

House Study Bill 235

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON DRAKE)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to animal feeding operations, by providing for
2 the regulation of open feedlot operations, and providing for
3 penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 1 DIVISION I
1 2 OPEN FEEDLOT OPERATIONS
1 3 SUBCHAPTER I
1 4 GENERAL PROVISIONS
1 5 Section 1. NEW SECTION. 459A.101 TITLE.
1 6 This chapter shall be known and may be cited as the "Animal
1 7 Agriculture Compliance Act for Open Feedlots".
1 8 Sec. 2. NEW SECTION. 459A.102 DEFINITIONS.
1 9 1. "Alternative technology system" or "alternative system"
1 10 means a system for open feedlot effluent control as provided
1 11 in section 459A.303.
1 12 2. "Animal" means the same as defined in section 459.102.
1 13 3. "Animal feeding operation" means the same as defined in
1 14 section 459.102.
1 15 4. "Animal unit" means the same as defined in section
1 16 459.102.
1 17 5. "Animal unit capacity" means a measurement used to
1 18 determine the maximum number of animal units that may be
1 19 maintained as part of an open feedlot operation.
1 20 6. "A.S.T.M. international" means the American society for
1 21 testing and materials international.
1 22 7. "Commission" means the environmental protection
1 23 commission created pursuant to section 455A.6.
1 24 8. "Department" means the department of natural resources.
1 25 9. "Document" means any form required to be processed by
1 26 the department under this chapter, including but not limited
1 27 to applications for permits or related materials as provided
1 28 in section 459A.205, soil and hydrogeologic reports as
1 29 provided in section 459A.206, construction certifications as
1 30 provided in section 459.207, nutrient management plans as
1 31 provided in section 459A.208, and notices required under this
1 32 chapter.
1 33 10. "National pollutant discharge elimination system
1 34 permit" means a permit issued by the United States
1 35 environmental protection agency pursuant to the federal Water
2 1 Pollution Control Act, Title 33, U.S.C., ch. 126, as amended,
2 2 and 40 C.F.R., pt. 124.
2 3 11. "Nutrient management plan" or "plan" means a plan
2 4 which provides for the management of open feedlot effluent and
2 5 the application of effluent as provided in section 459A.208.
2 6 12. "Open feedlot" means a lot, yard, corral, building, or
2 7 other area used to house animals in conjunction with an open
2 8 feedlot operation.
2 9 13. "Open feedlot effluent" or "effluent" means a
2 10 combination of manure, precipitation-induced runoff, or other
2 11 runoff from an open feedlot before its settleable solids have
2 12 been removed.
2 13 14. "Open feedlot operation" or "operation" means an
2 14 unroofed or partially roofed animal feeding operation if crop,
2 15 vegetation, or forage growth or residue cover is not
2 16 maintained as part of the animal feeding operation during the
2 17 period that animals are confined in the animal feeding

2 18 operation.
2 19 15. "Open feedlot operation structure" means an open
2 20 feedlot, settled open feedlot effluent basin, a solids
2 21 settling facility, or an alternative technology system.
2 22 16. "Research college" means an accredited public or
2 23 private college or university, including but not limited to a
2 24 university under the control of the state board of regents as
2 25 provided in chapter 262, or a community college under the
2 26 jurisdiction of a board of directors for a merged area as
2 27 provided in chapter 260C, if the college or university
2 28 performs research or experimental activities regarding animal
2 29 agriculture or agronomy.
2 30 17. "Settleable solids" or "solids" means that portion of
2 31 open feedlot effluent that meets all of the following
2 32 requirements:
2 33 a. The solids do not flow perceptibly under pressure.
2 34 b. The solids are not capable of being transported through
2 35 a mechanical pumping device designed to move a liquid.
3 1 c. The constituent molecules of the solids do not flow
3 2 freely among themselves but do show the tendency to separate
3 3 under stress.
3 4 18. "Settled open feedlot effluent basin" or "basin" means
3 5 an impoundment which is part of an open feedlot operation, if
3 6 the primary function of the impoundment is to collect and
3 7 store settled open feedlot effluent.
3 8 19. "Solids settling facility" means a basin, terrace,
3 9 diversion, or other structure or solids removal method which
3 10 is part of an open feedlot operation and which is designed and
3 11 operated to remove settleable solids from open feedlot
3 12 effluent. A solids settling facility shall not retain the
3 13 liquid portion of open feedlot effluent for more than seven
3 14 consecutive days following a precipitation event.
3 15 20. "Waters of the United States" means the same as
3 16 defined in 40 C.F.R., pt. 122, } 2, as that section exists on
3 17 the effective date of this Act.
3 18 Sec. 3. NEW SECTION. 459A.103 SPECIAL TERMS.
3 19 For purposes of this chapter, all of the following shall
3 20 apply:
3 21 1. a. Two or more open feedlot operations under common
3 22 ownership or common management are deemed to be a single open
3 23 feedlot operation if they are adjacent or utilize a common
3 24 area or system for open feedlot effluent disposal.
3 25 b. For purposes of determining whether two or more open
3 26 feedlot operations are adjacent, all of the following shall
3 27 apply:
3 28 (1) At least one open feedlot operation structure must be
3 29 constructed on or after the effective date of this Act.
3 30 (2) An open feedlot operation structure which is part of
3 31 one open feedlot operation is separated by less than one
3 32 thousand two hundred fifty feet from an open feedlot operation
3 33 structure which is part of the other open feedlot operation.
3 34 c. For purposes of determining whether two or more open
3 35 feedlot operations are under common ownership, a person must
4 1 hold an interest in each of the open feedlot operations as any
4 2 of the following:
4 3 (1) A sole proprietor.
4 4 (2) A joint tenant or tenant in common.
4 5 (3) A holder of a majority equity interest in a business
4 6 association as defined in section 202B.102, including but not
4 7 limited to as a shareholder, partner, member, or beneficiary.
4 8 An interest in the open feedlot operation under
4 9 subparagraph (2) or (3) which is held directly or indirectly
4 10 by the person's spouse or dependent child shall be attributed
4 11 to the person.
4 12 d. For purposes of determining whether two or more open
4 13 feedlot operations are under common management, a person must
4 14 have significant control of the management of the day-to-day
4 15 operations of each of the open feedlot operations. Common
4 16 management does not include control over a contract livestock
4 17 facility by a contractor, as defined in section 202.1.
4 18 2. An open feedlot operation structure is "constructed"
4 19 when any of the following occurs:
4 20 a. Excavation commences for a proposed open feedlot
4 21 operation structure or proposed expansion of an existing open
4 22 feedlot operation structure.
4 23 b. Forms for concrete are installed for a proposed open
4 24 feedlot operation structure or the proposed expansion of an
4 25 existing open feedlot operation structure.
4 26 c. Piping for the movement of open feedlot effluent is
4 27 installed within or between open feedlot operation structures
4 28 as proposed or proposed to be expanded.

