided
50 by rules adopted by the department in conformance with

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1 chapter 17A. In contesting the decision, the county
2 shall submit a statement to the department, providing
3 all reasons why the application should be approved or
4 disapproved according to legal requirements provided
5 in this chapter.

6 a. The county board of supervisors must contest
7 the decision within fourteen days following receipt of
8 the department's notice to approve or disapprove the
9 application.

10 b. The contested decision shall be heard by the
11 commission according to procedures adopted by the
12 commission. The commission may hear the case as a
13 contested case proceeding under chapter 17A. The
14 commission shall render a decision within thirty-five
15 days from the date that the county board of
16 supervisors files a demand for a hearing. The
17 decision of the commission shall be final agency
18 action under chapter 17A.

19 9. a. The department shall not issue a permit to
20 a person under this section if an enforcement action
21 by the department, relating to a violation of this
22 chapter concerning a confinement feeding operation in
23 which the person has an interest, is pending, as
24 provided in section 455B.202.

25 b. The department shall not issue a permit to a
26 person under this section for five years after the
27 date of the last violation committed by a person or
28 confinement feeding operation in which the person
29 holds a controlling interest during which the person
30 or operation was classified as a habitual violator
31 under section 455B.191.

32 Sec. 27. NEW SECTION. 455B.200B CONFINEMENT
33 FEEDING OPERATIONS -- SPECIAL TERMS.

34 For purposes of this part, all of the following
35 shall apply:

36 1. Two or more confinement feeding operations are
37 adjacent if any of the following apply:

38 a. All of the following apply:

39 (1) An animal feeding operation structure which is
40 part of one confinement feeding operation is located
41 within one thousand two hundred fifty feet from an
42 animal feeding operation structure which is part of
43 the other confinement feeding operation.

44 (2) The confinement feeding operations have a
45 combined animal weight capacity of the following:

46 (a) For animals other than bovine, less than six
47 hundred twenty-five thousand pounds.

48 (b) For bovine, less than one million six hundred
49 thousand pounds.

50 (3) An animal feeding operation structure subject

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1 to the distance requirements of this paragraph must be
2 constructed or expanded on or after the effective date
3 of this section.

4 b. All of the following apply:

5 (1) An animal feeding operation structure which is
6 part of one confinement feeding operation is located
7 within two thousand five hundred feet from an animal
8 feeding operation structure which is part of the other
9 confinement feeding operation.

10 (2) The confinement feeding operations have a
11 combined animal weight capacity of the following:

12 (a) For animals other than bovine, six hundred
13 twenty-five thousand pounds or more.

14 (b) For bovine, one million six hundred thousand
15 pounds or more.

16 (3) An animal feeding operation structure subject
17 to the distance requirements of this paragraph must be
18 constructed on or after the effective date of this
19 section.

20 2. An animal feeding operation structure is
21 "constructed" in the same manner as provided in
22 section 455B.161A.

23 Sec. 28. Section 445B.201, subsection 4, Code
24 1997, is amended by striking the subsection.

25 Sec. 29. Section 455B.202, Code Supplement 1997,
26 is amended to read as follows:

27 455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING
28 ACTIONS AND HABITUAL VIOLATORS.

29 1. As used in this section, "construction" means
30 ~~the same as defined by rules adopted by the department~~
31 ~~applicable to the construction of animal feeding~~
32 ~~operation structures as provided in this part unless~~
33 the context otherwise requires:-

34 a. "Habitual violator" means a person classified
35 as a habitual violator pursuant to section 455B.191.

36 b. "Operation of law" means a transfer by
37 inheritance, devise or bequest, court order,
38 dissolution decree, order in bankruptcy, insolvency,
39 replevin, foreclosure, execution sale, the execution
40 of a judgment, the foreclosure of a real estate
41 mortgage, the forfeiture of a real estate contract, or
42 a transfer resulting from a decree for specific
43 performance.

44 c. "Suspect site" means a confinement feeding
45 operation or land where a confinement feeding
46 operation could be constructed, if the site is subject
47 to a suspect transaction.

48 d. "Suspect transaction" means a transaction in
49 which a habitual violator does any of the following:

50 (1) Transfers a controlling interest in a suspect

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1 site to any of the following:

2 (a) An employee of the habitual violator or
3 business in which the person holds a controlling
4 interest.

5 (b) A person who holds an interest in a business,
6 including a confinement feeding operation, in which
7 the habitual violator holds a controlling interest.

8 (c) A person related to the habitual violator as
9 spouse, parent, grandparent, lineal ascendant of a
10 grandparent or spouse and any other lineal descendant
11 of the grandparent or spouse, or a person acting in a
12 fiduciary capacity for a related person. This
13 paragraph does not apply to a transaction completed by
14 an operation of law.

15 (2) Provides financing for the construction or
16 operation of a confinement feeding operation to any
17 person, by providing a contribution or loan to the
18 person, or providing cash or other tangible collateral
19 for a contribution or loan made by a third person.

20 e. "Transaction" includes a transfer in any manner
21 or by any means, including any of the following:

22 (1) Delivery and acceptance between two parties,
23 including by contract or agreement with or without
24 consideration, including by sale, exchange, barter, or
25 gift.

26 (2) An operation of law.

27 2. a. A person shall not construct or expand an
28 animal feeding operation structure which is part of a
29 confinement feeding operation, if the person is a any
30 of the following:

31 (1) A party to a pending action for a violation of
32 this chapter concerning a confinement feeding
33 operation in which the person has a controlling
34 interest and the action is commenced in district court
35 by the attorney general.

36 (2) A habitual violator.

37 b. A person shall not construct or expand an
38 animal feeding operation structure which is part of a
39 confinement feeding operation for five years after the
40 date of the last violation committed by a person or
41 confinement feeding operation in which the person
42 holds a controlling interest during which the person
43 or operation was classified as a habitual violator
44 under-section-455B-191.

45 3. c. This section subsection shall not prohibit a
46 person from completing the construction or expansion
47 of an animal feeding operation structure, if any of
48 the following apply:

49 a. (1) The person has an unexpired permit for the
50 construction or expansion of the animal feeding

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1 operation structure.

2 b- (2) The person is not required to obtain a
3 permit for the construction or expansion of the animal
4 feeding operation structure.

5 d. For purposes of this subsection, "construct" or
6 "expand" includes financing and contracting to build
7 an animal feeding operation structure regardless of
8 whether the person subsequently leases, owns, or
9 operates the animal feeding operation structure.

10 3. A person who receives a controlling interest in
11 a suspect site pursuant to a suspect transaction must
12 submit a notice of the transaction to the department
13 within thirty days. If, after notice and opportunity
14 to be heard, pursuant to the contested case provisions
15 of chapter 17A, the department finds that one purpose
16 of the transaction was to avoid the conditions and
17 enhanced penalties imposed upon a habitual violator,
18 the person shall be subject to the same conditions and
19 enhanced penalties as applied to the habitual violator
20 at the time of the transaction.

21 4. The department shall conduct an annual review
22 of each confinement feeding operation which is a
23 habitual violator and each confinement feeding
24 operation in which a habitual violator holds a
25 controlling interest.

26 Sec. 30. Section 455B.203, subsection 1, Code
27 1997, is amended to read as follows:

28 1. In-order-to-receive The following persons shall
29 submit a manure management plan to the department:

30 a. The owner of a confinement feeding operation,
31 other than a small animal feeding operation, if the
32 animal feeding operation was constructed after May 31,
33 1985, regardless of whether the confinement feeding
34 operation was required to be constructed pursuant to a
35 construction permit approved by rules adopted by the
36 department.

37 b. The owner of a confinement feeding operation,
38 if the confinement feeding operation is required to be
39 constructed pursuant to a permit issued by the
40 department pursuant to section 455B.200A.

41 c. A person who applies manure from a confinement
42 feeding operation, other than a small animal feeding
43 operation, which is located in another state, if the
44 manure is applied on land located in this state.

45 1A. A person shall not remove manure from a manure
46 storage structure which is part of a confinement
47 feeding operation for which a manure management plan
48 is required under this section, unless the department
49 approves a manure management plan submitted by the
50 owner of the confinement feeding operation as provided

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1 by the department on forms prescribed by the
2 department. The department may adopt rules allowing a
3 person to remove manure from a manure storage
4 structure until the manure management plan is approved
5 or disapproved by the department according to terms
6 and conditions required by rules adopted by the
7 department. The department shall approve or
8 disapprove a manure management plan within sixty days
9 of the date that the department receives a completed
10 plan. The department shall not issue a permit for the
11 construction of a confinement feeding operation or a
12 related animal feeding operation structure unless the
13 applicant submits a manure management plan together
14 with an application as provided in section 455B.1737-a
15 ~~person shall submit a manure management plan to the~~
16 ~~department together with the application for a~~
17 ~~construction permit 455B.200A.~~

18 Sec. 31. Section 455B.203, subsection 4,
19 unnumbered paragraph 1, Code 1997, is amended to read
20 as follows:

21 ~~A person receiving a permit for the construction of~~
22 ~~a confinement feeding operation required to submit a~~
23 ~~manure management plan to the department shall~~
24 maintain a current manure management plan and maintain
25 records sufficient to demonstrate compliance with the
26 manure management plan. Chapter 22 shall not apply to
27 the records which shall be kept confidential by the
28 department and its agents and employees. The contents
29 of the records are not subject to disclosure except as
30 follows:

31 Sec. 32. Section 455B.203, subsection 5, Code
32 1997, is amended to read as follows:

33 5. The department may inspect the confinement
34 feeding operation at any time during normal working
35 hours, and may inspect records required to be
36 maintained as part of the manure management plan. The
37 department shall regularly inspect a confinement
38 feeding operation if the operation or a person holding
39 a controlling interest in the operation is classified
40 as a habitual violator pursuant to section 455B.191.
41 The department shall assess and the confinement
42 feeding operation shall pay the actual costs of the
43 inspection. ~~However, in order to access the~~
44 ~~operation, the departmental inspector must comply with~~
45 ~~standard disease control restrictions customarily~~
46 ~~required by the operation. The department shall~~
47 ~~comply with section 455B.103 in conducting an~~
48 ~~investigation of the premises where the animals are~~
49 ~~kept.~~

50 Sec. 33. NEW SECTION. 455B.203A MANURE

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1 APPLICATORS CERTIFICATION.

2 1. As used in this section, unless the context
3 otherwise requires:

4 a. "Commercial manure applicator" means the same
5 as defined in section 455B.171.

6 b. "Confinement site" means a site where there is
7 located a manure storage structure which is part of a
8 confinement feeding operation, other than a small
9 animal feeding operation.

10 c. "Confinement site manure applicator" means a
11 person who applies manure stored at a confinement site
12 other than a commercial manure applicator.

13 2. a. A commercial manure applicator shall not
14 apply manure to land, unless the person is certified
15 pursuant this section.

16 b. A confinement site manure applicator shall not
17 apply manure to land, unless the person is certified
18 pursuant to this section.

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

27 b. A person required to be certified as a
28 confinement site manure applicator must be certified
29 by the department each three years. The person shall
30 be certified after completing an educational program
31 which shall consist of an examination required to be
32 passed by the person or two hours of continuing
33 instructional courses which the person must attend
34 each year in lieu of passing the examination.

35 4. The department shall adopt, by rule,
36 requirements for the certification, including
37 educational program requirements. The department may
38 establish different educational programs designed for
39 commercial manure applicators and confinement site
40 manure applicators. The department shall adopt rules
41 necessary to administer this section, including
42 establishing certification standards, which shall at
43 least include standards for the handling, application,
44 and storage of manure, the potential effects of manure
45 upon surface water and groundwater, and procedures to
46 remediate the potential effects on surface water or
47 groundwater.

48 a. The department shall adopt by rule criteria for
49 allowing a person required to be certified to complete
50 either a written or oral examination.

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

22 c. The department, in administering the
23 certification program under this section, and the
24 department of agriculture and land stewardship in
25 administering the certification program for pesticide
26 applicators may cooperate together.

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

30 (1) The person is any of the following:

31 (a) Actively engaged in farming who trades work
32 with another such person.

33 (b) Employed by a person actively engaged in
34 farming not solely as a manure applicator who applies
35 manure as an incidental part of the person's general
36 duties.

37 (c) Engaged in applying manure as an incidental
38 part of a custom farming operation.

39 (d) Engaged in applying manure as an incidental
40 part of a person's duties as provided by rules adopted
41 by the department providing for an exemption.

42 (2) The person applies manure for a period of
43 thirty days from the date of initial employment as a
44 commercial manure applicator if the person applying
45 the manure is acting under the instructions and
46 control of a certified commercial manure applicator
47 who is both of the following:

48 (a) Physically present at the site where the
49 manure is located.

50 (b) In sight or hearing distance of the supervised

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1 person.

2 b. This section shall not require a person to be
3 certified as a confinement site manure applicator if
4 all of the following apply:

5 (1) The person is a part-time employee of a
6 confinement site manure applicator.

7 (2) The person is acting under the instructions
8 and control of a certified commercial manure
9 applicator who is both of the following:

10 (a) Physically present at the site where the
11 manure is located.

12 (b) In sight or hearing distance of the supervised
13 person.

14 6. a. The department may charge a fee for
15 certifying persons under this section. The fee for
16 certification shall be based on the costs of
17 administering and enforcing this section and paying
18 the expenses of the department relating to
19 certification.

20 b. All moneys received by the department under the
21 provisions of this chapter shall be handled in the
22 same manner as repayment receipts, as defined in
23 section 8.2, and shall be used solely for the
24 administration and enforcement of this chapter.

25 Sec. 34. NEW SECTION. 455B.203B APPLICATION
26 REQUIREMENTS.

27 1. The department shall adopt rules governing the
28 application of manure originating from an anaerobic
29 lagoon or aerobic structure which is part of a
30 confinement feeding operation. The rules shall
31 establish application rates and practices to minimize
32 groundwater or surface water pollution resulting from
33 application, including pollution caused by runoff or
34 other manure flow resulting from precipitation events.
35 The rules shall establish different application rates
36 and practices based on the water holding capacity of
37 the soil at the time of application.

38 2. A person shall not apply manure by spray
39 irrigation equipment, except as provided by rules
40 adopted by the department pursuant to chapter 17A.
41 However, a person shall not use restricted spray
42 irrigation equipment to apply manure originating from
43 a confinement feeding operation, unless the manure has
44 been diluted as provided by rules adopted by the
45 department, including diluted by use of an anaerobic
46 lagoon.

47 Sec. 35. Section 455B.204, Code 1997, is amended
48 to read as follows:

49 455B.204 DISTANCE REQUIREMENTS.

50 1. ~~An animal feeding operation structure shall be~~

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1 located-at-least-five-hundred-feet-away-from-the
2 surface-intake-of-an-agricultural-drainage-well-or
3 known-sinkhole, and-at-least-two-hundred-feet-away
4 from As used in this section, unless the context
5 otherwise requires:

6 a. "Major water source" means a lake, reservoir,
7 river, or stream located within the territorial limits
8 of the state, any marginal river area adjacent to the
9 state, which can support a floating vessel capable of
10 carrying one or more persons during a total of a six-
11 month period in one out of ten years, excluding
12 periods of flooding which has been identified by rules
13 adopted by the commission.

14 b. "Watercourse" means any lake, river, creek,
15 ditch, or other body of water or channel having
16 definite banks and bed with water flow or the
17 occurrence of water, except lakes or ponds without
18 outlet to which only one landowner is riparian.

19 2. Except as provided in subsection 3, the
20 following shall apply:

21 a. An animal feeding operation structure shall not
22 be constructed closer than five hundred feet away from
23 a surface intake, wellhead, or cistern of an
24 agricultural drainage well or known sinkhole.

25 b. An animal feeding operation structure shall not
26 be constructed if the animal feeding operation
27 structure as constructed is closer than any of the
28 following:

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

31 (2) Five hundred feet away from a major water
32 source.

33 c. A watercourse, other than a major water source,
34 shall not be constructed, expanded, or diverted, if
35 the watercourse as constructed, expanded, or diverted
36 is closer than two hundred feet away from an animal
37 feeding operation structure.

38 d. A major water source shall not be constructed,
39 expanded, or diverted, if the water source as
40 constructed, expanded, or diverted is closer than five
41 hundred feet from an animal feeding operation
42 structure.

43 3. However, no distance A separation is distance
44 required between-a in subsection 2 shall not apply to
45 any of the following:

46 a. A location or object and a farm pond or
47 privately owned lake, as defined in section 462A.2.

48 b. A manure storage structure constructed with a
49 secondary containment barrier. The department shall
50 adopt rules providing for the construction and use of

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1 a secondary containment barrier, including design
2 standards.