4 29 3. In calculating the animal unit capacity of an open
4 30 feedlot operation, the animal unit capacity shall include the
4 31 animal unit capacity of all open feedlots which are part of
4 32 the open feedlot operation, unless an open feedlot has been
4 33 abandoned as provided in this section. The animal unit
4 34 capacity of an open feedlot operation shall not include the
4 35 animal unit capacity of any confinement feeding operation
5 1 buildings as defined in section 459.102, which are part of the
5 2 open feedlot operation.

5 3 4. An open feedlot operation structure is abandoned if the
5 4 open feedlot operation structure has been razed, removed from
5 5 the site of an open feedlot operation, filled in with earth,
5 6 or converted to uses other than an open feedlot operation
5 7 structure so that it cannot be used as an open feedlot
5 8 operation structure without significant reconstruction.

5 9 5. All distances between locations or objects provided in
5 10 this subchapter shall be measured in feet from their closest
5 11 points.

5 12 Sec. 4. NEW SECTION. 459A.104 GENERAL AUTHORITY ==
5 13 COMMISSION AND DEPARTMENT == PURPOSE == COMPLIANCE.

5 14 1. The commission shall establish by rule adopted pursuant
5 15 to chapter 17A, requirements relating to the construction,
5 16 including expansion, or operation of open feedlot operations,
5 17 including related open feedlot operation structures in the
5 18 same manner as provided in section 459.103.

5 19 2. Any provision referring generally to compliance with
5 20 the requirements of this chapter as applied to open feedlot
5 21 operations also includes compliance with requirements in rules
5 22 adopted by the commission pursuant to this section, orders
5 23 issued by the department as authorized under this chapter, and
5 24 the terms and conditions applicable to licenses,
5 25 certifications, permits, or nutrient management plans required
5 26 under this chapter.

5 27 3. The purpose of this chapter is to provide requirements
5 28 relating to the construction, including the expansion, and
5 29 operation of open feedlot operations, and the use of open
5 30 feedlot effluent, which shall be construed to supplement
5 31 applicable provisions of chapter 459. If there is a conflict
5 32 between the provisions of this chapter and chapter 459, the
5 33 provisions of this chapter shall prevail.

5 34 Sec. 5. NEW SECTION. 459A.105 EXCEPTION TO REGULATION.

5 35 1. Except as provided in subsection 2, the requirements of
6 1 this chapter which regulate open feedlot operations, including
6 2 rules adopted by the department pursuant to section 459A.104,
6 3 shall not apply to research activities and experiments
6 4 performed under the authority and regulations of a research
6 5 college, if the research activities and experiments relate to
6 6 open feedlot operation structures and the disposal or
6 7 treatment of effluent originating from open feedlot
6 8 operations.

6 9 2. The requirements of section 459A.410, including rules
6 10 adopted by the department under that section, apply to
6 11 research activities and experiments performed under the
6 12 authority and regulations of a research college.

6 13 SUBCHAPTER II
6 14 DOCUMENTATION

6 15 Sec. 6. NEW SECTION. 459A.201 DOCUMENT PROCESSING
6 16 REQUIREMENTS.

6 17 1. The department shall adopt and promulgate forms
6 18 required to be completed in order to comply with this chapter,
6 19 including forms for documents that the department shall make
6 20 available on the internet in the same manner as provided in
6 21 section 459.302.

6 22 2. a. The department shall provide for procedures for the
6 23 receipt, filing, processing, and return of documents in an
6 24 electronic format in the same manner as provided in section
6 25 459.302. The department shall provide for authentication of
6 26 the documents that may include electronic signatures as
6 27 provided in chapter 554D.

6 28 b. The department shall to every extent feasible provide
6 29 for the processing of documents required under this subchapter
6 30 using electronic systems in the same manner as required in
6 31 section 459.302.

6 32 3. The department shall approve or disapprove an
6 33 application for a construction permit as provided in section
6 34 459A.205 within sixty days after receiving the permit
6 35 application. However, the applicant may deliver a notice
7 1 requesting a continuance. Upon receipt of a notice, the time
7 2 required for the department to act upon the application shall
7 3 be suspended for the period provided in the notice, but for
7 4 not more than thirty days after the department's receipt of

7 5 the notice. The applicant may submit more than one notice.
7 6 However, the department may provide that an application is
7 7 terminated if no action is required by the department for one
7 8 year following delivery of the application to the department.

7 9 Sec. 7. NEW SECTION. 459A.205 PERMIT REQUIREMENTS ==
7 10 SETTLED OPEN FEEDLOT EFFLUENT BASINS AND ALTERNATIVE
7 11 TECHNOLOGY SYSTEMS.

7 12 1. The department shall approve or disapprove applications
7 13 for permits for the construction, including the expansion, of
7 14 settled open feedlot effluent basins and alternative
7 15 technology systems, as provided in this chapter. The
7 16 department's decision to approve or disapprove a permit for
7 17 the construction of a basin or alternative system shall be
7 18 based on whether the application is submitted according to
7 19 procedures and standards required by this chapter. A person
7 20 shall not begin construction of a basin or alternative system
7 21 requiring a permit under this section, unless the department
7 22 first approves the person's application and issues to the
7 23 person a construction permit.

7 24 2. The department shall issue a construction permit upon
7 25 approval of an application. The department shall approve the
7 26 application regardless of whether the applicant is required to
7 27 be issued a construction permit.

7 28 3. The department shall not approve an application for a
7 29 construction permit unless the applicant submits all of the
7 30 following:

7 31 a. A nutrient management plan as provided in section
7 32 459A.208.

7 33 b. An engineering report, construction plans, or
7 34 specifications prepared by a licensed professional engineer or
7 35 the natural resources conservation service of the United
8 1 States department of agriculture certifying that the
8 2 construction of the settled open feedlot effluent basin or
8 3 alternative technology system complies with the construction
8 4 design standards required in this chapter.

8 5 4. An open feedlot operation must be issued a construction
8 6 permit prior to any of the following:

8 7 a. The construction, including expansion, of a settled
8 8 open feedlot effluent basin or alternative technology system
8 9 if after construction the open feedlot operation has an animal
8 10 unit capacity of one thousand animal units or more.

8 11 b. The department has previously issued the open feedlot
8 12 operation a construction permit and any of the following
8 13 applies:

8 14 (1) The animal unit capacity of the open feedlot operation
8 15 will be increased to more than the design animal unit capacity
8 16 approved by the department in the previous construction
8 17 permit.

8 18 (2) The volume of open feedlot effluent stored at the open
8 19 feedlot operation would be more than the design volume
8 20 approved by the department in the previous construction
8 21 permit.

8 22 c. The open feedlot operation was discontinued for twenty=
8 23 four months or more and the animal unit capacity would be one
8 24 thousand animal units or more.

8 25 5. Prior to submitting an application for a construction
8 26 permit the applicant may submit a conceptual design and site
8 27 investigation report to the department for review and comment.

8 28 6. The application for the construction permit shall
8 29 include all of the following:

8 30 a. The name of the owner of the open feedlot operation and
8 31 the name of the open feedlot operation, including mailing
8 32 address and telephone number.

8 33 b. The name of the contact person for the open feedlot
8 34 operation, including the person's mailing address and
8 35 telephone number.

9 1 c. The location of the open feedlot operation.

9 2 d. A statement providing that the application is for any
9 3 of the following:

9 4 (1) The construction or expansion of a settled open
9 5 feedlot effluent basin or alternative technology system for an
9 6 existing open feedlot operation which is not expanding.

9 7 (2) The construction or expansion of a settled open
9 8 feedlot effluent basin or alternative technology system for
9 9 the expansion of an existing open feedlot operation.

9 10 (3) The construction of a settled open feedlot effluent
9 11 basin or alternative technology system for a proposed new open
9 12 feedlot operation.

9 13 e. The animal unit capacity for each animal species in the
9 14 open feedlot operation before and after the proposed
9 15 construction.

9 16 f. An engineering report, construction plans, and
9 17 specifications prepared by a licensed professional engineer or
9 18 by the United States natural resource conservation service,
9 19 for the settled open feedlot operation effluent basin or
9 20 alternative technology system.

9 21 g. A soils and hydrogeologic report of the site, as
9 22 required in section 459A.206.