3 4. All distances between locations or objects
4 shall be measured from their closest points, as
5 provided by rules adopted by the department.

6 ~~2. A person shall not dispose of manure closer to~~
7 ~~a designated area than provided in section 459-27.~~

8 5. A person shall not construct or expand an
9 unformed manure storage structure within an
10 agricultural drainage well area as provided in section
11 455I.5.

12 Sec. 36. NEW SECTION. 455B.205 MANURE STORAGE
13 STRUCTURES -- CONSTRUCTION STANDARDS -- INSPECTIONS.

14 1. The department shall establish by rule
15 engineering standards for the construction of manure
16 storage structures required to be constructed pursuant
17 to a permit issued under section 455B.200A.

18 2. The design standards for unformed manure
19 storage structures established by the department shall
20 account for special design characteristics of animal
21 feeding operations, including all of the following:

22 a. The lining of the structure shall be
23 constructed with materials deemed suitable by the
24 department in order to minimize seepage loss through
25 the lining's seal.

26 b. The structure shall be constructed with
27 materials deemed suitable by the department in order
28 to control erosion on the structure's berm, side
29 slopes, and base.

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

32 d. The top of the floor of the structure's liner
33 must be above the groundwater table as determined by
34 the department. If the groundwater table is less than
35 two feet below the top of the liner's floor, the
36 structure shall be installed with a synthetic liner.

37 If the department allows an unformed manure storage
38 structure to be located at a site by permanently
39 lowering the groundwater table, the department shall
40 confirm that the proposed system meets standards
41 necessary to ensure that the structure does not
42 pollute groundwater sources. If the department allows
43 drain tile installed to lower a groundwater table to
44 remain where located, the department shall require
45 that a device be installed to allow monitoring of the
46 water in the drain tile line. The department shall
47 also require the installation of a device to allow
48 shutoff of the drain tile lines, if the drain tile
49 lines do not have a surface outlet accessible on the
50 property where the structure is located.

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1 3. a. The department shall conduct a routine
2 inspection of each unformed manure storage structure
3 at least once each year. A routine inspection
4 conducted pursuant to this subsection shall be limited
5 to a visual inspection of the site where the unformed
6 manure storage structure is located. The department
7 shall inspect the site at a reasonable time after
8 providing at least twenty-four hours' notice to the
9 person owning or managing the confinement feeding
10 operation. The visual inspection shall include, but
11 not be limited to, determining whether any of the
12 following exists:

- 13 (1) An adequate freeboard level.
- 14 (2) The seepage of manure from the unformed manure
15 storage structure.
- 16 (3) Erosion.
- 17 (4) Inadequate vegetation cover.
- 18 (5) The presence of an opening allowing manure to
19 drain from the unformed manure storage structure.

20 b. Nothing in this subsection restricts the
21 department from conducting an inspection of an animal
22 feeding operation which is not routine.

23 Sec. 37. NEW SECTION. 455B.206 EXCEPTION TO
24 REGULATION.

25 1. As used in this section, "research college"
26 means an accredited public or private college or
27 university, including but not limited to a university
28 under the control of the state board of regents as
29 provided in chapter 262, or a community college under
30 the jurisdiction of a board of directors for a merged
31 area as provided in chapter 260C, if the college or
32 university performs research or experimental
33 activities regarding animal agriculture or agronomy.

34 2. The requirements of this part which regulate
35 animal feeding operations, including rules adopted by
36 the department pursuant to section 455B.200, shall not
37 apply to research activities and experiments performed
38 under the authority and regulations of a research
39 college, if the research activities and experiments
40 relate to animal feeding operations, including but not
41 limited to the confinement of animals and the storage
42 and disposal of manure originating from animal feeding
43 operations.

44 3. This section shall not apply to requirements
45 provided in any of the following:

46 a. Section 455B.201, including rules adopted by
47 the department under that section.

48 b. Section 455B.204, including rules adopted by
49 the department under that section.

50 Sec. 38. Section 657.11, subsections 2, 3, 5, 6,

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1 7, and 8, Code 1997, are amended to read as follows:

2 ~~2. If a person has received all permits required~~
3 ~~pursuant to chapter 455B for an animal feeding~~
4 ~~operation, as defined in section 455B.161, there shall~~
5 ~~be a rebuttable presumption that an~~ An animal feeding
6 operation is, as defined in section 455B.161, shall
7 not be found to be a public or private nuisance under
8 this chapter or under principles of common law, and
9 that the animal feeding operation ~~does~~ shall not
10 ~~unreasonably and continuously~~ be found to interfere
11 with another person's comfortable use and enjoyment of
12 the person's life or property under any other cause of
13 action. ~~The rebuttable presumption also applies to~~
14 ~~persons who are not required to obtain a permit~~
15 ~~pursuant to chapter 455B for an animal feeding~~
16 ~~operation as defined in section 455B.161. The~~
17 ~~rebuttable presumption~~ However, this section shall not
18 apply if the person bringing the action proves that an
19 injury to a the person or damage to the person's
20 property is proximately caused by a either of the
21 following:

22 a. The failure to comply with a federal statute or
23 regulation or a state statute or rule which applies to
24 the animal feeding operation.

25 b. ~~3. The rebuttable presumption may be overcome~~
26 ~~by clear and convincing evidence of both~~ Both of the
27 following:

28 a. (1) The animal feeding operation unreasonably
29 and continuously for substantial periods of time
30 interferes with another the person's comfortable use
31 and enjoyment of the person's life or property.

32 b. (2) ~~The injury or damage is proximately caused~~
33 ~~by the negligent operation of the~~ animal feeding
34 operation failed to use existing prudent generally
35 accepted management practices reasonable for the
36 operation.

37 5. ~~The rebuttable presumption created by this~~ This
38 section shall apply regardless of the established date
39 of operation or expansion of the animal feeding
40 operation. ~~The rebuttable presumption~~ A defense
41 against a cause of action provided in this section
42 includes, but is not limited to, a defense for actions
43 arising out of the care and feeding of animals; the
44 handling or transportation of animals; the treatment
45 or disposal of manure resulting from animals; the
46 transportation and application of animal manure; and
47 the creation of noise, odor, dust, or fumes arising
48 from an animal feeding operation.

49 6. ~~An animal feeding operation that complies with~~
50 ~~the requirements in chapter 455B for animal feeding~~

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~~1 operations-shall-be-deemed-to-meet-any-common-law
2 requirements-regarding-the-standard-of-a-normal-person
3 living-in-the-locality-of-the-operation.~~

4 7--A If a court determines that a claim is
5 frivolous, a person who brings the claim as part of a
6 losing cause of action against a person for-whom-the
7 rebuttable-presumption-created who may raise a defense
8 under this section is-not-rebutted, shall be liable to
9 the person against whom the action was brought for all
10 costs and expenses incurred in the defense of the
11 ~~action,--if-the-court-determines-that-a-claim-is~~
12 ~~frivolous.~~

13 8 7. The-rebuttable-presumption-created-in-this
14 This section does not apply to an injury to a person
15 or damages to property caused by the animal feeding
16 operation before May-31-1995 the effective date of
17 this section.

18 Sec. 39. Section 657.11, subsection 4, unnumbered
19 paragraph 1, Code 1997, is amended to read as follows:

20 ~~The-rebuttable-presumption~~ This section does not
21 apply to a person during any period that the person is
22 classified as a chronic violator under this subsection
23 as to any confinement feeding operation in which the
24 person holds a controlling interest, as defined by
25 rules adopted by the department of natural resources.
26 ~~The-rebuttable-presumption~~ This section shall apply to
27 the person on and after the date that the person is
28 removed from the classification of chronic violator.
29 For purposes of this subsection, "confinement feeding
30 operation" means an animal feeding operation in which
31 animals are confined to areas which are totally
32 roofed, and which are regulated by the department of
33 natural resources or the environmental protection
34 commission.

35 Sec. 40. 1995 Iowa Acts, chapter 195, section 37,
36 is amended to read as follows:

37 SEC. 37. ANIMAL AGRICULTURE CONSULTING
38 ORGANIZATION. The department of natural resources
39 shall request that the Iowa pork producers
40 association, the Iowa cattlemen's association, the
41 Iowa poultry association, the Iowa dairy products
42 association, ~~an-organization-representing-agricultural~~
43 producers-generally, Iowa state university, the soil
44 conservation division of the department of agriculture
45 and land stewardship, and the natural resources
46 conservation service of the United States department
47 of agriculture, and after the effective date of this
48 section of this Act as amended by 1998 Iowa Acts,
49 House File 2494, two organizations representing
50 agricultural producers generally each appoint one

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1 member to consult with the department regarding. The
2 appointees shall consult with the department regarding
3 this Act, rules adopted pursuant to this Act, and the
4 Act's implementation. The department shall consult
5 with representatives in meetings which shall be
6 conducted by the department, upon the call of the
7 director of the department or the director's designee,
8 or upon the request to the department of any three
9 members. The department shall request that the
10 representatives provide the department with
11 recommendations regarding the adoption of rules
12 required to administer this Act. This section is
13 repealed on March 31, 2005.

14 Sec. 41. 1995 Iowa Acts, chapter 195, section 38,
15 is amended to read as follows:

16 SEC. 38. INDEMNITY FEES -- PRIOR PERMITTEES.

17 1. The indemnity fee imposed upon permittees
18 pursuant to section 204.3, as enacted in this Act,
19 shall be imposed upon all persons who have received a
20 permit by the department of natural resources for the
21 construction of a confinement feeding operation with a
22 manure storage structure as defined in section
23 ~~455B.16~~ 204.1, as enacted in this Act, prior to the
24 effective date of this Act. However, an indemnity fee
25 shall not be imposed upon a person the following
26 persons:

27 a. A person who has received a construction permit
28 more than ten years prior to the effective date of
29 this Act.

30 b. A person who has received a construction permit
31 within ten years prior to May 31, 1995, if the
32 confinement feeding operation was not constructed
33 under the permit and the permit has expired.

34 2. To every extent possible, the department of
35 natural resources shall notify all persons required to
36 pay the fee. The notice shall be in writing. The
37 department shall establish a date when the fees must
38 be paid to the department, which shall be not less
39 than three months after the delivery of the notice.
40 If a person is delinquent in paying the indemnity fee
41 when due, or if upon examination, an underpayment of
42 the fee is found by the department, the person is
43 subject to a penalty of ten dollars or an amount equal
44 to the amount of deficiency for each day of the
45 delinquency, whichever is less. ~~After the date~~
46 ~~required for payment, the department shall transfer~~
47 ~~all outstanding claims to the department of~~
48 ~~agriculture and land stewardship.~~

49 3. The department of natural resources shall
50 deliver to receive from the department of agriculture

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1 and land stewardship the most current available
2 information regarding the persons required to pay the
3 fee and any delinquency penalty, ~~including the names~~
4 ~~and addresses of the persons, and the capacity of the~~
5 ~~confinement-feeding operations subject to the permit.~~
6 The department of ~~agriculture and land stewardship~~
7 natural resources, in cooperation with the attorney
8 general, may bring a court action in order to collect
9 indemnity fees and delinquency penalties required to
10 be paid under this section.

11 Sec. 42. AMNESTY PERIOD. Notwithstanding 1995
12 Iowa Acts, chapter 195, section 38, a person who has
13 not paid an indemnity fee as required by that Act, as
14 amended by this Act, shall not be subject to a
15 delinquency penalty as provided in that Act, if the
16 person pays the full amount of the indemnity fee to
17 the department of agriculture and land stewardship on
18 or before December 31, 1998, as required by the
19 department.

20 Sec. 43. EFFECT OF THIS ACT -- REFUND. Nothing in
21 this Act requires the department of natural resources
22 or the department of agriculture and land stewardship
23 to refund an indemnity fee or delinquency penalty
24 payment paid by permittees pursuant to 1995 Iowa Acts,
25 chapter 195, section 38.

26 Sec. 44. INDEMNITY FEES -- PRIOR MANURE MANAGEMENT
27 PLAN SUBMITTEES.

28 1. The indemnity fee imposed upon persons required
29 to submit a manure management plan pursuant to section
30 204.3A, as enacted in this Act, shall be imposed upon
31 all persons who are required to submit a manure
32 management plan under section 455B.203 as amended in
33 this Act. However, a fee shall not be imposed upon a
34 person who was not required to submit a manure
35 management plan to the department of natural resources
36 pursuant to 1995 Iowa Acts, chapter 195, and 567 IAC
37 section 65.18(455B).

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

50 Sec. 45. INDEMNITY FEES -- PRIOR CONSTRUCTION

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1 PERMITTEES. The department of agriculture and land
2 stewardship shall deliver to the department of natural
3 resources the most current available information
4 regarding persons required to pay the indemnity fee
5 imposed pursuant to 1995 Iowa Acts, chapter 195,
6 section 38. The department of natural resources, in
7 cooperation with the attorney general, may bring a
8 court action in order to collect indemnity fees and
9 delinquency penalties as provided in that Act for
10 deposit into the manure storage indemnity fund as
11 created in section 204.2.

12 Sec. 46. MANURE MANAGEMENT PLAN SUBMISSIONS. All
13 persons required to submit a manure management plan
14 pursuant to section 455B.203 as amended by this Act
15 shall submit a manure management plan according to the
16 same requirements, as provided in that section or
17 rules adopted by the department pursuant to that
18 section. Persons who have submitted a manure
19 management plan that complies with those requirements
20 are not required to submit a new manure management
21 plan. Persons who have not submitted a manure
22 management plan that complies with those requirements
23 shall not be required to submit a new manure
24 management plan until July 1, 1999.

25 Sec. 47. MANURE APPLICATOR CERTIFICATION --
26 DELAYED APPLICABILITY. A person shall not be required
27 to be certified as a commercial manure applicator or a
28 confinement site manure applicator as required
29 pursuant to section 455B.203A, as enacted in this Act,
30 for sixty days following the effective date of that
31 section of this Act.

32 Sec. 48. ANIMAL AGRICULTURE CONSULTING
33 ORGANIZATION. The department of natural resources
34 shall consult with the members of the animal
35 agriculture consulting organization regarding this
36 Act, rules adopted pursuant to this Act, and the Act's
37 implementation, to the same extent and in the same
38 manner as required in 1995 Iowa Acts, chapter 195,
39 section 37, as amended by this Act.

40 Sec. 49. DIRECTION TO THE DEPARTMENT OF NATURAL
41 RESOURCES -- RULEMAKING. The department of natural
42 resources shall adopt all rules necessary to
43 administer and enforce this Act by January 1, 1999.
44 The department is required to adopt rules under this
45 Act, including adopting new rules or amending existing
46 rules, only to the extent that rules must be adopted
47 in order to comply with the requirements of this Act.
48 This section shall not be construed to limit the
49 authority of the department to adopt rules under this
50 Act or other statutory authority which the department

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1 determines is necessary or advisable.

2 Sec. 50. DIRECTIONS TO IOWA CODE EDITOR.

3 1. The Iowa Code editor is directed to transfer
4 chapter 204, as amended by this Act, to a chapter
5 determined appropriate by the Iowa Code editor. The
6 Iowa Code editor shall correct internal references as
7 necessary.

8 2. The Iowa Code editor is directed to transfer
9 section 159.27 to or near section 455B.204A.

10 Sec. 51. TRANSFER OF PROVISIONS. The transfer of
11 provisions from one section to another section does
12 not affect the effect or applicability of rules
13 adopted by the department of natural resources, except
14 as required by the provisions of this Act.

15 Sec. 52. SEVERABILITY. If any provision of this
16 Act or the application of this Act to any person or
17 circumstance is held invalid, the invalidity shall not
18 affect other provisions or applications of this Act
19 which shall be given effect without the invalid
20 provision or application, and to this end the
21 provisions of this Act are severable.

22 Sec. 53. EFFECTIVE DATES.

23 1. Sections 9, 10, 14, 27, 29, 38, 39, 40 through
24 43, 48, 49, and this section, being deemed of
25 immediate importance, take effect upon enactment.

26 2. Sections 11, 13, 15, 16, 18 through 21, 23, 26,
27 30, 31, and 33 through 35 take effect on January 1,
28 1999."

29 2. Title page, line 1, by inserting after the
30 word "Act" the following: "providing for agricultural
31 production, including".

32 3. Title page, line 2, by striking the words "an
33 effective date" and inserting the following:
34 "effective dates".

RECEIVED FROM THE SENATE

H-9048 FILED APRIL 9, 1998

House Concurrent
4.13-98 (p.1536)

HSB 661

*Trig Ch.
Walter
Klemme
Koenigs
Frewert*

Agriculture
Succeeded by
SF (HF) 2494

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON EDDIE)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act regulating animal feeding operations and making penalties
2 applicable and providing an effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 7D.10A ALLOCATION TO MANURE
2 STORAGE INDEMNITY FUND.