9 23 h. Information, including but not limited to maps,
9 24 drawings, and aerial photos that clearly show the location of
9 25 the open feedlot operation and all existing and proposed
9 26 settled open feedlot effluent basins or alternative technology
9 27 systems, clean water diversions, other pertinent features or
9 28 structures, the location of any other open feedlot operations
9 29 under common ownership or common management and located within
9 30 one thousand two hundred fifty feet of the open feedlot
9 31 operation, and the location of public water supply systems or
9 32 private wells which are within an area which is equal to a
9 33 multiple of two times the applicable separation distance.

9 34 i. For an open feedlot operation implementing an
9 35 alternative technology system as provided in section 459A.303,
10 1 the applicant shall submit all of the following:

10 2 (1) Information showing that the proposed open feedlot
10 3 operation meets criteria for siting as established by rules
10 4 adopted by the department. However, if the site does not meet
10 5 the criteria, the information shall show substantially
10 6 equivalent alternatives to meeting such criteria.

10 7 (2) The results of predictive computer modeling for the
10 8 proposed alternative technology system to determine
10 9 suitability of the proposed site for the system and to predict
10 10 performance of the system as compared to the use of a settled
10 11 open feedlot effluent basin.

10 12 (3) A conceptual design of the proposed alternative
10 13 technology system, as developed by a licensed engineer.

10 14 7. A construction permit for an open feedlot operation
10 15 expires as follows:

10 16 a. If construction does not begin within one year after
10 17 the date the construction permit is issued.

10 18 b. If construction is not completed within six years after
10 19 the date the construction permit is issued. However, the
10 20 department may grant an extension of time to begin or complete
10 21 construction upon a showing of just cause by the construction
10 22 permit applicant.

10 23 8. The department may suspend or revoke a construction
10 24 permit or refuse to renew a permit expiring under this section
10 25 if it determines that the operation of the open feedlot
10 26 operation constitutes a clear, present, and impending danger
10 27 to public health or the environment.

10 28 9. This section does not require a person to obtain a
10 29 permit to construct a basin or alternative system if the basin
10 30 or system is part of an open feedlot operation which is owned
10 31 by a research college conducting research activities as
10 32 provided in section 459A.105.

10 33 Sec. 8. NEW SECTION. 459A.206 SETTLED OPEN FEEDLOT
10 34 EFFLUENT BASINS == SOILS AND HYDROGEOLOGIC REPORT.

10 35 A settled open feedlot effluent basin required to be
11 1 constructed pursuant to a construction permit issued pursuant
11 2 to section 459A.205 shall meet design standards as required by
11 3 a soils and hydrogeologic report.

11 4 The report shall be submitted with the construction permit
11 5 application as provided in section 459A.205. The report shall
11 6 include all of the following:

11 7 1. A description of the steps to determine the soils and
11 8 hydrogeologic conditions at the proposed construction site, a
11 9 description of the geologic units encountered, and a
11 10 description of the effects of the soil and groundwater
11 11 elevation and direction of flow on the construction and
11 12 operation of the basin.

11 13 2. The subsurface soil classification of the site. A
11 14 subsurface soil classification shall be based on A.S.T.M
11 15 international designation D 2487=92 or D 2488=90.

11 16 3. The results of at least three soil corings reflecting
11 17 the continuous soil profile taken for each basin. The soil
11 18 corings shall be taken and used in determining subsurface soil
11 19 characteristics and groundwater elevation and direction of
11 20 flow of the proposed site for construction. The soil corings
11 21 shall be taken as follows:

11 22 a. By a qualified person ordinarily engaged in the
11 23 practice of taking soil cores and in performing soil testing.

11 24 b. At locations that reflect the continuous soil profile
11 25 conditions existing within the area of the proposed basin,
11 26 including conditions found near the corners and the deepest

11 27 point of the proposed basin. The soil corings shall be taken
11 28 to a minimum depth of ten feet below the bottom elevation of
11 29 the basin.

11 30 c. By a method such as hollow stem auger or other method
11 31 that identifies the continuous soil profile and does not
11 32 result in the mixing of soil layers.

11 33 Sec. 9. NEW SECTION. 459A.207 CONSTRUCTION
11 34 CERTIFICATION.

11 35 1. The owner of an open feedlot operation who is issued a
12 1 construction permit for a settled open feedlot effluent basin
12 2 as provided in section 459A.205 after the effective date of
12 3 this Act shall submit to the department a construction
12 4 certification from a licensed professional engineer certifying
12 5 all of the following:

12 6 a. The basin was constructed in accordance with the design
12 7 plans submitted to the department as part of an application
12 8 for a construction permit pursuant to section 459A.205. If
12 9 the actual construction deviates from the approved plans, the
12 10 certification shall identify all changes and certify that the
12 11 changes were consistent with all applicable standards of this
12 12 section.

12 13 b. The basin was inspected by the licensed professional
12 14 engineer after completion of construction and before
12 15 commencement of operation.

12 16 2. A written record of an investigation for tile lines,
12 17 including the findings of the investigation and actions taken
12 18 to comply with subchapter III, shall be submitted as part of
12 19 the construction certification.

12 20 Sec. 10. NEW SECTION. 459A.208 NUTRIENT MANAGEMENT PLAN
12 21 == REQUIREMENTS.

12 22 1. The owner of an open feedlot operation required to have
12 23 a national pollution discharge elimination permit shall
12 24 develop and maintain a nutrient management plan meeting the
12 25 requirements of this section by December 31, 2006.

12 26 2. Not more than one open feedlot operation shall be
12 27 covered by a single nutrient management plan.

12 28 3. A person shall not remove open feedlot effluent from an
12 29 open feedlot operation structure which is part of an open
12 30 feedlot operation for which a nutrient management plan is
12 31 required under this section, unless the department approves a
12 32 nutrient management plan as required in this section. The
12 33 department may adopt rules allowing a person to remove open
12 34 feedlot effluent from an open feedlot operation structure
12 35 until the nutrient management plan is approved or disapproved
13 1 by the department according to terms and conditions required
13 2 by rules adopted by the department.

13 3 4. The department shall not approve an application for a
13 4 permit to construct a settled open feedlot effluent basin
13 5 unless the owner of the open feedlot operation applying for
13 6 approval submits a nutrient management plan together with the
13 7 application for the construction permit as provided in section
13 8 459A.205. The nutrient management plan shall be approved or
13 9 disapproved as part of the construction permit application. A
13 10 nutrient management plan using an alternative technology
13 11 system shall not include requirements for settled effluent
13 12 that enters the alternative technology system.

13 13 5. A nutrient management plan must be authenticated by the
13 14 person required to submit the nutrient management plan as
13 15 required by the department in accordance with section
13 16 459A.208.

13 17 6. A nutrient management plan shall include all of the
13 18 following:

13 19 a. Restrictions on the application of open feedlot
13 20 effluent based on all of the following:

13 21 (1) Calculations necessary to determine the land area
13 22 required for the application of open feedlot effluent from an
13 23 open feedlot operation based on nitrogen use levels in order
13 24 to obtain optimum crop yields according to a crop schedule
13 25 specified in the nutrient management plan, and according to
13 26 requirements adopted by the department.

13 27 (2) A phosphorus index established pursuant to section
13 28 459.312.

13 29 b. Information relating to the land application of the
13 30 open feedlot effluent, including all of the following:

13 31 (1) Nutrient levels of the open feedlot effluent.

13 32 (2) Application methods, the timing of the application,
13 33 and the location of the land where the application occurs.

13 34 (3) If the location of the application is on land other
13 35 than land owned or rented for crop production by the person
14 1 applying for a construction or national pollutant discharge
14 2 elimination system permit, the plan shall include a copy of

14 3 each written agreement executed between the person and the
14 4 landowner or the person renting the land for crop production
14 5 where the open feedlot effluent will be applied.
14 6 c. An estimate of the open feedlot effluent volume or
14 7 weight produced by the open feedlot operation.
14 8 d. Information which shows all of the following:
14 9 (1) There is adequate storage of open feedlot effluent,
14 10 including procedures to ensure proper operation and
14 11 maintenance of the storage structures.
14 12 (2) The proper management of animal mortalities to ensure
14 13 that animals are not disposed of in an open feedlot operation
14 14 structure or a treatment system that is not specifically
14 15 designed to treat animal mortalities.
14 16 (3) Surface drainage prior to contact with an open feedlot
14 17 structure is diverted, as appropriate, from the open feedlot
14 18 operation.
14 19 (4) Animals kept in the open feedlot operation will not
14 20 have direct contact with waters of the United States.
14 21 (5) Chemicals or other contaminants handled on-site are
14 22 not disposed of in an open feedlot operation structure or a
14 23 treatment system that is not specifically designed to treat
14 24 such chemicals or contaminants.
14 25 7. If an open feedlot operation uses an alternative
14 26 technology system as provided in section 459A.303, the
14 27 nutrient management plan is not required to provide for
14 28 settled effluent that enters the alternative technology
14 29 system.
14 30 8. A person required to develop and maintain a nutrient
14 31 management plan shall maintain a current nutrient management
14 32 plan and maintain records sufficient to demonstrate compliance
14 33 with the nutrient management plan. Chapter 22 shall not apply
14 34 to the records which shall be kept confidential by the
14 35 department and its agents and employees. The contents of the
15 1 records are not subject to disclosure except as follows:
15 2 a. Upon waiver by the person receiving the permit.
15 3 b. In a contested case proceeding commenced under chapter
15 4 17A. Notwithstanding section 17A.19, the proceeding shall be
15 5 closed.
15 6 c. When required by subpoena or court order.
15 7 9. A person required to authenticate a nutrient management
15 8 plan who is found in violation of the terms and conditions of
15 9 the plan shall not be subject to an enforcement action other
15 10 than the assessment of a civil penalty pursuant to section
15 11 459A.502.