3 If moneys are not sufficient to support the manure storage
4 indemnity fund as provided in chapter 204, the executive
5 council may allocate from moneys in the general fund of the
6 state, which are not otherwise obligated or encumbered, an
7 amount to the manure storage indemnity fund as provided under
8 section 204.2. However, not more than a total of one million
9 dollars shall be allocated to the manure storage indemnity
10 fund at any time.

11 Sec. 2. Section 204.1, subsections 4, 8, and 9, Code 1997,
12 are amended to read as follows:

13 4. "Department" means the department of agriculture-and
14 ~~land-stewardship~~ natural resources.

15 8. "Manure storage structure" means ~~a-structure-used-to~~
16 ~~store-manure-as-part-of-a-confinement-feeding-operation~~
17 ~~subject-to-a-construction-permit-issued-by-the-department-of~~
18 ~~natural-resources-pursuant-to-section-455B.173.--A-manure~~
19 ~~storage-structure-includes,-but-is-not-limited-to,-an~~
20 ~~anaerobic-lagoon,-formed-manure-storage-structure,-or-earthen~~
21 ~~manure-storage-basin,~~ the same as defined in section 455B.161
22 455B.171.

23 9. "Permittee" means a person who, pursuant to section
24 455B.200A, obtains a permit for the construction of a manure
25 storage structure, or a confinement feeding operation, if a
26 manure storage structure is connected to the confinement
27 feeding operation.

28 Sec. 3. Section 204.2, subsections 2, 3, and 5, Code 1997,
29 are amended to read as follows:

30 2. The fund consists of moneys from indemnity fees
31 remitted by permittees to the department ~~of-natural-resources~~
32 ~~and-transferred-to-the-department-of-agriculture-and-land~~
33 ~~stewardship~~ as provided in section 204.3; moneys from
34 indemnity fees remitted by persons required to submit manure
35 management plans to the department pursuant to section 204.3A;

1 sums collected on behalf of the fund by the department through
2 legal action or settlement; moneys required to be repaid to
3 the department by a county pursuant to this chapter; civil
4 penalties assessed and collected by the department ~~of-natural~~
5 resources or the attorney general pursuant to chapter 455B,
6 against permittees animal feeding operations; moneys paid as a
7 settlement involving an enforcement action for a civil penalty
8 subject to assessment and collection against permittees by the
9 department ~~of-natural-resources~~ or the attorney general
10 pursuant to chapter 455B; interest, property, and securities
11 acquired through the use of moneys in the fund; or moneys
12 contributed to the fund from other sources.

13 3. The moneys collected under this section and shall be
14 deposited in the fund and shall be appropriated to the
15 department for the exclusive purpose of ~~indemnifying-a-county~~
16 ~~for-expenses-related-to-cleaning-up-the-site-of-the~~
17 ~~confinement-feeding-operation,-including-removing-and~~
18 ~~disposing-of-manure-from-a-manure-storage-structure~~ providing
19 moneys for cleanup of abandoned facilities as provided in
20 section 204.4, and to pay the department for costs related to
21 administering the provisions of this chapter. For each fiscal
22 year, the department shall not use more than one percent of
23 the total amount which is available in the fund or ten
24 thousand dollars, whichever is less, to pay for the costs of
25 administration. Moneys in the fund shall not be subject to
26 appropriation or expenditure for any other purpose than
27 provided in this section.

28 5. The following shall apply to moneys in the fund:

29 a. On August 31 following the close of each fiscal year,
30 moneys in the fund which are not obligated or encumbered on
31 June 30 of the past fiscal year, ~~less~~ not counting the
32 department's estimate of the cost to the fund for pending or
33 unsettled claims and any amount required to be credited to the
34 general fund of the state under this subsection, and-which-are
35 in excess of one three million dollars, shall be deposited in

1 the organic nutrient management fund as created in section
2 161C.5 for purposes of supporting the organic nutrient
3 management program.

4 b. The executive council may allocate moneys from the
5 general fund of the state as provided in section 7D.10A in an
6 amount necessary to support the fund, including payment of
7 claims as provided in section 204.4. However, an allocation
8 of moneys from the general fund of the state shall be made
9 only if the amount of moneys in the fund, which are not
10 obligated or encumbered, and not counting the department's
11 estimate of the cost to the fund for pending or unsettled
12 claims and any amount required to be credited to the general
13 fund of the state under this subsection, is less than one
14 million dollars.

15 c. The department shall credit an amount to the general
16 fund of the state which is equal to an amount allocated to the
17 fund by the executive council under paragraph "b". The
18 department shall credit the moneys to the general fund of the
19 state, if the moneys in the fund which are not obligated or
20 encumbered, and not counting the department's estimate of the
21 cost to the fund for pending or unsettled claims and any
22 amount required to be transferred to the general fund under
23 this paragraph, are in excess of two million five hundred
24 thousand dollars. The department is not required to credit
25 the total amount to the general fund of the state during any
26 one fiscal year.

27 Sec. 4. Section 204.3, Code 1997, is amended to read as
28 follows:

29 204.3 FEES.

30 An indemnity fee shall be assessed upon permittees which
31 shall be paid to and collected by the department of natural
32 resources, prior to issuing a permit for the construction of a
33 confinement feeding operation as provided in section 455B-173
34 455B.200A. The amount of the fees shall be based on the
35 following:

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

4 a. For all animals other than poultry, the amount of the
5 fee shall be ~~five~~ ten cents per animal unit of capacity for
6 confinement feeding operations.

7 b. For poultry, the amount of the fee shall be ~~two~~ four
8 cents per animal unit of capacity for confinement feeding
9 operations.

10 2. If the confinement feeding operation has an animal
11 weight capacity of six hundred twenty-five thousand or more
12 pounds but less than one million two hundred fifty thousand
13 pounds, the following shall apply:

14 a. For all animals other than poultry, the amount of the
15 fee shall be ~~seven-and-one-half~~ fifteen cents per animal unit
16 of capacity for confinement feeding operations.

17 b. For poultry, the amount of the fee shall be ~~three~~ six
18 cents per animal unit of capacity for confinement feeding
19 operations.

20 3. If the confinement feeding operation has an animal
21 weight capacity of one million two hundred fifty thousand or
22 more pounds, the following shall apply:

23 a. For all animals other than poultry, the amount of the
24 fee shall be ~~ten~~ twenty cents per animal unit of capacity for
25 confinement feeding operations.

26 b. For poultry, the amount of the fee shall be ~~four~~ eight
27 cents per animal unit of capacity for confinement feeding
28 operations.

29 The department of ~~natural-resources~~ shall deposit moneys
30 collected from the fees into the fund according to procedures
31 adopted by the department of ~~agriculture-and-land-stewardship~~.

32 Sec. 5. NEW SECTION. 204.3A MANURE MANAGEMENT PLAN --
33 INDEMNITY FEE REQUIRED.

34 An indemnity fee shall be assessed upon persons required to
35 submit a manure management plan as provided in chapter 455B,

1 but not required to obtain a construction permit pursuant to
2 section 455B.200A. The amount of the fees shall be ten cents
3 per animal unit of capacity for confinement feeding
4 operations.

5 Sec. 6. Section 204.4, subsection 1, Code 1997, is amended
6 to read as follows:

7 1. A county that has acquired real estate containing a
8 manure storage structure following nonpayment of taxes
9 pursuant to section 446.19, may make a claim against the fund
10 to pay ~~the costs of cleaning up the site of the confinement~~
11 ~~feeding operation, including the costs of removing and~~
12 ~~disposing of the manure from a manure storage structure~~
13 cleanup costs incurred by the county as provided in section
14 204.5. Each claim shall include a bid by a qualified person,
15 other than a governmental entity, to remove and dispose of the
16 manure for a fixed amount specified in the bid.

17 Sec. 7. NEW SECTION. 204.4A USE OF FUND FOR EMERGENCY
18 CLEANUP.

19 If the department provides cleanup of a condition caused by
20 a confinement feeding operation as provided in section 204.5,
21 the department may use moneys in the fund for purposes of
22 supporting the cleanup. The department shall reimburse the
23 fund from moneys recovered by the department as reimbursement
24 for the cleanup as provided in section 204.5.

25 Sec. 8. Section 204.5, Code 1997, is amended to read as
26 follows:

27 204.5 SITE CLEANUP.

28 1. a. A county which that has acquired real estate
29 containing on which there is located a confinement feeding
30 operation structure, as defined in section 455B.161, following
31 the nonpayment of taxes pursuant to section 446.19, may clean
32 up the site provide for cleanup, including removing and
33 disposing of manure at any time, remediating contamination
34 which originates from the confinement feeding operation, or
35 demolishing and disposing of structures relating to the

1 confinement feeding operation. The county may seek
2 reimbursement including by bringing an action for the costs of
3 the ~~removal-and-disposal~~ cleanup from the person abandoning
4 the real estate.

5 b. If the confinement feeding operation has caused a
6 clear, present, and impending danger to the public health or
7 the environment, the department may clean up the confinement
8 feeding operation and remediate contamination which originates
9 from the confinement feeding operation, pursuant to sections
10 455B.381 through 455B.399. The department may seek
11 reimbursement including by bringing an action for the costs of
12 the cleanup from a person liable for causing the condition.

13 2. A person cleaning up a site confinement feeding
14 operation located on real estate acquired by a county may
15 demolish or dispose of any building or equipment used-in of
16 the confinement feeding operation located on the land
17 according to rules adopted by the department ~~of-natural~~
18 ~~resources~~ pursuant to chapter 17A, which apply to the disposal
19 of farm buildings or equipment by an individual or business
20 organization.

21 Sec. 9. NEW SECTION. 331.304A LIMITATIONS ON COUNTY
22 LEGISLATION.

23 1. As used in this section:

24 a. "Agricultural operation" means a condition or activity
25 which occurs on land used for the production of agricultural
26 commodities, including but not limited to the raising,
27 harvesting, handling, drying, or storage of crops for feed,
28 food, seed, or fiber; the care or feeding of livestock; the
29 handling or transportation of crops or livestock; the storage,
30 treatment, or disposal of livestock manure; and the
31 application of fertilizers, soil conditioners, pesticides, and
32 herbicides on crops.

33 b. "County legislation" means any ordinance, motion,
34 resolution, or amendment adopted by a county pursuant to
35 section 331.302.

1 2. A county shall not adopt or enforce county legislation
2 regulating an agricultural operation unless expressly
3 authorized by state law. County legislation adopted in
4 violation of this section is void and unenforceable and any
5 enforcement activity conducted in violation of this section is
6 void.

7 Sec. 10. Section 455B.104, Code 1997, is amended to read
8 as follows:

9 455B.104 DEPARTMENTAL DUTIES -- PERMITS -- REQUIREMENTS
10 AND ASSISTANCE.

11 1. The department shall either approve or deny a permit to
12 a person applying for a permit under this chapter, within six
13 months from the date that the department receives a completed
14 application for the permit. An application which is not
15 approved or denied within the six-month period shall be
16 approved by default. The department shall issue a permit to
17 the applicant within ten days following the date of default
18 approval. However, this section subsection shall not apply to
19 applications for permits which are issued under division II,
20 or division IV, parts 2 through 7.

21 2. The department shall not issue a permit to a person
22 under this chapter for five years after the date of the last
23 violation committed by the person or by a confinement feeding
24 operation in which the person holds a controlling interest
25 during which the person or operation was classified as a
26 habitual violator under section 455B.191.

27 3. The department shall assist persons applying for
28 assistance to establish and operate renewable fuel production
29 facilities pursuant to the value-added agricultural products
30 and processes financial assistance program established in
31 section 15E.111.

32 Sec. 11. Section 455B.161, Code 1997, is amended by adding
33 the following new subsections:

34 NEW SUBSECTION. 0A. "Aerobic structure" means an animal
35 feeding operation structure other than an egg washwater

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1 storage structure which employs bacterial action which is
2 maintained by the utilization of air or oxygen and which
3 includes aeration equipment.

4 NEW SUBSECTION. 21. "Unformed manure storage structure"
5 means a covered or uncovered animal feeding operation
6 structure, other than a formed manure storage structure, which
7 is an anaerobic lagoon, aerobic structure, or earthen manure
8 storage basin.

9 Sec. 12. NEW SECTION. 455B.161A CONFINEMENT FEEDING
10 OPERATIONS -- CALCULATING ADJACENCY.

11 For purposes of this part, two or more confinement feeding
12 operations are adjacent, if any of the following apply:

13 1. The confinement feeding operations are separated at
14 their closest points by a distance of one thousand two hundred
15 fifty feet or less.

16 2. All of the following apply:

17 a. The confinement feeding operations are separated at
18 their closest points by two thousand five hundred feet or
19 less.

20 b. The confinement feeding operations have a combined
21 animal weight capacity of six hundred twenty-five thousand
22 pounds or more for animals other than bovine or one million
23 six hundred thousand pounds or more for bovine.

24 Sec. 13. Section 455B.162, unnumbered paragraph 1, Code
25 1997, is amended to read as follows:

26 The following shall apply to animal feeding operation
27 structures:

28 1. Except as provided in subsection 2, and sections
29 455B.163 and 455B.165, this subsection applies to animal
30 feeding operation structures constructed on or after May 31,
31 1995, but prior to the effective date of this Act; to the
32 expansion of structures constructed on or after May 31, 1995;
33 or, except as provided in section 455B.163, but prior to the
34 effective date of this Act; and to the expansion of structures
35 constructed prior to May 31, 1995.

1 Sec. 14. Section 455B.162, subsection 1, Code 1997, is
 2 amended to read as follows:

3 ~~1.---Except-as-provided-in-subsection-27-the-following-table~~
 4 ~~shall-apply-to-animal-feeding-operation-structures-~~

5 a. The following table represents the minimum separation
 6 distance in feet required between an animal feeding operation
 7 structure and a residence not owned by the owner of the animal
 8 feeding operation, or a commercial enterprise, bona fide
 9 religious institution, or an educational institution:

	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 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 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, 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 for animals other than bovine, or 4,000,000 or more pounds for bovine
10			
11			
12			
13			
14			
15	Minimum	having an	
16	separation	animal	Minimum
17	distance in	weight	separation
18	feet for	capacity of	distance in
19	operations	625,000 or	feet for
20	having an	more pounds	operations
21	animal	but less than	having an
22	weight	1,250,000	animal
23	capacity of	pounds for	weight
24	less than	animals other	capacity of
25	625,000	than bovine,	1,250,000 or
26	pounds for	or 1,600,000	more pounds
27	animals other	or more	for animals
28	than bovine,	pounds but	other than
29	or less than	less than	bovine, or
30	1,600,000	4,000,000	4,000,000 or
31	pounds for	pounds for	more pounds
32	Type of structure	bovine	for bovine
33	Anaerobic		
34	lagoon	1,250	1,875
35	Uncovered earthen		2,500

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S.F. _____ H.F. _____

1	manure storage			
2	basin	1,250	1,875	2,500
3	Uncovered formed			
4	manure storage			
5	structure	1,000	1,500	2,000
6	Covered earthen			
7	manure storage			
8	basin	750	1,000	1,500
9	Covered formed			
10	manure storage			
11	structure	750	1,000	1,500
12	Confinement			
13	building	750	1,000	1,500
14	Egg washwater			
15	storage structure	750	1,000	1,500

16 1A. Except as provided in subsection 2, and sections
 17 455B.163 and 455B.165, this subsection applies to animal
 18 feeding operation structures constructed on or after the
 19 effective date of this Act and to the expansion of structures
 20 constructed on or after the effective date of this Act. The
 21 following table represents the minimum separation distance in
 22 feet required between an animal feeding operation structure
 23 and a residence not owned by the owner of the animal feeding
 24 operation, or a commercial enterprise, bona fide religious
 25 institution, or an educational institution:

26			
27		<u>Minimum</u>	
28		<u>separation</u>	
29		<u>distance in</u>	
30		<u>feet for</u>	
31		<u>operations</u>	
32	<u>Minimum</u>	<u>having an</u>	
33	<u>separation</u>	<u>animal</u>	<u>Minimum</u>
34	<u>distance in</u>	<u>weight</u>	<u>separation</u>
35	<u>feet for</u>	<u>capacity of</u>	<u>distance in</u>

1	<u>operations</u>	<u>625,000 or</u>	<u>feet for</u>
2	<u>having an</u>	<u>more pounds</u>	<u>operations</u>
3	<u>animal</u>	<u>but less than</u>	<u>having an</u>
4	<u>weight</u>	<u>1,250,000</u>	<u>animal</u>
5	<u>capacity of</u>	<u>pounds for</u>	<u>weight</u>
6	<u>less than</u>	<u>animals other</u>	<u>capacity of</u>
7	<u>625,000</u>	<u>than bovine,</u>	<u>1,250,000 or</u>
8	<u>pounds for</u>	<u>or 1,600,000</u>	<u>more pounds</u>
9	<u>animals other</u>	<u>or more</u>	<u>for animals</u>
10	<u>than bovine,</u>	<u>pounds but</u>	<u>other than</u>
11	<u>or less than</u>	<u>less than</u>	<u>bovine, or</u>
12	<u>1,600,000</u>	<u>4,000,000</u>	<u>4,000,000 or</u>
13	<u>pounds for</u>	<u>pounds for</u>	<u>more pounds</u>
14	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>
			<u>for bovine</u>
15	<u>Anaerobic</u>		
16	<u>lagoon</u>	<u>1,250</u>	<u>1,875</u>
			<u>2,500</u>
17	<u>Uncovered earthen</u>		
18	<u>manure storage</u>		
19	<u>basin</u>	<u>1,250</u>	<u>1,875</u>
			<u>2,500</u>
20	<u>Uncovered formed</u>		
21	<u>manure storage</u>		
22	<u>structure</u>	<u>1,250</u>	<u>1,500</u>
			<u>2,000</u>
23	<u>Covered earthen</u>		
24	<u>manure storage</u>		
25	<u>basin</u>	<u>1,250</u>	<u>1,500</u>
			<u>1,875</u>
26	<u>Covered formed</u>		
27	<u>manure storage</u>		
28	<u>structure</u>	<u>1,250</u>	<u>1,500</u>
			<u>1,875</u>
29	<u>Confinement</u>		
30	<u>building</u>	<u>1,250</u>	<u>1,500</u>
			<u>1,875</u>
31	<u>Egg washwater</u>		
32	<u>storage</u>		
33	<u>structure</u>	<u>1,250</u>	<u>1,500</u>
			<u>1,875</u>
34	<u>b- 1B. Except as provided in subsection 2, and sections</u>		
35	<u>455B.163 and 455B.165, this subsection applies to animal</u>		

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

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

1 structure 1,250 1,875 2,500

2 1C. On and after the effective date of this Act an animal
3 feeding operation structure shall not be constructed or
4 expanded within two hundred fifty feet from a road, street,
5 bridge, or thoroughfare which is constructed or maintained by
6 the state or a political subdivision. However, a county where
7 the road is located may reduce the number of feet required
8 pursuant to this subsection by county legislation as provided
9 in section 331.302.