15 12 SUBCHAPTER III

15 13 DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

15 14 Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN FEEDLOT
15 15 EFFLUENT BASINS == CONSTRUCTION DESIGN STANDARDS == RULES.
15 16 If the department requires that a settled open feedlot
15 17 effluent basin be constructed according to construction design
15 18 standards, regardless of whether the department requires the
15 19 owner to be issued a construction permit under section
15 20 459A.205, any construction design standards for the basin
15 21 shall be established by rules as provided in chapter 17A that
15 22 exclusively account for special design characteristics of open
15 23 feedlot operations and related basins, including but not
15 24 limited to the dilute composition of settled open feedlot
15 25 effluent as collected and stored in the basins.
15 26 Sec. 12. NEW SECTION. 459A.302 SETTLED OPEN FEEDLOT
15 27 EFFLUENT BASINS == CONSTRUCTION REQUIREMENTS.
15 28 A settled open feedlot effluent basin required to be
15 29 constructed pursuant to a construction permit issued pursuant
15 30 to section 459A.205 shall meet all of the following
15 31 requirements:
15 32 1. a. Prior to constructing a settled open feedlot
15 33 effluent basin, the site for the basin shall be investigated
15 34 for a drainage tile line. The investigation shall be made by
15 35 digging a core trench to a depth of at least six feet deep
16 1 from ground level at the projected center of the berm of the
16 2 basin. If a tile line is discovered, one of the following
16 3 solutions shall be implemented:
16 4 (1) The tile line shall be rerouted around the perimeter
16 5 of the basin.
16 6 (2) The tile line shall be replaced with a nonperforated
16 7 tile under the basin floor. There must be a minimum of three
16 8 feet between the tile and the basin floor.
16 9 b. A written record of the investigation shall be
16 10 submitted as part of the construction certification required
16 11 under section 459A.207.
16 12 2. a. The settled open feedlot effluent basin shall be
16 13 constructed with a minimum separation of two feet between the

16 14 top of the liner of the basin and the seasonal high=water
16 15 table.

16 16 b. If drainage tile around the perimeter of the basin is
16 17 installed a minimum of two feet below the top of the basin
16 18 liner to artificially lower the seasonal high=water table, the
16 19 top of the basin's liner may be a maximum of four feet below
16 20 the seasonal high=water table. The seasonal high=water table
16 21 may be artificially lowered by gravity flow tile lines,
16 22 nongravity mechanical systems that use pumping equipment, or
16 23 other similar system.

16 24 3. Drainage tile may be installed to artificially lower
16 25 the seasonal high=water table at a settled open feedlot
16 26 effluent basin, if all of the following conditions are
16 27 satisfied:

16 28 a. A device to allow monitoring of the water in the
16 29 drainage tile lines and a device to allow shutoff of the flow
16 30 in the drainage tile lines are installed, if the drainage tile
16 31 lines do not have a surface outlet accessible on the property
16 32 where the settled open feedlot effluent basin is located.

16 33 b. Drainage tile lines are installed horizontally at least
16 34 twenty=five feet away from the settled open feedlot effluent
16 35 basin. Tile lines shall be placed in a vertical trench and
17 1 encased in granular material which extends upward to the level
17 2 of the seasonal high=water table.

17 3 c. For purposes of this section, the seasonal high=water
17 4 table means the "seasonal high=water table" as determined by a
17 5 professional engineer pursuant to the following requirements:

17 6 (1) The seasonal high=water table shall be determined by
17 7 evaluating soil profile characteristics such as color and
17 8 mottling from soil corings, soil test pits, or other soil
17 9 profile evaluation methods, water level data from soil corings
17 10 or other sources, and other pertinent information.

17 11 (2) If drainage tile to artificially lower the seasonal
17 12 high=water table is installed as required by this section, the
17 13 level to which the seasonal high=water table will be lowered
17 14 will be the seasonal high=water table.

17 15 4. A settled open feedlot effluent basin shall be
17 16 constructed with at least four feet between the bottom of the
17 17 basin and a bedrock formation.

17 18 5. A settled open feedlot effluent basin constructed on a
17 19 floodplain or within a floodway of a river or stream shall
17 20 comply with rules of the department.

17 21 6. The liner of a settled open feedlot effluent basin
17 22 shall comply with all of the following:

17 23 a. The liner shall comply with any of the following
17 24 permeability standards:

17 25 (1) The liner shall be constructed to have a percolation
17 26 rate that shall not exceed one=sixteenth inch per day at the
17 27 design depth of the basin as determined by percolation tests
17 28 conducted by the professional engineer. If a clay soil liner
17 29 is used, the liner shall be constructed with a minimum
17 30 thickness of twelve inches or the minimum thickness necessary
17 31 to comply with the percolation rate in this section, whichever
17 32 is greater.

17 33 (2) The liner shall be constructed at optimum moisture
17 34 content not less than ninety=five percent of the maximum
17 35 density as determined by a standard five=point proctor test
18 1 performed at the site of the open feedlot operation by the
18 2 professional engineer. If a clay soil liner is used, the
18 3 liner shall be constructed with a minimum thickness of twelve
18 4 inches.

18 5 b. If a synthetic liner is used, the liner shall be
18 6 installed to comply with the percolation rate required in this
18 7 section.