10 Sec. 15. Section 455B.162, subsection 2, paragraph a, Code
11 1997, is amended to read as follows:

12 a. As used in this subsection, a "qualified confinement
13 feeding operation" means a confinement feeding operation
14 having an animal weight capacity of two million or more pounds
15 for animals other than animals kept in a swine farrow-to-
16 finish operation or bovine kept in a confinement feeding
17 operation; a swine farrow-to-finish operation having an animal
18 weight capacity of two million five hundred thousand or more
19 pounds; or a confinement feeding operation having an animal
20 weight capacity of ~~six~~ eight million or more pounds for
21 bovine.

22 Sec. 16. Section 455B.163, Code 1997, is amended to read
23 as follows:

24 455B.163 SEPARATION DISTANCE REQUIREMENTS FOR ANIMAL
25 FEEDING OPERATIONS -- EXPANSION OF PRIOR CONSTRUCTED
26 STRUCTURES CONSTRUCTED-PRIOR-TO-MAY-31-1995.

27 An animal feeding operation constructed prior to the date
28 that a distance requirement became effective under section
29 455B.162 and which does not comply with the section's distance
30 requirements-of-section-455B-162-on-May-31-1995, requirements
31 may continue to operate regardless of those-separation
32 distances the distance requirements. The animal feeding
33 operation may be expanded on-or-after-May-31-1995, regardless
34 of-those-separation-distances, if either of the following
35 applies:

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1 1. The animal feeding operation structure as constructed
2 or expanded complies with the current distance requirements
3 requirement of section 455B.162.

4 2. All of the following apply to the expansion of the
5 animal feeding operation:

6 a. No portion of the animal feeding operation after
7 expansion is closer than before expansion to a location or
8 object for which separation is currently required under
9 section 455B.162.

10 b. The animal weight capacity of the animal feeding
11 operation as expanded is not more than the lesser of the
12 following:

13 (1) Double its capacity on May 31, 1995, for an animal
14 feeding operation constructed prior to May 31, 1995, or on the
15 effective date of this Act, for an animal feeding operation
16 constructed after May 31, 1995, and before the effective date
17 of this Act.

18 (2) Either of the following:

19 (a) Six hundred twenty-five thousand pounds animal weight
20 capacity for animals other than bovine.

21 (b) One million six hundred thousand pounds animal weight
22 capacity for bovine.

23 Sec. 17. Section 455B.164, Code 1997, is amended to read
24 as follows:

25 455B.164 DISTANCE MEASUREMENTS.

26 All distances between locations or objects provided in this
27 part shall be measured from their closest points, as provided
28 by rules adopted by the department. However, a distance from
29 a road, street, or thoroughfare shall be measured from the
30 portion of the right-of-way which is furthest from the road,
31 street, or thoroughfare.

32 Sec. 18. Section 455B.165, subsection 5, Code 1997, is
33 amended to read as follows:

34 5. An animal feeding operation structure which is ~~located~~
35 constructed or expanded within any distance from a residence,

1 educational institution, commercial enterprise, bona fide
2 religious institution, city, or public use area, if the
3 residence, educational institution, commercial enterprise, or
4 bona fide religious institution was constructed or expanded,
5 or the boundaries of the city or public use area were
6 expanded, after the date that the animal feeding operation was
7 established. The date the animal feeding operation was
8 established is the date on which the animal feeding operation
9 commenced operating. A change in ownership or expansion of
10 the animal feeding operation shall not change the established
11 date of operation.

12 Sec. 19. Section 455B.171, Code Supplement 1997, is
13 amended by adding the following new subsections:

14 NEW SUBSECTION. 0A. "Aerobic structure" means the same as
15 defined in section 455B.161.

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

18 NEW SUBSECTION. 2A. "Animal feeding operation structure"
19 means the same as defined in section 455B.161.

20 NEW SUBSECTION. 3A. "Commercial manure applicator" means
21 a person who engages in the business and charges a fee for
22 applying manure on the land of another person.

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

25 NEW SUBSECTION. 12A. "Manure storage structure" means an
26 animal feeding operation structure used to store manure as
27 part of a confinement feeding operation, including but not
28 limited to a formed or unformed manure storage structure.

29 NEW SUBSECTION. 23A. "Restricted spray irrigation
30 equipment" means spray irrigation equipment which disperses
31 manure through an orifice at a rate of eighty pounds per
32 square inch or more.

33 NEW SUBSECTION. 31A. "Spray irrigation equipment" means
34 mechanical equipment used for the aerial application of
35 manure, if the equipment receives manure from a manure storage

1 structure during application via a pipe or hose connected to
2 the structure, and includes a type of equipment customarily
3 used for the aerial application of water to aid the growing of
4 general farm crops.

5 NEW SUBSECTION. 32A. "Unformed manure storage structure"
6 means the same as defined in section 455B.161.

7 NEW SUBSECTION. 38. "Watercourse" means the same as
8 defined in section 455B.261.

9 Sec. 20. Section 455B.173, subsection 13, Code 1997, is
10 amended by striking the subsection and inserting in lieu
11 thereof the following:

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

16 Sec. 21. Section 455B.191, subsection 7, unnumbered
17 paragraph 2, Code 1997, is amended to read as follows:

18 This subsection shall not apply unless the department of
19 natural resources has previously notified the person of the
20 person's classification as a habitual violator ~~as provided in~~
21 ~~section-455B-173.~~ The department shall notify persons
22 classified as habitual violators of their classification,
23 additional restrictions imposed upon the persons pursuant to
24 the classification, and special civil penalties that may be
25 imposed upon the persons. The notice shall be sent to the
26 persons by certified mail.

27 Sec. 22. NEW SECTION. 455B.200 GENERAL.

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

35 Sec. 23. NEW SECTION. 455B.200A PERMIT REQUIREMENTS.

1 1. The department shall issue permits for the construction
2 of animal feeding operation structures, including structures
3 which are part of confinement feeding operations, as provided
4 by rules adopted pursuant to section 455B.200. The department
5 shall issue a permit to an animal feeding operation if an
6 application is submitted according to procedures required by
7 the department and the application meets standards established
8 by the department, regardless of whether the animal feeding
9 operation is required to obtain such a permit. The department
10 shall not require that a person obtain a permit for the
11 construction of an animal feeding operation structure if the
12 structure is part of a small animal feeding operation. For
13 purposes of this section, an animal feeding operation
14 structure includes a manure storage structure.

15 2. The department shall not issue a permit for the
16 construction of an animal feeding operation structure which is
17 part of a confinement feeding operation unless the person
18 submits all of the following:

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

22 b. A manure management plan as provided in section
23 455B.203.

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

33 4. The department shall cooperate with the natural
34 resources conservation service of the United States department
35 of agriculture. To the extent allowed by the service, the

1 department shall consult with the service regarding the
2 proposed site of an animal feeding operation structure which
3 is part of a confinement feeding operation and may require
4 that an applicant submit an evaluation of the proposed site
5 prepared by the service.

6 The department may adopt a recommendation by the service
7 that an unformed manure storage structure be constructed with
8 a secondary containment barrier, unless the department
9 determines that the recommendation is unsupported by any
10 scientific or engineering evidence. The department shall
11 require that a secondary containment barrier be constructed
12 with materials and according to specifications required by the
13 department.

14 5. An applicant for a construction permit shall not begin
15 construction at the location of a site planned for the
16 construction of an animal feeding operation structure until
17 the person has been granted a permit for the construction of
18 the structure by the department.

19 6. The department shall make a determination regarding the
20 approval or denial of a permit within sixty days from the date
21 that the department receives a completed application for a
22 permit. However, the sixty-day requirement shall not apply to
23 an application if the applicant is not required to obtain a
24 permit in order to construct an animal feeding operation
25 structure or to operate an animal feeding operation.

26 7. The department shall deliver a copy or require the
27 applicant to deliver a copy of the application for a
28 construction permit and the applicant's manure management plan
29 to the county board of supervisors in the county where the
30 confinement feeding operation or related animal feeding
31 operation structure subject to the permit is to be located.

32 a. The department shall not approve the application until
33 thirty days following delivery of the application to the
34 county board of supervisors.

35 b. The county board of supervisors may hold a public

1 hearing to receive public comments regarding the application.
2 The county board of supervisors may submit comments by the
3 board and the public to the department as provided in this
4 section. The comments may include, but are not limited to,
5 any of the following:

6 (1) The existence of a structure or area not included in
7 the permit application which benefits from a separation
8 distance requirement as provided in section 455B.162 or
9 455B.204.

10 (2) The suitability of soils and the hydrology of the site
11 where construction is proposed.

12 (3) The availability of land for the application of manure
13 originating from the confinement feeding operation.

14 (4) The impact of construction upon established drainage
15 tile lines which cross the property boundaries of the site
16 where the construction is proposed.

17 c. The department shall consider and respond to comments
18 submitted by the county board of supervisors regarding
19 compliance by the applicant with the legal requirements for
20 approving the construction permit as provided in this chapter,
21 including rules adopted by the commission pursuant to this
22 chapter, if the comments are delivered to the department
23 within thirty days after receipt of the application by the
24 county board of supervisors.

25 d. The department shall notify the county board of
26 supervisors three days prior to conducting an inspection of
27 the site where the construction is proposed.

28 e. The department shall notify the county board of
29 supervisors of the department's decision to approve or
30 disapprove an application for a construction permit within
31 three days following the department's decision. The county
32 board of supervisors may contest the decision as provided by
33 rules adopted by the commission in conformance with chapter
34 17A. In contesting the decision, the county shall submit a
35 statement to the department, providing all reasons why the

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1 application should be approved or disapproved according to
2 legal requirements provided in this chapter. The statement
3 shall include an evaluation of the construction permit
4 application by the field office of the natural resources and
5 conservation service of the United States department of
6 agriculture serving the county, to the extent that the natural
7 resources and conservation service agrees to assist the county
8 in preparing an evaluation.

9 (1) The county board of supervisors must contest the
10 decision within fourteen days following receipt of the
11 department's notice to approve or disapprove the application.

12 (2) The contested case shall be heard by an administrative
13 law judge who shall develop an expertise regarding legal
14 requirements necessary in order to approve an application and
15 issue a permit for the construction of an animal feeding
16 operation structure. The proposed decision of the
17 administrative law judge may be appealed to the commission for
18 final agency action.

19 8. Prior to issuing a permit to a person for the
20 construction of an animal feeding operation, the department
21 may require the installation and operation of a hydrological
22 monitoring system for an exclusively earthen manure storage
23 structure according to rules which shall be adopted by the
24 department.

25 9. a. The department shall not issue a permit to a person
26 under this section if an enforcement action by the department,
27 relating to a violation of this chapter concerning a
28 confinement feeding operation in which the person has an
29 interest, is pending.

30 b. The department shall not issue a permit to a person
31 under this section for five years after the date of the last
32 violation committed by a person or confinement feeding
33 operation in which the person holds a controlling interest
34 during which the person or operation was classified as a
35 habitual violator under section 455B.191.

1 Sec. 24. NEW SECTION. 455B.200B CONFINEMENT FEEDING
2 OPERATIONS -- CALCULATING ADJACENCY.

3 For purposes of this part, two or more confinement feeding
4 operations are adjacent if any of the following apply:

5 1. The confinement feeding operations are separated at
6 their closest points by a distance of one thousand two hundred
7 fifty feet or less.

8 2. All of the following apply:

9 a. The confinement feeding operations are separated at
10 their closest points by two thousand five hundred feet or
11 less.

12 b. The confinement feeding operations have a combined
13 animal weight capacity of six hundred twenty-five thousand
14 pounds or more for animals other than bovine or one million
15 six hundred thousand pounds or more for bovine.

16 Sec. 25. Section 455B.201, subsection 4, Code 1997, is
17 amended by striking the subsection.

18 Sec. 26. Section 455B.202, Code Supplement 1997, is
19 amended to read as follows:

20 455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING ACTIONS
21 AND HABITUAL VIOLATORS.

22 1. As used in this section, "construction" unless the
23 context otherwise requires:

24 a. "Chronic violator" means the same as defined in section
25 657.11A.

26 b. "Construction" means the same as defined by rules
27 adopted by the department applicable to the construction of
28 animal feeding operation structures as provided in this part.

29 c. "Habitual violator" means a person classified as a
30 habitual violator pursuant to section 455B.191.

31 d. "Suspect site" means a confinement feeding operation or
32 land where a confinement feeding operation could be
33 constructed, if the site is subject to a suspect transaction.

34 e. "Suspect transaction" means a transaction in which a
35 habitual violator or chronic violator does any of the

1 following:

2 (1) Transfers a controlling interest in a suspect site to
3 any of the following:

4 (a) An employee of the habitual violator or chronic
5 violator or business in which the person holds a controlling
6 interest.

7 (b) A person who holds an interest in a business,
8 including a confinement feeding operation, in which the
9 habitual violator or chronic violator holds a controlling
10 interest.

11 (c) A person related to the habitual violator or chronic
12 violator as spouse, parent, grandparent, lineal ascendant of a
13 grandparent or spouse and any other lineal descendant of the
14 grandparent or spouse, or a person acting in a fiduciary
15 capacity for a related person.

16 (2) Provides financing for the construction or operation
17 of a confinement feeding operation to any person, by providing
18 a contribution or loan to the person, or providing cash or
19 other tangible collateral for a contribution or loan made by a
20 third person.

21 2. a. A person shall not construct or expand an animal
22 feeding operation structure which is part of a confinement
23 feeding operation, if the person is a any of the following:

24 (1) A party to a pending action for a violation of this
25 chapter concerning a confinement feeding operation in which
26 the person has a controlling interest and the action is
27 commenced in district court by the attorney general.

28 (2) A habitual violator or a chronic violator.

29 b. A person shall not construct or expand an animal
30 feeding operation structure which is part of a confinement
31 feeding operation for five years after the date of the last
32 violation committed by a person or confinement feeding
33 operation in which the person holds a controlling interest
34 during which the person or operation was classified as a
35 habitual violator ~~under-section-455B-191.~~

1 3- c. This section subsection shall not prohibit a person
2 from completing the construction or expansion of an animal
3 feeding operation structure, if any of the following apply:

4 a- (1) The person has an unexpired permit for the
5 construction or expansion of the animal feeding operation
6 structure.