18 8 7. The owner of an open feedlot operation using a settled
18 9 open feedlot effluent basin shall inspect the berms of the
18 10 basin at least semiannually for evidence of erosion. If the
18 11 inspection reveals erosion which may impact the basin's
18 12 structural stability or the integrity of the basin's liner,
18 13 the owner shall repair the berms.

18 14 Sec. 13. NEW SECTION. 459A.303 ALTERNATIVE TECHNOLOGY
18 15 SYSTEMS.

18 16 In lieu of using a settled open feedlot effluent basin as
18 17 provided in section 459A.301 to meet the open feedlot effluent
18 18 control requirements of section 459A.401, an open feedlot
18 19 operation may use an alternative technology system for open
18 20 feedlot effluent control that provides an equivalent level of
18 21 open feedlot effluent control that would be achieved by using
18 22 a settled open feedlot effluent control basin. The department
18 23 shall adopt rules establishing alternative technology systems.

18 24 SUBCHAPTER IV

18 25 OPEN FEEDLOT EFFLUENT CONTROL
18 26 Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT EFFLUENT
18 27 CONTROL METHODS.
18 28 Except as otherwise provided in section 459A.303, an open
18 29 feedlot operation shall provide for the management of
18 30 settleable solids and other effluent by using an open feedlot
18 31 effluent control method as follows:
18 32 1. All settleable solids from open feedlot effluent shall
18 33 be removed prior to discharge into a waters of the United
18 34 States.
18 35 a. The settleable solids shall be removed by use of a
19 1 solids settling facility. The construction of a solids
19 2 settling facility is not required where existing site
19 3 conditions provide for removal of settleable solids prior to
19 4 discharge to a waters of the United States.
19 5 b. The removal of settleable solids shall be deemed to
19 6 have occurred when the velocity of flow of the open feedlot
19 7 effluent has been reduced to less than point five feet per
19 8 second for a minimum of five minutes. A solids settling
19 9 facility shall have sufficient capacity to store settled
19 10 solids between periods of land application and to provide
19 11 required flow-velocity reduction for open feedlot effluent
19 12 flow volumes resulting from a precipitation event of less
19 13 intensity than a ten-year, one-hour frequency event. A solids
19 14 settling facility which receives open feedlot effluent shall
19 15 provide a minimum of one square foot of surface area for each
19 16 eight cubic feet of open feedlot effluent per hour resulting
19 17 from a ten-year, one-hour frequency precipitation event.
19 18 2. Except as provided in this subsection, an open feedlot
19 19 operation that operates pursuant to a national pollutant
19 20 discharge elimination system permit shall not discharge open
19 21 feedlot effluent from an open feedlot operation structure into
19 22 the waters of this United States. An open feedlot operation
19 23 may discharge open feedlot effluent into the waters of the
19 24 United States due to a precipitation event, if any of the
19 25 following apply:
19 26 a. For an open feedlot operation that houses cattle, other
19 27 than veal cattle, the operation is designed, constructed,
19 28 operated, and maintained to contain all open feedlot effluent
19 29 resulting from a twenty-five-year, twenty-four-hour
19 30 precipitation event.
19 31 b. For an open feedlot operation that houses veal calves,
19 32 swine, chickens, or turkeys, the operation is designed,
19 33 constructed, operated, and maintained to contain all open
19 34 feedlot effluent resulting from a one-hundred-year, twenty=
19 35 four-hour precipitation event.
20 1 3. An open feedlot operation designed, constructed, and
20 2 operated in accordance with the requirements of an open
20 3 feedlot effluent control alternative technology system as
20 4 provided in rules adopted by the department shall be deemed to
20 5 be in compliance with this section, unless a discharge from
20 6 the open feedlot operation causes a violation of state water
20 7 quality standards as provided in chapter 455B, division III.
20 8 4. The control of open feedlot effluent may be
20 9 accomplished by the use of a solids settling facility, settled
20 10 open feedlot effluent basin, or any other open feedlot
20 11 effluent control structure or practice approved by the
20 12 department. The department may require the diversion of
20 13 surface drainage prior to contact with an open feedlot
20 14 operation structure. Solids shall be settled from open
20 15 feedlot effluent before the effluent enters a settled open
20 16 feedlot basin.
20 17 Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT EFFLUENT
20 18 CONTROL == ALTERNATIVE CONTROL PRACTICES.
20 19 If because of topography or other factors related to the
20 20 site of an open feedlot operation it is economically or
20 21 physically impractical to comply with open feedlot effluent
20 22 control requirements using the open feedlot effluent controls
20 23 in section 459A.401, the department shall allow the use of
20 24 other open feedlot effluent control practices if those
20 25 practices will provide an equivalent level of open feedlot
20 26 effluent control that would be achieved by using an open
20 27 feedlot effluent control method pursuant to section 459A.401.
20 28 Sec. 16. NEW SECTION. 459A.410 EFFLUENT APPLICATION
20 29 REQUIREMENTS.
20 30 Settled open feedlot effluent shall be applied in a manner
20 31 which does not cause surface water or groundwater pollution.
20 32 Application in accordance with the provisions of state law,
20 33 including this chapter, rules adopted pursuant to the
20 34 provisions of state law, including this chapter, and
20 35 guidelines adopted pursuant to this chapter, shall be deemed

21 1 as compliance with this section.
21 2 Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF
21 3 OPERATIONS.
21 4 The owner of an open feedlot operation who discontinues the
21 5 use of the operation shall remove all open feedlot effluent
21 6 from related open feedlot operation structures used to store
21 7 open feedlot effluent, as soon as practical but not later than
21 8 six months following the date the open feedlot operation is
21 9 discontinued.