7 b- (2) The person is not required to obtain a permit for
8 the construction or expansion of the animal feeding operation
9 structure.

10 3. A suspect transaction shall be presumed to be made in
11 order to avoid conditions and enhanced penalties imposed upon
12 a habitual violator or chronic violator pursuant to this
13 chapter. A person receiving control of a suspect site
14 pursuant to a suspect transaction shall be deemed to be an
15 agent of the habitual violator or chronic violator, unless the
16 habitual violator or chronic violator and the person receiving
17 the controlling interest in the a suspect site because of the
18 suspect transaction, both prove by clear and convincing
19 evidence all of the following:

20 a. That the suspect transaction was for a legitimate
21 business purpose made by parties exercising independent and
22 reasonable judgment.

23 b. That the habitual violator or chronic violator does not
24 exercise a controlling influence over the business affairs of
25 the confinement feeding operation.

26 If the person receiving control of a suspect site is deemed
27 to be an agent of a habitual violator or chronic violator, the
28 person shall not construct or expand an animal feeding
29 operation structure which is part of a confinement feeding
30 operation, for as long as the habitual violator or chronic
31 violator, including the agent, or the confinement feeding
32 operation is classified as a habitual violator or chronic
33 violator.

34 4. The department shall conduct an annual review of each
35 confinement feeding operation which is a habitual violator or

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1 chronic violator and each confinement feeding operation in
2 which a habitual violator or chronic violator holds a
3 controlling interest.

4 Sec. 27. Section 455B.203, subsection 1, Code 1997, is
5 amended to read as follows:

6 1. ~~In-order-to-receive~~ The following persons shall submit
7 a manure management plan to the department:

8 a. The owner of a confinement feeding operation other than
9 a small animal feeding operation. A person shall not remove
10 manure from a manure storage structure which is part of a
11 confinement feeding operation unless the department approves a
12 manure management plan submitted by the owner of the
13 confinement feeding operation as provided by the department.

14 The department may adopt rules allowing a person to remove
15 manure from a manure storage structure until the manure
16 management plan is approved or disapproved by the department
17 according to terms and conditions required by the department.

18 The department shall not issue a permit for the construction
19 of a confinement feeding operation or a related animal feeding
20 operation structure unless the applicant submits a manure
21 management plan together with an application as provided in
22 section 455B:1737-a-person-shall-submit-a-manure-management
23 plan-to-the-department-together-with-the-application-for-a
24 construction-permit 455B.200A.

25 b. A person who owns a confinement feeding operation,
26 other than a small animal feeding operation, in another state
27 if the manure is applied on land located in this state.

28 Sec. 28. Section 455B.203, subsection 2, unnumbered
29 paragraph 1, Code 1997, is amended to read as follows:

30 A manure management plan shall conform with the
31 requirements of section 455B.203B. The plan shall include all
32 of the following:

33 Sec. 29. Section 455B.203, subsection 3, Code 1997, is
34 amended to read as follows:

35 3. a. A person classified as a habitual violator or a

1 confinement feeding operation in which a habitual violator
2 owns a controlling interest, as provided in section 455B.191,
3 shall submit a manure management plan to the department on an
4 annual basis, which must be approved by the department for the
5 following year of operation.

6 b. A person receiving a controlling interest in a
7 confinement feeding operation pursuant to a suspect
8 transaction as provided in section 455B.202 must submit a
9 manure management plan to the department prior to taking
10 control of the confinement feeding operation. The department
11 shall not approve the manure management plan, if any of the
12 following applies:

13 (1) The person taking control of the confinement feeding
14 operation exercised managerial authority over a confinement
15 feeding operation and one of the following applies:

16 (a) The confinement feeding operation is classified as a
17 habitual violator or chronic violator.

18 (b) The person owning a controlling interest in the
19 confinement feeding operation is classified as a habitual
20 violator or chronic violator.

21 (2) The confinement feeding operation is subject to a
22 pending action for a violation of this chapter and the action
23 is commenced in district court by the attorney general.

24 (3) The department finds that the person is unwilling or
25 incapable of instituting changes necessary in order to ensure
26 that manure originating from the confinement feeding operation
27 is managed in a manner consistent with this chapter, including
28 rules adopted by the department. The person shall have the
29 burden of demonstrating by clear and convincing evidence that
30 the person is willing and capable of instituting the necessary
31 changes. The department shall consider the person's
32 experience and past history of controlling confinement feeding
33 operations.

34 Sec. 30. NEW SECTION. 455B.203A MANURE APPLICATORS
35 CERTIFICATION.

1 1. As used in this section, unless the context otherwise
2 requires:

3 a. "Commercial manure applicator" means the same as
4 defined in section 455B.171.

5 b. "Confinement site" means a site where there is located
6 a manure storage structure which is part of a confinement
7 feeding operation, other than a small animal feeding
8 operation.

9 c. "Confinement site manure applicator" means a person who
10 applies manure stored at a confinement site.

11 2. a. A commercial manure applicator shall not apply
12 manure to land, unless the person is certified pursuant this
13 section.

14 b. A confinement site manure applicator shall not apply
15 manure to land, unless the person is certified pursuant to
16 this section.

17 3. A person required to be certified under this section
18 shall choose between a one-year certification for which the
19 person shall pay a thirty dollar fee or a three-year
20 certification for which the person shall pay a seventy-five
21 dollar fee.

22 4. To be initially certified a person must complete an
23 educational program which shall consist of an examination
24 required to be passed by the person. After initial
25 certification, the person must renew the certification by
26 completing the educational program which shall consist of
27 either an examination or continuing instructional courses.
28 The person must pass the examination each third year following
29 initial certification or may elect to attend two hours of
30 continuing instructional courses each year.

31 5. The department shall adopt, by rule, requirements for
32 the certification, including educational program requirements.
33 The department may establish different educational programs
34 designed for commercial manure applicators and confinement
35 site manure applicators. The department shall adopt rules

1 necessary to administer this section, including establishing
2 certification standards, which shall at least include
3 standards for the handling, application, and storage of
4 manure, the potential effects of manure upon surface water and
5 groundwater, and procedures to remediate the potential effects
6 on surface water or groundwater.

7 a. The department shall adopt by rule criteria for
8 allowing a person required to be certified to complete either
9 a written or oral examination.

10 b. The department shall administer the continuing
11 instructional courses, by either teaching the courses or
12 selecting persons to teach the courses, according to criteria
13 as provided by rules adopted by the department. The
14 department shall, to the extent possible, select persons to
15 teach the continuing instructional courses. The department is
16 not required to compensate persons to teach the continuing
17 instructional courses. In selecting persons, the department
18 shall consult with organizations interested in the application
19 of manure, including associations representing manure
20 applicators and associations representing agricultural
21 producers. The Iowa cooperative extension service in
22 agriculture and home economics of Iowa state university of
23 science and technology shall cooperate with the department in
24 administering the continuing instructional courses. The Iowa
25 cooperative extension service may teach continuing
26 instructional courses, train persons selected to teach
27 courses, or distribute informational materials to persons
28 teaching the courses.

29 c. The department, in administering the certification
30 program under this section, shall cooperate with the
31 department of agriculture and land stewardship in
32 administering the certification program for pesticide
33 applicators pursuant to section 206.5.

34 6. This section shall not require a person to be certified
35 as a commercial manure applicator because the person is any of

1 the following:

2 a. Actively engaged in farming who trades work with
3 another such person.

4 b. Employed by a person actively engaged in farming not
5 solely as a manure applicator who applies manure as an
6 incidental part of the person's general duties.

7 c. Engaged in applying manure as an incidental part of a
8 custom farming operation.

9 d. Engaged in applying manure as an incidental part of a
10 person's duties as provided by rules adopted by the department
11 providing for an exemption.

12 7. A person is not required to be certified as a
13 commercial manure applicator to apply manure for a period of
14 thirty days from the date of initial employment as a
15 commercial manure applicator if the person applying the manure
16 is acting under the instructions and control of a certified
17 commercial manure applicator who is in sight or hearing
18 distance of the supervised person.

19 Sec. 31. NEW SECTION. 455B.203B APPLICATION
20 REQUIREMENTS.

21 1. The department of natural resources shall adopt rules
22 governing the application of manure originating from an
23 anaerobic lagoon or aerobic structure which is part of a
24 confinement feeding operation. The rules shall establish
25 application rates and practices to minimize groundwater or
26 surface water pollution resulting from application, including
27 pollution caused by runoff or other manure flow resulting from
28 precipitation events. The rules shall establish different
29 application rates and practices based on the water holding
30 capacity of the soil at the time of application.

31 2. A person shall not apply manure by spray irrigation
32 equipment, except as provided by rules adopted by the
33 department pursuant to chapter 17A. However, a person shall
34 not use restricted spray irrigation equipment to apply manure
35 originating from a confinement feeding operation, unless the

1 manure has been diluted as provided by rules adopted by the
2 department, including diluted by use of an anaerobic lagoon.

3 Sec. 32. Section 455B.204, subsection 1, unnumbered
4 paragraph 1, Code 1997, is amended to read as follows:

5 a. An Except as provided in paragraph "b", an animal
6 feeding operation structure shall not be located-at-least-five
7 constructed or expanded closer than the following:

8 (1) Less than five hundred feet away from the-surface
9 intake a wellhead or cistern of an agricultural drainage well
10 or known sinkhole,-and-at-least.

11 (2) Less than two hundred feet away from a watercourse.
12 However, an animal feeding operation structure shall not be
13 constructed or expanded closer than five hundred feet away
14 from a lake, river, or stream located within the territorial
15 limits of the state, any marginal river area adjacent to the
16 state, which can support a floating vessel capable of carrying
17 one or more persons during a total of a six-month period in
18 one out of ten years, excluding periods of flooding.

19 b. However,-no No distance separation is required between
20 a location or object and a farm pond or privately owned lake,
21 as defined in section 462A.2.

22 Sec. 33. Section 455B.204, Code 1997, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 3. A person shall not construct or expand
25 an unformed manure storage structure within an agricultural
26 drainage well area as provided in section 455I.5.

27 Sec. 34. NEW SECTION. 455B.205 MANURE STORAGE STRUCTURES
28 -- CONSTRUCTION STANDARDS -- INSPECTIONS.

29 1. The department shall establish by rule engineering
30 standards for the construction of manure storage structures.

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

35 a. The lining of the structure shall be constructed with

1 materials deemed suitable by the department in order to
 2 minimize seepage loss through the lining's seal.

3 b. The structure shall be constructed with materials
 4 deemed suitable by the department in order to control erosion
 5 on the structure's berm, side slopes, and base.

6 c. The structure shall be constructed to minimize seepage
 7 into near-surface water sources.

8 d. The top of the floor of the structure's liner must be
 9 above the groundwater table as determined by the department.
 10 If the groundwater table is less than two feet below the top
 11 of the liner's floor, the structure shall be installed with a
 12 synthetic liner. If the department allows an unformed manure
 13 storage structure to be located at a site by permanently
 14 lowering the groundwater table, the department shall confirm
 15 that the proposed system meets standards necessary to ensure
 16 that the structure does not pollute groundwater sources. If
 17 the department allows drain tile installed to lower a
 18 groundwater table to remain where located, the department
 19 shall require that a device be installed to allow monitoring
 20 of the water in the drain tile line. The department shall
 21 also require the installation of a device to allow shutoff of
 22 the drain tile lines, if the drain tile lines do not have a
 23 surface outlet accessible on the property where the structure
 24 is located.

25 2. The department shall to every extent practical
 26 cooperate with the state office and field offices of the
 27 natural resources conservation service of the United States
 28 department of agriculture in adopting construction standards
 29 for anaerobic lagoons.

30 3. The department shall inspect each unformed manure
 31 storage structure at least once each year. An inspection
 32 conducted pursuant to this subsection shall be limited to a
 33 visual inspection of the site where the unformed manure
 34 storage structure is located. The department shall inspect
 35 the site at a reasonable time after providing at least twenty-

1 four hours' notice to the person owning or managing the
2 confinement feeding operation. However, in order to inspect
3 the premises the departmental inspector must comply with
4 standard biosecurity requirements customarily required by the
5 operation. The visual inspection shall include, but not be
6 limited to, determining whether any of the following exists:

- 7 a. An adequate freeboard level.
- 8 b. The seepage of manure from the unformed manure storage
9 structure.
- 10 c. Erosion.
- 11 d. Inadequate vegetation cover.
- 12 e. The presence of an opening allowing manure to drain
13 from the unformed manure storage structure.

14 Sec. 35. NEW SECTION. 455B.206 CONSTRUCTION OF EARTHEN
15 MANURE STORAGE BASIN -- MORATORIUM.

16 1. A person shall not construct or expand an earthen
17 manure storage basin on or after July 1, 1998.

18 2. This section is repealed on July 1, 2001.

19 Sec. 36. Section 657.11, subsection 4, Code 1997, is
20 amended by striking the subsection.

21 Sec. 37. NEW SECTION. 657.11A CHRONIC VIOLATORS.

22 1. As used in this section, unless the context otherwise
23 requires:

24 a. "Commission" means the environmental protection
25 commission created in section 455A.6.

26 b. "Confinement feeding operation" means the same as
27 defined in section 455B.161.

28 c. "Department" means the department of natural resources.

29 d. "Suspect site" means a confinement feeding operation or
30 land where a confinement feeding operation could be
31 constructed, if the site is subject to a suspect transaction.

32 e. "Suspect transaction" means a transaction in which a
33 person classified as a chronic violator under this section
34 does any of the following:

35 (1) Transfers a controlling interest in a suspect site to

1 any of the following:

2 (a) An employee of the chronic violator or business in
3 which the person holds a controlling interest.

4 (b) A person who holds an interest in a business,
5 including a confinement feeding operation, in which the
6 chronic violator holds a controlling interest.

7 (c) A person related to the chronic violator as spouse,
8 parent, grandparent, lineal ascendant of a grandparent or
9 spouse and any other lineal descendant of the grandparent or
10 spouse, or a person acting in a fiduciary capacity for a
11 related person.

12 (2) Provides financing for the construction or operation
13 of a confinement feeding operation to any person, including by
14 providing a contribution, loan to the person, or providing
15 collateral for a contribution or loan made by a third person.

16 2. The rebuttable presumption provided in section 657.11
17 does not apply to a person during any period that the person
18 is classified as a chronic violator under this section as to
19 any confinement feeding operation in which the person holds a
20 controlling interest, as defined by rules adopted by the
21 department of natural resources. The rebuttable presumption
22 shall apply to the person on and after the date that the
23 person is removed from the classification of chronic violator.

24 3. A person shall be classified as a chronic violator if
25 the person has committed three or more violations as described
26 in this subsection prior to, on, or after July 1, 1996. In
27 addition, in relation to each violation, the person must have
28 been subject to either of the following:

29 a. The assessment of a civil penalty by the department or
30 the commission in an amount equal to three thousand dollars or
31 more.

32 b. A court order or judgment for a legal action brought by
33 the attorney general after referral by the department or
34 commission.

35 4. Each violation must have occurred within five years

1 prior to the date of the latest violation, counting any
2 violation committed by a confinement feeding operation in
3 which the person holds a controlling interest. A violation
4 occurs on the date the department issues an administrative
5 order to the person assessing a civil penalty of three
6 thousand dollars or more, or on the date the department
7 notifies a person in writing that the department will
8 recommend that the commission refer, or the commission refers
9 the case to the attorney general for legal action, or the date
10 of entry of the court order or judgment, whichever occurs
11 first. A violation under this subsection shall not be counted
12 if the civil penalty ultimately imposed is less than three
13 thousand dollars, the department or commission does not refer
14 the action to the attorney general, the attorney general does
15 not take legal action, or a court order or judgment is not
16 entered against the person. A person shall be removed from
17 the classification of chronic violator on the date on which
18 the person and all confinement feeding operations in which the
19 person holds a controlling interest have committed less than
20 three violations described in this subsection for the prior
21 five years.

22 5. For purposes of counting violations, a continuing and
23 uninterrupted violation shall be considered as one violation.
24 Different types of violations shall be counted as separate
25 violations regardless of whether the violations were committed
26 during the same period. The violation must be a violation of
27 a state statute, or a rule adopted by the department, which
28 applies to a confinement feeding operation and any related
29 animal feeding operation structure, including an anaerobic
30 lagoon, earthen manure storage basin, formed manure storage
31 structure, or egg washwater storage structure, or any related
32 pollution control device or practice. The structure, device,
33 or practice must be part of the confinement feeding operation.
34 The violation must be one of the following:

35 a. Constructing or operating a related animal feeding

1 operation structure or installing or using a related pollution
2 control device or practice, for which the person must obtain a
3 permit, in violation of statute or rules adopted by the
4 department, including the terms or conditions of the permit.

5 b. Intentionally making a false statement or
6 misrepresenting information to the department as part of an
7 application for a construction permit for the related animal
8 feeding operation structure, or the installation of the
9 related pollution control device or practice, for which the
10 person must obtain a construction permit from the department.

11 c. Failing to obtain a permit or approval by the
12 department for a permit to construct or operate a confinement
13 feeding operation or use a related animal feeding operation
14 structure or pollution control device or practice, for which
15 the person must obtain a permit from the department.

16 d. Operating a confinement feeding operation, including a
17 related animal feeding operation structure or pollution
18 control device or practice, which causes pollution to the
19 waters of the state, if the pollution was caused
20 intentionally, or caused by a failure to take measures
21 required to abate the pollution which resulted from an act of
22 God.

23 e. Failing to submit a manure management plan as required,
24 or operating a confinement feeding operation required to have
25 a manure management plan without having submitted the manure
26 management plan.

27 6. A suspect transaction shall be presumed to be made in
28 order to avoid a cause of action for nuisance brought against
29 the person classified as a chronic violator. The person
30 receiving control of the operation pursuant to the suspect
31 transaction shall be deemed to be an agent of the chronic
32 violator, unless the chronic violator and the person receiving
33 the controlling interest in the confinement feeding operation
34 because of the suspect transaction, prove by clear and
35 convincing evidence all of the following:

1 a. That the suspect transaction was for a legitimate
2 business purpose made by parties exercising independent and
3 reasonable judgment.

4 b. That the chronic violator does not exercise a
5 controlling influence over the business affairs of the
6 confinement feeding operation.

7 7. If the person receiving control of a suspect site is
8 deemed to be an agent of a chronic violator, the presumption
9 that the confinement feeding operation is not a public or
10 private nuisance as provided in section 657.11 shall not apply
11 for as long as the chronic violator, including the agent, or
12 the confinement feeding operation is classified as a chronic
13 violator.

14 Sec. 38. 1995 Iowa Acts, chapter 195, section 38, is
15 amended to read as follows:

16 SEC. 38. INDEMNITY FEES -- PRIOR PERMITTEES.

17 1. The indemnity fee imposed upon permittees pursuant to
18 section 204.3, as enacted in this Act, shall be imposed upon
19 all persons who have received a permit by the department of
20 natural resources for the construction of a confinement
21 feeding operation with a manure storage structure as defined
22 in section ~~455B-161~~ 204.1, as enacted in this Act, prior to
23 the effective date of this Act. However, an indemnity fee
24 shall not be imposed upon a-person the following persons:

25 a. A person who has received a construction permit more
26 than ten years prior to the effective date of this Act.

27 b. A person who has received a construction permit within
28 ten years prior to May 31, 1995, if the confinement feeding
29 operation was not constructed under the permit and the permit
30 has expired.

31 2. To every extent possible, the department of natural
32 resources shall notify all persons required to pay the fee.
33 The notice shall be in writing. The department shall
34 establish a date when the fees must be paid to the department,
35 which shall be not less than three months after the delivery

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1 of the notice. If a person is delinquent in paying the
2 indemnity fee when due, or if upon examination, an
3 underpayment of the fee is found by the department, the person
4 is subject to a penalty of ten dollars or an amount equal to
5 the amount of deficiency for each day of the delinquency,
6 whichever is less. ~~After the date required for payment, the~~
7 ~~department shall transfer all outstanding claims to the~~
8 ~~department of agriculture and land stewardship.~~

9 3. The department of natural resources shall deliver to
10 receive from the department of agriculture and land
11 stewardship the most current available information regarding
12 the persons required to pay the fee and any delinquency
13 penalty, ~~including the names and addresses of the persons, and~~
14 ~~the capacity of the confinement feeding operations subject to~~
15 ~~the permit.~~ The department of agriculture and land
16 stewardship natural resources, in cooperation with the
17 attorney general, may bring a court action in order to collect
18 indemnity fees and delinquency penalties required to be paid
19 under this section.

20 Sec. 39. AMNESTY PERIOD. Notwithstanding 1995 Iowa Acts,
21 chapter 195, section 38, a person who has not paid an
22 indemnity fee as required by that Act, as amended by this Act,
23 shall not be subject to a delinquency penalty as provided in
24 that Act, if the person pays the full amount of the indemnity
25 fee to the department of agriculture and land stewardship on
26 or before June 30, 1998, as required by the department.

27 Sec. 40. EFFECT OF THIS ACT -- REFUND. Nothing in this
28 Act requires the department of natural resources or the
29 department of agriculture and land stewardship to refund an
30 indemnity fee or delinquency penalty payment paid by
31 permittees pursuant to 1995 Iowa Acts, chapter 195, section
32 38.

33 Sec. 41. INDEMNITY FEES -- PRIOR MANURE MANAGEMENT PLAN
34 SUBMITTEES.

35 1. The indemnity fee imposed upon persons required to

1 submit a manure management plan pursuant to section 204.3A, as
2 enacted in this Act, shall be imposed upon all persons who
3 were required to submit a manure management plan to the
4 department of natural resources pursuant to 567 IAC section
5 65.18(455B).

6 2. To every extent possible, the department shall notify
7 all persons required to pay the fee. The notice shall be in
8 writing. The department shall establish a date when the fees
9 must be paid to the department, which shall be not less than
10 three months after the delivery of the notice. If a person is
11 delinquent in paying the indemnity fee when due, or if upon
12 examination, an underpayment of the fee is found by the
13 department, the person is subject to a penalty of ten dollars
14 or an amount equal to the amount of deficiency for each day of
15 the delinquency, whichever is less.

16 Sec. 42. INDEMNITY FEES -- PRIOR CONSTRUCTION PERMITTEES.
17 The department of agriculture and land stewardship shall
18 deliver to the department of natural resources the most
19 current available information regarding persons required to
20 pay the indemnity fee imposed pursuant to 1995 Iowa Acts,
21 chapter 195, section 38. The department of natural resources,
22 in cooperation with the attorney general, may bring a court
23 action in order to collect indemnity fees and delinquency
24 penalties as provided in that Act for deposit into the manure
25 storage indemnity fund as created in section 204.2.

26 Sec. 43. MANURE MANAGEMENT PLAN SUBMISSIONS. All persons
27 required to submit a manure management plan pursuant to
28 section 455B.203 as amended by this Act shall submit a manure
29 management plan according to the same requirements, as
30 provided in that section or rules adopted by the department
31 pursuant to that section. Persons who have submitted a manure
32 management plan that complies with those requirements are not
33 required to submit a new manure management plan. Persons who
34 have not submitted a manure management plan that complies with
35 those requirements shall not be required to submit a new

1 indemnity fund which was established in order to reimburse
2 counties for expenses incurred by counties in cleaning up
3 manure storage structures on a site that the county received
4 due to nonpayment of back taxes. The fund is supported by
5 fees paid by persons obtaining construction permits from the
6 department of natural resources for confinement feeding
7 operations. The bill provides that if moneys are not
8 sufficient to support the fund, the executive council may
9 allocate up to \$3 million from the general fund in order to
10 help satisfy claims by counties. The bill also doubles the
11 fees paid by permittees.

12 The bill prohibits a county from adopting or enforcing
13 county legislation regulating an agricultural operation,
14 unless expressly authorized by state law.

15 The bill amends a number of provisions in Code chapter 455
16 which regulates animal feeding operations. The bill provides
17 for determining when adjacent confinement feeding operations
18 are considered as a single operation.

19 The bill amends separation distance requirements between
20 animal feeding operation structures and homes, schools,
21 businesses, and churches, by increasing several of those
22 separation distance requirements.

23 The bill amends Code section 455B.173, subsection 13,
24 providing for the issuance of permits by the department for
25 animal feeding operations. The bill transfers that section
26 for purposes of enhancing readability, and amends several of
27 its provisions.

28 The bill provides that a county board of supervisors may
29 hold a public hearing to receive public comments regarding an
30 application for a construction permit for an animal feeding
31 operation. The county board of supervisors may submit
32 comments by the board and the public to the department. The
33 bill provides that a county board of supervisors may contest
34 the decision as provided by rules adopted by the environmental
35 protection commission in conformance with Code chapter 17A.

1 The bill requires the owner of a confinement feeding
2 operation, other than a small animal feeding operation, to
3 submit a manure management plan, regardless of whether a
4 permit is required for the operation. The bill also provides
5 that an out-of-state owner must submit a manure management
6 plan if the manure is applied in this state.

7 The bill provides for the certification of commercial
8 manure applicators and persons who apply manure which
9 originates from a confinement feeding operation other than a
10 small animal feeding operation. The bill provides that a
11 manure applicator is prohibited from applying manure unless
12 the person is certified by the department. The requirements
13 involve passing an examination and taking continuing
14 instructional courses. The requirements are similar to
15 requirements imposed upon commercial pesticide applicators.
16 The bill assesses fees for certification.

17 The bill requires the department of natural resources to
18 adopt rules governing the application of manure originating
19 from an anaerobic lagoon or aerobic structure which is part of
20 a confinement feeding operation. The rules must establish
21 application rates and practices to minimize groundwater or
22 surface water pollution resulting from application, including
23 pollution caused by runoff or other manure flow resulting from
24 precipitation events. The rules shall establish different
25 application rates and practices based on the water holding
26 capacity of the soil at the time of application. The bill
27 restricts the use of spray irrigation equipment used to apply
28 manure with a large dispersal rate.

29 The bill requires the department to establish engineering
30 standards for the construction of formed manure storage
31 structures. The bill provides special requirements for
32 unformed structures. The rules adopted by the department
33 shall account for special design characteristics of animal
34 feeding operations. The department must to every extent
35 practical cooperate with the state office and field offices of

1 the natural resources conservation service of the United
2 States department of agriculture in adopting construction
3 standards for anaerobic lagoons.

4 The bill provides separation distances between animal
5 feeding operation structures and watercourses, including
6 increasing the distance required between an animal feeding
7 operation structure and a lake, river, or stream located
8 within the territorial limits of the state, or a marginal
9 river area adjacent to the state.

10 The bill imposes a moratorium on the construction or
11 expansion of earthen manure storage basins.

12 The bill amends a provision of law which currently
13 prohibits a habitual violator from obtaining a permit by the
14 department of natural resources for the construction or
15 operation of another animal feeding operation. This bill
16 extends that prohibition to apply to all environmental permits
17 issued by the department under Code chapter 455B.

18 The bill provides that a transaction involving a habitual
19 violator or a chronic violator may be considered suspect, if
20 the transaction involves (1) transferring a controlling
21 interest in the operation or land where an operation may be
22 constructed to a person who is financially close or family
23 related or (2) financing the construction or operation of a
24 confinement feeding operation. The bill provides that a
25 suspect transaction is not recognized for purposes of
26 enforcing environmental laws or claiming nuisance suit
27 protection, unless the violator and the person receiving a
28 controlling interest in a confinement feeding operation prove
29 by clear and convincing evidence that the transaction was for
30 a legitimate business purpose made by parties exercising
31 independent and reasonable judgment, and the chronic violator
32 does not exercise a controlling influence over the business
33 affairs of the confinement feeding operation. This bill
34 provides that the indemnity fee is not assessable if the
35 confinement feeding operation was not constructed under a

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1 construction permit and the permit has expired. The bill also
2 provides that a person who has not paid an indemnity fee is
3 not subject to a delinquency penalty if the person pays the
4 full amount of the indemnity fee to the department of
5 agriculture and land stewardship on or before June 30, 1998,
6 as required by the department.

7 The bill requires that the department consult with members
8 of organizations representing various interests known as the
9 animal agriculture consulting organization.

10 This bill provides that the indemnity fee is not assessable
11 if the confinement feeding operation was not constructed under
12 a construction permit and the permit has expired. The bill
13 also provides that a person who has not paid an indemnity fee
14 is not subject to a delinquency penalty if the person pays the
15 full amount of the indemnity fee to the department of natural
16 resources on or before June 30, 1998, as required by the
17 department.

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HOUSE FILE 2494

AN ACT

PROVIDING FOR AGRICULTURAL PRODUCTION, INCLUDING REGULATING ANIMAL FEEDING OPERATIONS AND MAKING PENALTIES APPLICABLE AND PROVIDING EFFECTIVE DATES.

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

Section 1. NEW SECTION. 7D.10A ALLOCATION TO MANURE STORAGE INDEMNITY FUND.

If moneys are not sufficient to support the manure storage indemnity fund as provided in chapter 204, the executive council may allocate from moneys in the general fund of the state, which are not otherwise obligated or encumbered, an amount to the manure storage indemnity fund as provided under section 204.2. However, not more than a total of one million dollars shall be allocated to the manure storage indemnity fund at any time.

Sec. 2. Section 204.1, subsections 4, 8, and 9, Code 1997, are amended to read as follows:

4. "Department" means the department of ~~agriculture and land-stewardship~~ natural resources.

8. "Manure storage structure" means ~~a structure used to store manure as part of a confinement-feeding operation~~

~~subject to a construction permit issued by the department of natural resources pursuant to section 455B.173. A manure storage structure includes, but is not limited to, an anaerobic lagoon, formed manure storage structure, or earthen manure storage basin, the same as defined in section 455B.161 455B.171.~~

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

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

2. The fund consists of moneys from indemnity fees remitted by permittees to the department of ~~natural resources and transferred to the department of agriculture and land stewardship~~ as provided in section 204.3; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 204.3A; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this chapter; civil penalties assessed and collected by the department of ~~natural resources or the attorney general~~ pursuant to chapter 455B, against permittees animal feeding operations; moneys paid as a settlement involving an enforcement action for a civil penalty subject to assessment and collection against permittees by the department of ~~natural resources or the attorney general~~ pursuant to chapter 455B; interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. The moneys collected under this section and shall be deposited in the fund and shall be appropriated to the department for the exclusive purpose of indemnifying a county for expenses related to cleaning up the site of the confinement-feeding operation, including removing and

disposing-of-manure-from-a-manure-storage-structure providing moneys for cleanup of abandoned facilities as provided in section 204.4, and to pay the department for costs related to administering the provisions of this chapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

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

a. On August 31 following the close of each fiscal year, moneys in the fund which are not obligated or encumbered on June 30 of the past fiscal year, less not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, and which are in excess of one three million dollars, shall be deposited in the organic nutrient management fund as created in section 161C.5 for purposes of supporting the organic nutrient management program.

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

c. The department shall credit an amount to the general fund of the state which is equal to an amount allocated to the fund by the executive council under paragraph "b". The department shall credit the moneys to the general fund of the

state, if the moneys in the fund which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be transferred to the general fund under this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the general fund of the state during any one fiscal year.

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

204.3 FEES.

An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department of natural resources, prior to issuing a permit for the construction of a confinement feeding operation as provided in section 455B:173 455B.200A. The amount of the fees shall be based on the following:

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

a. For all animals other than poultry, the amount of the fee shall be five ten cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be two four cents per animal unit of capacity for confinement feeding operations.

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

a. For all animals other than poultry, the amount of the fee shall be seven-and-one-half fifteen cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be three six cents per animal unit of capacity for confinement feeding operations.

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

a. For all animals other than poultry, the amount of the fee shall be ten twenty cents per animal unit of capacity for confinement feeding operations.

b. For poultry, the amount of the fee shall be four eight cents per animal unit of capacity for confinement feeding operations.

The department ~~of natural resources~~ shall deposit moneys collected from the fees into the fund according to procedures adopted by the department ~~of agriculture and land stewardship~~.

Sec. 5. NEW SECTION. 204.3A MANURE MANAGEMENT PLAN -- INDEMNITY FEE REQUIRED.

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

Sec. 6. Section 204.4, subsections 1 and 2, Code 1997, are amended to read as follows:

1. A county that has acquired real estate containing a manure storage structure following nonpayment of taxes pursuant to section 446.19, may make a claim against the fund to ~~pay the costs of cleaning up the site of the confinement feeding operation, including the costs of removing and disposing of the manure from a manure storage structure~~ cleanup costs incurred by the county as provided in section 204.5. Each claim shall include a bid by a qualified person, other than a governmental entity, to remove and dispose of the manure for a fixed amount specified in the bid.

2. The If a county provides cleanup under section 204.5 after acquiring real estate following nonpayment of taxes, the department shall determine if a claim is eligible to be satisfied under this section subsection, and do one of the following:

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

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

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

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

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

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

204.5 ~~SIFB~~ CLEANUP.

1. a. A county which that has acquired real estate containing on which there is located a confinement feeding operation structure, as defined in section 455B:361, following the nonpayment of taxes pursuant to section 446.19, may clean up the site provide for cleanup, including removing and disposing of manure at any time, remediating contamination which originates from the confinement feeding operation, or

demolishing and disposing of structures relating to the confinement feeding operation. The county may seek reimbursement including by bringing an action for the costs of the ~~removal-and-disposal~~ cleanup from the person abandoning the real estate.

b. If the confinement feeding operation has caused a clear, present, and impending danger to the public health or the environment, the department may clean up the confinement feeding operation and remediate contamination which originates from the confinement feeding operation, pursuant to sections 455B.381 through 455B.399. If the department fails to commence cleanup within twenty-four hours after being notified of a condition requiring cleanup, the county may provide for the cleanup as provided in this paragraph. The department or county may seek reimbursement including by bringing an action for the costs of the cleanup from a person liable for causing the condition.

2. A person cleaning up a site confinement feeding operation located on real estate acquired by a county may demolish or dispose of any building or equipment used-in of the confinement feeding operation located on the land according to rules adopted by the department of ~~natural resources~~ pursuant to chapter 17A, which apply to the disposal of farm buildings or equipment by an individual or business organization.

Sec. 9. NEW SECTION. 331.304A LIMITATIONS ON COUNTY LEGISLATION.

1. As used in this section:

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

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

2. A county shall not adopt or enforce county legislation regulating a condition or activity occurring on land used for

the production, care, feeding, or housing of animals unless the regulation of the production, care, feeding, or housing of animals is expressly authorized by state law. County legislation adopted in violation of this section is void and unenforceable and any enforcement activity conducted in violation of this section is void. A condition or activity occurring on land used for the production, care, feeding, or housing of animals includes but is not limited to the construction, operation, or management of an animal feeding operation, an animal feeding operation structure, or aerobic structure, and to the storage, handling, or application of manure or egg washwater.

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

455B.104 DEPARTMENTAL DUTIES -- PERMITS -- REQUIREMENTS AND ASSISTANCE.

1. The department shall either approve or deny a permit to a person applying for a permit under this chapter, within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this ~~section~~ subsection shall not apply to applications for permits which are issued under division II, or division IV, parts 2 through 7.

2. For five years after the date of the last violation of this chapter committed by a person or by a confinement feeding operation in which the person holds a controlling interest during which the person or confinement feeding operation was classified as a habitual violator under section 455B.191, all of the following shall apply:

a. The department may not issue a new permit under this chapter to the person or confinement feeding operation.

b. The department may revoke or refuse to renew an existing permit issued under this chapter, to the person or

confinement feeding operation, if the permit relates to a confinement feeding operation, and the department determines that the continued operation of the confinement feeding operation under the existing permit constitutes a clear, present, and impending danger to the public health or environment.

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

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

455B.110 ANIMAL FEEDING OPERATIONS ---~~COMMISSION-APPROVAL~~
OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

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

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

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

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

(2) If the county board of supervisors determines that the allegation constitutes a violation, it shall forward the complaint to the department which shall investigate the complaint as provided in this section.

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint, if the department determines that the complaint is legally sufficient and an investigation is justified. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

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

(2) The department shall notify the county board of supervisors in the county where the violation is alleged to occur prior to investigating the premises of the alleged violation. However, the department is not required to provide notice if the department determines that a clear, present, and impending danger to the public health or environment requires immediate action.

(3) The county board of supervisors may designate a county employee to accompany a departmental official during the investigation of the premises of a confinement feeding operation. The county designee shall have the same right of access to the real estate of the premises as the departmental official conducting the inspection during the period that the county accompanies the departmental official.

(4) Upon the completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending, or completed enforcement action arising from the investigation. The department shall deliver a copy of the notice to the

animal feeding operation that is the subject of the complaint and the board of supervisors of the county where the violation is alleged to have occurred.

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

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

3. The department shall not initiate an enforcement action in response to a violation by an animal feeding operation as provided in this chapter or a rule adopted pursuant to this chapter, or request the commencement of legal action by the attorney general pursuant to section 455B.141, unless the commission has approved the intended action. This section subsection shall not apply to an enforcement action in which the department enforces a civil penalty of three thousand dollars or less. This section subsection shall also not apply to an order to terminate an emergency issued by the director pursuant to section 455B.175.

Sec. 12. Section 455B.161, Code 1997, is amended by adding the following new subsections:

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

NEW SUBSECTION. 5A. "Cemetery" means a space held for the purpose of permanent burial, entombment, or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to chapter

523I or 566A. However, "cemetery" does not include a pioneer cemetery as defined in section 331.325.

NEW SUBSECTION. 19A. "Spray irrigation equipment" means the same as defined in section 455B.171.

NEW SUBSECTION. 21. "Unformed manure storage structure" means a covered or uncovered animal feeding operation structure in which manure is stored, other than a formed manure storage structure, which is an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

Sec. 13. Section 455B.161, subsection 17, Code 1997, is amended to read as follows:

17. "Public use area" means that any of the following:

a. A portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

b. A cemetery.

Sec. 14. NEW SECTION. 455B.161A CONFINEMENT FEEDING OPERATIONS -- SPECIAL TERMS.

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

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

a. An animal feeding operation structure which is part of one confinement feeding operation is located within the following distance from an animal feeding operation structure which is part of the other confinement feeding operation:

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Excavation for a proposed animal feeding operation structure or proposed expansion of an existing animal feeding operation structure, including excavation for the footings of the animal feeding operation structure.

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

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

Sec. 15. Section 455B.162, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The following shall apply to animal feeding operation structures:

1. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after May 31, 1995, but prior to the effective date of this section; and to the expansion of structures constructed on-or-after-May-31, 1995, or except as provided in section 455B.163 to the expansion of structures constructed prior to May-31-1995; the effective date of this section.

Sec. 16. Section 455B.162, subsection 1, Code 1997, is amended to read as follows:

~~1. Except as provided in subsection 2, the following table shall apply to animal feeding operation structures:~~

a. The following table represents the minimum separation distance in feet required between an animal feeding operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than	Minimum separation distance in feet for operations having an	Minimum separation distance in feet for operations having an
	animal	animal
	weight	weight
	capacity of	capacity of
	625,000 or	625,000 or
	more pounds	more pounds
	but less than	but less than
	having an	having an

Type of structure	weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	1,250,000 pounds for animals other than bovine, or 1,600,000 pounds but less than 4,000,000 pounds for bovine	animal weight capacity of 1,250,000 more pounds for animals other than bovine, or 4,000,000 more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,000	1,500	2,000
Covered earthen manure storage basin	750	1,000	1,500
Covered formed manure storage structure	750	1,000	1,500
Confinement building	750	1,000	1,500
Egg washwater storage structure	750	1,000	1,500

1A. Except as provided in subsection 2, and sections 455B.163 and 455B.165, this subsection applies to animal feeding operation structures constructed on or after the effective date of this section and to the expansion of structures constructed on or after the effective date of this section. The following table represents the minimum separation distance in feet required between an animal feeding

operation structure and a residence not owned by the owner of the animal feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution;

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of less than 1,250,000 pounds for animals other than bovine, or 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 more pounds for animals other than bovine, or 4,000,000 more pounds for bovine
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,250	1,500	2,000
Covered earthen manure storage			

basin	1,000	1,250	1,875
<u>Covered formed manure storage structure</u>	1,000	1,250	1,875
<u>Confinement building</u>	1,000	1,250	1,875
<u>Egg washwater storage structure</u>	750	1,000	1,500

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

Minimum separation distance in feet for operations having an animal weight capacity of less than	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	Minimum separation distance in feet for operations having an animal weight capacity of

625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for	than bovine, or 1,600,000 or more pounds but less than 4,000,000 pounds for	1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
<u>Type of structure bovine</u>	<u>bovine</u>	<u>for bovine</u>

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

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

Sec. 17. Section 455B.162, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. As used in this subsection, a "qualified confinement feeding operation" means a confinement feeding operation having an animal weight capacity of two million or more pounds for animals other than animals kept in a swine farrow-to-finish operation or bovine kept in a confinement feeding operation; a swine farrow-to-finish operation having an animal weight capacity of two million five hundred thousand or more pounds; or a confinement feeding operation having an animal weight capacity of ~~six~~ eight million or more pounds for bovine.

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

455B.163 SEPARATION DISTANCE REQUIREMENTS FOR ANIMAL FEEDING OPERATIONS -- EXPANSION OF STRUCTURES-CONSTRUCTED PRIOR-TO-MAY-31,1995 PRIOR CONSTRUCTED OPERATIONS.

An animal feeding operation constructed or expanded prior to the date that a distance requirement became effective under section 455B.162 and which does not comply with the section's distance requirements-of-section-455B.162-on-May-31,1995, requirement may continue to operate regardless of those separation-distances the distance requirement. The animal feeding operation may be expanded on-or-after-May-31,1995, regardless-of-those-separation-distances, if either any of the following applies:

1. a. The An animal feeding operation structure as constructed or expanded prior to the effective date of this section, complies with the distance requirements of applying to that structure as provided in section 455B.162.

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

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

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

b. The animal weight capacity of the animal feeding operation as expanded is not more than the lesser of the following:

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

(2) Either of the following:

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

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

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

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

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

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

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

Sec. 19. Section 455B.164, Code 1997, is amended to read as follows:

455B.164 DISTANCE MEASUREMENTS.

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

Sec. 20. Section 455B.165, subsections 2, 3, and 5, Code 1997, are amended to read as follows:

2. A confinement feeding operation structure, ~~other than an earthen manure storage basin~~, if the structure is part of a confinement feeding operation which qualifies as a small animal feeding operation. However, this subsection shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

3. a. An animal feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located, if an animal feeding operation structure is constructed or expanded within the separation distance required between an animal feeding operation structure and a thoroughfare as required pursuant to section 455B.162, the state or a political subdivision constructing or maintaining the thoroughfare benefiting from the distance separation requirement may execute a written waiver with the titleholder of the land where the structure is located. The animal feeding operation structure shall be constructed or expanded under such terms and conditions that the parties negotiate.

b. The A written waiver under this subsection becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of this part section 455B.162 as it relates to a distance requirement between the animal feeding operation structure and the location or object benefiting from the separation distance requirement.

5. An animal feeding operation structure which is ~~located~~ constructed or expanded within any distance from a residence, educational institution, commercial enterprise, bona fide religious institution, city, or public use area, if the residence, educational institution, commercial enterprise, or

bona fide religious institution was constructed or expanded, or the boundaries of the city or public use area were expanded, after the date that the animal feeding operation was established. The date the animal feeding operation was established is the date on which the animal feeding operation commenced operating. A change in ownership or expansion of the animal feeding operation shall not change the established date of operation.

Sec. 21. Section 455B.165, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. An animal feeding operation structure which is constructed or expanded within a separation distance required between an animal feeding operation structure and a thoroughfare as required pursuant to section 455B.162, if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which the separation distance is measured as provided in section 455B.164. The permanent vegetation must stand along the full length of the animal feeding operation structure. The permanent vegetation must be at least seedlings and have a mature predicted height of at least twenty feet. The department shall adopt rules to carry out this subsection.

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

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

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

c. The liquid manure originates from a small animal feeding operation.

d. The liquid manure is applied by spray irrigation equipment using a center pivot mechanism as provided by rules adopted by the department, if all of the following apply:

- (1) The spray irrigation equipment uses hoses which discharge the liquid manure in a downward direction at a height of not more than nine feet above the soil.
- (2) The spray irrigation equipment disperses manure through an orifice at a rate of not more than twenty-five pounds per square inch.
- (3) The liquid manure is not applied within two hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

NEW SUBSECTION. 7. The distance between an animal feeding operation structure and a cemetery, if any of the following applies:

a. The animal feeding operation structure was constructed or expanded prior to the effective date of this section of this Act.

b. The construction or expansion of the animal feeding operation structure began prior to the effective date of this section of this Act.

Sec. 22. Section 455B.171, Code Supplement 1997, is amended by adding the following new subsections:

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

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

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

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

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

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

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

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

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

Sec. 23. Section 455B.173, subsection 13, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

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

Sec. 24. Section 455B.191, subsection 7, unnumbered paragraph 2, Code 1997, is amended to read as follows:

This subsection shall not apply unless the department of natural resources has previously notified the person of the person's classification as a habitual violator as provided in section 455B.173. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to their classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

Sec. 25. NEW SECTION. 455B.200 GENERAL.

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

Sec. 26. NEW SECTION. 455B.200A PERMIT REQUIREMENTS.

1. The department shall issue permits for the construction, including the expansion, of animal feeding operation structures, including structures which are part of confinement feeding operations, as provided by rules adopted pursuant to section 455B.200. The department shall issue a permit to an animal feeding operation if an application is submitted according to procedures required by the department and the application meets standards established by the department, regardless of whether the animal feeding operation is required to obtain such a permit. The department shall not require that a person obtain a permit for the construction of an animal feeding operation structure if the structure is part of a small animal feeding operation. For purposes of this section, an animal feeding operation structure includes a manure storage structure.

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

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

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

3. The department shall not issue a permit for the construction of three or more animal feeding operation structures unless the applicant files a statement approved by a professional engineer registered pursuant to chapter 542B

certifying that the construction of the animal feeding operation structures will not impede the drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction.

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

5. An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure until the person has been granted a permit for the construction of the animal feeding operation structure by the department.

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

7. The department shall deliver a copy or require the applicant to deliver a copy of the application for a construction permit for the construction of a confinement feeding operation or related animal feeding operation structure, including supporting documents, to the county board of supervisors in the county where the confinement feeding operation or related animal feeding operation structure subject to the permit is proposed to be constructed.

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

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

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

- (a) The name of the person applying to receive the construction permit.
- (b) The name of the township where the confinement feeding operation or animal feeding operation is to be constructed or expanded.
- (c) Each type of animal feeding operation proposed to be constructed or expanded.
- (d) The animal weight capacity of the confinement feeding operation if the construction permit is approved.

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

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

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

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

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

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

(d) Whether the construction or expansion of a proposed animal feeding operation structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage

of land not owned by the person applying for the construction permit.

b. The department shall notify the county board of supervisors at least three days prior to conducting an inspection of the site that the construction is proposed in the permit application. The county board of supervisors may designate a county employee to accompany a departmental official during the site inspection. The county designee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

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

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

8. The department shall notify the county board of supervisors of the county where a confinement feeding operation or related animal feeding operation structure subject to a construction permit is proposed to be constructed. The notice shall state the department's decision to approve or disapprove an application for the construction permit. The notice shall be delivered to the county within three days following the department's decision. The county board of supervisors may contest the decision by filing a demand for a hearing before the commission as provided by

rules adopted by the department in conformance with chapter 17A. In contesting the decision, the county shall submit a statement to the department, providing all reasons why the application should be approved or disapproved according to legal requirements provided in this chapter.

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

b. The contested decision shall be heard by the commission according to procedures adopted by the commission. The commission may hear the case as a contested case proceeding under chapter 17A. The commission shall render a decision within thirty-five days from the date that the county board of supervisors files a demand for a hearing. The decision of the commission shall be final agency action under chapter 17A.

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

b. The department shall not issue a permit to a person under this section for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 455B.191.

Sec. 27. NEW SECTION. 455B.200B CONFINEMENT FEEDING OPERATIONS -- SPECIAL TERMS.

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

1. Two or more confinement feeding operations are adjacent if any of the following apply:

a. All of the following apply:

(1) An animal feeding operation structure which is part of one confinement feeding operation is located within one thousand two hundred fifty feet from an animal feeding

operation structure which is part of the other confinement feeding operation.

(2) The confinement feeding operations have a combined animal weight capacity of the following:

(a) For animals other than bovine, less than six hundred twenty-five thousand pounds.

(b) For bovine, less than one million six hundred thousand pounds.

(3) An animal feeding operation structure subject to the distance requirements of this paragraph must be constructed or expanded on or after the effective date of this section.

b. All of the following apply:

(1) An animal feeding operation structure which is part of one confinement feeding operation is located within two thousand five hundred feet from an animal feeding operation structure which is part of the other confinement feeding operation.

(2) The confinement feeding operations have a combined animal weight capacity of the following:

(a) For animals other than bovine, six hundred twenty-five thousand pounds or more.

(b) For bovine, one million six hundred thousand pounds or more.

(3) An animal feeding operation structure subject to the distance requirements of this paragraph must be constructed on or after the effective date of this section.

2. An animal feeding operation structure is "constructed" in the same manner as provided in section 455B.161A.

Sec. 28. Section 445B.201, subsection 4, Code 1997, is amended by striking the subsection.

Sec. 29. Section 455B.202, Code Supplement 1997, is amended to read as follows:

455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING ACTIONS AND HABITUAL VIOLATORS.

1. As used in this section, "construction"--means-the-same as-defined-by-rules-adopted-by-the-department-applicable-to

~~the construction of animal feeding operation structures as provided in this part unless the context otherwise requires;~~

a. "Habitual violator" means a person classified as a habitual violator pursuant to section 455B.191.

b. "Operation of law" means a transfer by inheritance, devise or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

c. "Suspect site" means a confinement feeding operation or land where a confinement feeding operation could be constructed, if the site is subject to a suspect transaction.

d. "Suspect transaction" means a transaction in which a habitual violator does any of the following:

(1) Transfers a controlling interest in a suspect site to any of the following:

(a) An employee of the habitual violator or business in which the person holds a controlling interest.

(b) A person who holds an interest in a business, including a confinement feeding operation, in which the habitual violator holds a controlling interest.

(c) A person related to the habitual violator as spouse, parent, grandparent, lineal ascendant of a grandparent or spouse and any other lineal descendant of the grandparent or spouse, or a person acting in a fiduciary capacity for a related person. This paragraph does not apply to a transaction completed by an operation of law.

(2) Provides financing for the construction or operation of a confinement feeding operation to any person, by providing a contribution or loan to the person, or providing cash or other tangible collateral for a contribution or loan made by a third person.

e. "Transaction" includes a transfer in any manner or by any means, including any of the following:

(1) Delivery and acceptance between two parties, including by contract or agreement with or without consideration, including by sale, exchange, barter, or gift.

(2) An operation of law.

2. a. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation, if the person is any of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator ~~under section 455B.191.~~

~~3. c.~~ This section subsection shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if any of the following apply:

a. (1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

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

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

3. A person who receives a controlling interest in a suspect site pursuant to a suspect transaction must submit a notice of the transaction to the department within thirty

days. If, after notice and opportunity to be heard, pursuant to the contested case provisions of chapter 17A, the department finds that one purpose of the transaction was to avoid the conditions and enhanced penalties imposed upon a habitual violator, the person shall be subject to the same conditions and enhanced penalties as applied to the habitual violator at the time of the transaction.

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

Sec. 30. Section 455B.203, subsection 1, Code 1997, is amended to read as follows:

1. In-order-to-receive The following persons shall submit a manure management plan to the department:

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

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

c. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

1A. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan submitted by the owner of the confinement feeding operation as provided by the department on forms prescribed by the department. The department may adopt rules allowing a person

to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department. The department shall approve or disapprove a manure management plan within sixty days of the date that the department receives a completed plan. The department shall not issue a permit for the construction of a confinement feeding operation or a related animal feeding operation structure unless the applicant submits a manure management plan together with an application as provided in section 455B-173; a person shall submit a manure management plan to the department together with the application for a construction permit 455B.200A.

Sec. 31. Section 455B.203, subsection 4, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A person receiving a permit for the construction of a confinement feeding operation required to submit a manure management plan to the department shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

Sec. 32. Section 455B.203, subsection 5, Code 1997, is amended to read as follows:

5. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 455B.191. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection. However, in-order-to-access-the-operation, the

~~departmental-inspector-must-comply-with-standard-disease control-restrictions-customarily-required-by-the-operation. The department shall comply with section 455B.103 in conducting an investigation of the premises where the animals are kept.~~

Sec. 33. NEW SECTION. 455B.203A MANURE APPLICATORS CERTIFICATION.

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

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

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

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

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

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

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

b. A person required to be certified as a confinement site manure applicator must be certified by the department each three years. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or two hours of continuing

instructional courses which the person must attend each year in lieu of passing the examination.

4. The department shall adopt, by rule, requirements for the certification, including educational program requirements. The department may establish different educational programs designed for commercial manure applicators and confinement site manure applicators. The department shall adopt rules necessary to administer this section, including establishing certification standards, which shall at least include standards for the handling, application, and storage of manure, the potential effects of manure upon surface water and groundwater, and procedures to remediate the potential effects on surface water or groundwater.

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

b. The department shall administer the continuing instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the continuing instructional courses. The department is not required to compensate persons to teach the continuing instructional courses. In selecting persons, the department shall consult with organizations interested in the application of manure, including associations representing manure applicators and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the continuing instructional courses. The Iowa cooperative extension service may teach continuing instructional courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

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

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

(1) The person is any of the following:

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

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

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

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

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

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

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

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

(1) The person is a part-time employee of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified commercial manure applicator who is both of the following:

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

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

6. a. The department may charge a fee for certifying persons under this section. The fee for certification shall be based on the costs of administering and enforcing this section and paying the expenses of the department relating to certification.

b. All moneys received by the department under the provisions of this chapter shall be handled in the same manner as repayment receipts, as defined in section 8.2, and shall be used solely for the administration and enforcement of this chapter.

Sec. 34. NEW SECTION. 455B.203B APPLICATION REQUIREMENTS.

1. The department shall adopt rules governing the application of manure originating from an anaerobic lagoon or aerobic structure which is part of a confinement feeding operation. The rules shall establish application rates and practices to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. The rules shall establish different application rates and practices based on the water holding capacity of the soil at the time of application.

2. A person shall not apply manure by spray irrigation equipment, except as provided by rules adopted by the department pursuant to chapter 17A. However, a person shall not use restricted spray irrigation equipment to apply manure originating from a confinement feeding operation, unless the manure has been diluted as provided by rules adopted by the department, including diluted by use of an anaerobic lagoon.

Sec. 35. Section 455B.204, Code 1997, is amended to read as follows:

455B.204 DISTANCE REQUIREMENTS.

1. ~~An animal-feeding-operation-structure-shall-be-located-at-least-five-hundred-feet-away-from-the-surface-intake-of-an-agricultural-drainage-well-or-known-sinkhole, and-at-least-two-hundred-feet-away-from~~ As used in this section, unless the context otherwise requires:

a. "Major water source" means a lake, reservoir, river, or stream located within the territorial limits of the state, any marginal river area adjacent to the state, which can support a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding which has been identified by rules adopted by the commission.

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

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

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

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

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

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

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

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

3. However, no distance A separation is distance required between a in subsection 2 shall not apply to any of the following:

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

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

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

~~2. A person shall not dispose of manure closer to a designated area than provided in section 159.27.~~

5. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 455I.5.

Sec. 36. NEW SECTION. 455B.205 MANURE STORAGE STRUCTURES -- CONSTRUCTION STANDARDS -- INSPECTIONS.

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

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

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

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

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

d. The top of the floor of the structure's liner must be above the groundwater table as determined by the department. If the groundwater table is less than two feet below the top of the liner's floor, the structure shall be installed with a synthetic liner. If the department allows an unformed manure storage structure to be located at a site by permanently

lowering the groundwater table, the department shall confirm that the proposed system meets standards necessary to ensure that the structure does not pollute groundwater sources. If the department allows drain tile installed to lower a groundwater table to remain where located, the department shall require that a device be installed to allow monitoring of the water in the drain tile line. The department shall also require the installation of a device to allow shutoff of the drain tile lines, if the drain tile lines do not have a surface outlet accessible on the property where the structure is located.

3. a. The department shall conduct a routine inspection of each unformed manure storage structure at least once each year. A routine inspection conducted pursuant to this subsection shall be limited to a visual inspection of the site where the unformed manure storage structure is located. The department shall inspect the site at a reasonable time after providing at least twenty-four hours' notice to the person owning or managing the confinement feeding operation. The visual inspection shall include, but not be limited to, determining whether any of the following exists:

- (1) An adequate freeboard level.
- (2) The seepage of manure from the unformed manure storage structure.
- (3) Erosion.
- (4) Inadequate vegetation cover.
- (5) The presence of an opening allowing manure to drain from the unformed manure storage structure.

b. Nothing in this subsection restricts the department from conducting an inspection of an animal feeding operation which is not routine.

Sec. 37. NEW SECTION. 455B.206 EXCEPTION TO REGULATION.

1. As used in this section, "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.

2. The requirements of this part which regulate animal feeding operations, including rules adopted by the department pursuant to section 455B.200, 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 animal feeding operations, including but not limited to the confinement of animals and the storage and disposal of manure originating from animal feeding operations.

3. This section shall not apply to requirements provided in any of the following:

a. Section 455B.201, including rules adopted by the department under that section.

b. Section 455B.204, including rules adopted by the department under that section.

Sec. 38. Section 657.11, subsections 2, 3, 5, 6, 7, and 8, Code 1997, are amended to read as follows:

2. ~~If a person has received all permits required pursuant to chapter 455B for an animal feeding operation as defined in section 455B.161 there shall be a rebuttable presumption that an animal feeding operation is, as defined in section 455B.161, shall not be found to be a public or private nuisance under this chapter or under principles of common law, and that the animal feeding operation does shall not unreasonably and continuously be found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. The rebuttable presumption also applies to persons who are not required to obtain a permit pursuant to chapter 455B for an animal feeding operation as defined in section 455B.161. The rebuttable presumption However, this section shall not apply if the person bringing the action proves that an injury to a~~

the person or damage to the person's property is proximately caused by ~~a~~ either of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. ~~3. The rebuttable presumption may be overcome by clear and convincing evidence of both~~ Both of the following:

a- (1) The animal feeding operation unreasonably and continuously for substantial periods of time interferes with another the person's comfortable use and enjoyment of the person's life or property.

b- (2) The injury or damage is proximately caused by the negligent operation of the animal feeding operation failed to use existing prudent generally accepted management practices reasonable for the operation.

5. ~~The rebuttable presumption created by this~~ This section shall apply regardless of the established date of operation or expansion of the animal feeding operation. ~~The rebuttable presumption~~ A defense against a cause of action provided in this section includes, but is not limited to, a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

6. ~~An animal feeding operation that complies with the requirements in chapter 455B for animal feeding operations shall be deemed to meet any common-law requirements regarding the standard of a normal person living in the locality of the operation.~~

7- ~~A~~ If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person for whom the rebuttable presumption created who may raise a defense under this section is not rebutted, shall be liable to the person against whom the action was brought for all costs and expenses incurred in the

defense of the action ~~if the court determines that a claim is frivolous.~~

8 7. ~~The rebuttable presumption created in this~~ This section does not apply to an injury to a person or damages to property caused by the animal feeding operation before May 31, 1995 the effective date of this section.

Sec. 39. Section 657.11, subsection 4, unnumbered paragraph 1, Code 1997, is amended to read as follows:

~~The rebuttable presumption~~ This section does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. ~~The rebuttable presumption~~ This section shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, "confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

Sec. 40. 1995 Iowa Acts, chapter 195, section 37, is amended to read as follows:

SEC. 37. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The department of natural resources shall request that the Iowa pork producers association, the Iowa cattlemen's association, the Iowa poultry association, the Iowa dairy products association, ~~an organization representing agricultural producers generally,~~ Iowa state university, the soil conservation division of the department of agriculture and land stewardship, and the natural resources conservation service of the United States department of agriculture, and after the effective date of this section of this Act as amended by 1998 Iowa Acts, House File 2494, two organizations representing agricultural producers generally each appoint one member to consult with the department regarding. The

appointees shall consult with the department regarding this Act, rules adopted pursuant to this Act, and the Act's implementation. The department shall consult with representatives in meetings which shall be conducted by the department, upon the call of the director of the department or the director's designee, or upon the request to the department of any three members. The department shall request that the representatives provide the department with recommendations regarding the adoption of rules required to administer this Act. This section is repealed on March 31, 2005.

Sec. 41. 1995 Iowa Acts, chapter 195, section 38, is amended to read as follows:

SEC. 38. INDEMNITY FEES -- PRIOR PERMITTEES.

1. The indemnity fee imposed upon permittees pursuant to section 204.3, as enacted in this Act, shall be imposed upon all persons who have received a permit by the department of natural resources for the construction of a confinement feeding operation with a manure storage structure as defined in section ~~455B.261~~ 204.1, as enacted in this Act, prior to the effective date of this Act. However, an indemnity fee shall not be imposed upon ~~a person~~ the following persons:

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

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

2. To every extent possible, the department of natural resources shall notify all persons required to pay the fee. The notice shall be in writing. The department shall establish a date when the fees must be paid to the department, which shall be not less than three months after the delivery of the notice. If a person is delinquent in paying the indemnity fee when due, or if upon examination, an underpayment of the fee is found by the department, the person is subject to a penalty of ten dollars or an amount equal to

the amount of deficiency for each day of the delinquency, whichever is less. ~~After the date required for payment, the department shall transfer all outstanding claims to the department of agriculture and land stewardship.~~

3. The department of natural resources shall ~~deliver to~~ receive from the department of agriculture and land stewardship the most current available information regarding the persons required to pay the fee and any delinquency penalty, ~~including the names and addresses of the persons, and the capacity of the confinement feeding operations subject to the permit.~~ The department of ~~agriculture and land stewardship~~ natural resources, in cooperation with the attorney general, may bring a court action in order to collect indemnity fees and delinquency penalties required to be paid under this section.

Sec. 42. AMNESTY PERIOD. Notwithstanding 1995 Iowa Acts, chapter 195, section 38, a person who has not paid an indemnity fee as required by that Act, as amended by this Act, shall not be subject to a delinquency penalty as provided in that Act, if the person pays the full amount of the indemnity fee to the department of agriculture and land stewardship on or before December 31, 1998, as required by the department.

Sec. 43. EFFECT OF THIS ACT -- REFUND. Nothing in this Act requires the department of natural resources or the department of agriculture and land stewardship to refund an indemnity fee or delinquency penalty payment paid by permittees pursuant to 1995 Iowa Acts, chapter 195, section 38.

Sec. 44. INDEMNITY FEES -- PRIOR MANURE MANAGEMENT PLAN SUBMITTEES.

1. The indemnity fee imposed upon persons required to submit a manure management plan pursuant to section 204.3A, as enacted in this Act, shall be imposed upon all persons who are required to submit a manure management plan under section 455B.203 as amended in this Act. However, a fee shall not be imposed upon a person who was not required to submit a manure

management plan to the department of natural resources pursuant to 1995 Iowa Acts, chapter 195, and 567 IAC section 65.18(455B).

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

Sec. 45. INDEMNITY FEES -- PRIOR CONSTRUCTION PERMITTEES. The department of agriculture and land stewardship shall deliver to the department of natural resources the most current available information regarding persons required to pay the indemnity fee imposed pursuant to 1995 Iowa Acts, chapter 195, section 38. The department of natural resources, in cooperation with the attorney general, may bring a court action in order to collect indemnity fees and delinquency penalties as provided in that Act for deposit into the manure storage indemnity fund as created in section 204.2.

Sec. 46. MANURE MANAGEMENT PLAN SUBMISSIONS. All persons required to submit a manure management plan pursuant to section 455B.203 as amended by this Act shall submit a manure management plan according to the same requirements, as provided in that section or rules adopted by the department pursuant to that section. Persons who have submitted a manure management plan that complies with those requirements are not required to submit a new manure management plan. Persons who have not submitted a manure management plan that complies with those requirements shall not be required to submit a new manure management plan until July 1, 1999.

Sec. 47. MANURE APPLICATOR CERTIFICATION -- DELAYED APPLICABILITY. A person shall not be required to be certified

as a commercial manure applicator or a confinement site manure applicator as required pursuant to section 455B.203A, as enacted in this Act, for sixty days following the effective date of that section of this Act.

Sec. 48. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The department of natural resources shall consult with the members of the animal agriculture consulting organization regarding this Act, rules adopted pursuant to this Act, and the Act's implementation, to the same extent and in the same manner as required in 1995 Iowa Acts, chapter 195, section 37, as amended by this Act.

Sec. 49. DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES -- RULEMAKING. The department of natural resources shall adopt all rules necessary to administer and enforce this Act by January 1, 1999. The department is required to adopt rules under this Act, including adopting new rules or amending existing rules, only to the extent that rules must be adopted in order to comply with the requirements of this Act. This section shall not be construed to limit the authority of the department to adopt rules under this Act or other statutory authority which the department determines is necessary or advisable.

Sec. 50. DIRECTIONS TO IOWA CODE EDITOR.

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

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

Sec. 51. TRANSFER OF PROVISIONS. The transfer of provisions from one section to another section does not affect the effect or applicability of rules adopted by the department of natural resources, except as required by the provisions of this Act.

Sec. 52. SEVERABILITY. If any provision of this Act or the application of this Act to any person or circumstance is

held invalid, the invalidity shall not affect other provisions or applications of this Act which shall be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 53. EFFECTIVE DATES.

1. Sections 9, 10, 14, 27, 29, 38, 39, 40 through 43, 48, 49, and this section, being deemed of immediate importance, take effect upon enactment.

2. Sections 11, 13, 15, 16, 18 through 21, 23, 26, 30, 31, and 33 through 35 take effect on January 1, 1999.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2494, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved _____, 1998

TERRY E. BRANSTAD
Governor