21 10 SUBCHAPTER V
21 11 ENFORCEMENT

21 12 Sec. 18. NEW SECTION. 459A.501 GENERAL.
21 13 The department and the attorney general shall enforce the
21 14 provisions of this chapter in the same manner as provided in
21 15 chapter 455B, division I, unless otherwise provided in this
21 16 chapter.

21 17 Sec. 19. NEW SECTION. 459A.502 VIOLATIONS == CIVIL
21 18 PENALTY.

21 19 A person who violates this chapter shall be subject to a
21 20 civil penalty which shall be established, assessed, and
21 21 collected in the same manner as provided in section 455B.191.
21 22 Any civil penalty collected shall be deposited in the general
21 23 fund of the state. A person shall not be subject to a penalty
21 24 under this section and a penalty under chapter 459 for the
21 25 same violation.

21 26 DIVISION II

21 27 ANIMAL AGRICULTURE COMPLIANCE ACT CIVIL PENALTIES

21 28 Sec. 20. Section 455B.109, subsection 4, Code 2005, is
21 29 amended to read as follows:

21 30 4. All civil penalties assessed by the department and
21 31 interest on the penalties shall be deposited in the general
21 32 fund of the state. ~~However, civil penalties assessed by the~~
~~21 33 department and interest on the civil penalties, arising out of~~
~~21 34 violations involving animal feeding operations under chapter~~
~~21 35 459, subchapter II, shall be deposited in the animal~~
~~22 1 agriculture compliance fund as created in section 459.401.~~
~~22 2 Civil penalties assessed by the department and interest on the~~
~~22 3 penalties arising out of violations committed by animal~~
~~22 4 feeding operations under chapter 459, subchapter III, which~~
~~22 5 may be assessed pursuant to section 455B.191 or 459.604, shall~~
~~22 6 also be deposited in the animal agriculture compliance fund.~~

22 7 Sec. 21. Section 459.401, subsection 2, paragraph a,
22 8 subparagraph (5), Code 2005, is amended by striking the
22 9 subparagraph.

22 10 Sec. 22. Section 459.602, Code 2005, is amended to read as
22 11 follows:

22 12 459.602 AIR QUALITY VIOLATIONS == CIVIL PENALTY.
22 13 A person who violates subchapter II shall be subject to a
22 14 civil penalty which shall be established, assessed, and
22 15 collected in the same manner as provided in section 455B.109.
22 16 Any civil penalty collected shall be deposited in the ~~animal~~
~~22 17 agriculture compliance fund created in section 459.401~~ general
22 18 fund of the state.

22 19 Sec. 23. Section 459.603, Code 2005, is amended to read as
22 20 follows:

22 21 459.603 WATER QUALITY VIOLATIONS == CIVIL PENALTY.
22 22 A person who violates subchapter III shall be subject to a
22 23 civil penalty which shall be established, assessed, and
22 24 collected in the same manner as provided in section 455B.191.
22 25 Any civil penalty collected shall be deposited in the ~~animal~~
~~22 26 agriculture compliance fund created in section 459.401~~ general
22 27 fund of the state.

22 28 Sec. 24. Section 459.604, subsection 2, Code 2005, is
22 29 amended to read as follows:

22 30 2. Moneys assessed and collected in civil penalties and
22 31 interest earned on civil penalties, arising out of a violation
22 32 involving an animal feeding operation, shall be deposited in
22 33 the ~~animal agriculture compliance fund as created in section~~
~~22 34 459.401~~ general fund of the state.

22 35 DIVISION III

23 1 CONFORMING AMENDMENTS

23 2 Sec. 25. Section 455B.103, subsections 3 and 4, Code 2005,
23 3 are amended to read as follows:

23 4 3. Contract, with the approval of the commission, with
23 5 public agencies of this state to provide all laboratory,
23 6 scientific field measurement and environmental quality
23 7 evaluation services necessary to implement the provisions of
23 8 this chapter, ~~and chapter 459, subchapters II and III and~~
~~23 9 chapter 459A.~~ If the director finds that public agencies of
23 10 this state cannot provide the laboratory, scientific field
23 11 measurement and environmental evaluation services required by

23 12 the department, the director may contract, with the approval
23 13 of the commission, with any other public or private persons or
23 14 agencies for such services or for scientific or technical
23 15 services required to carry out the programs and services
23 16 assigned to the department.

23 17 4. Conduct investigations of complaints received directly
23 18 or referred by the commission created in section 455A.6 or
23 19 other investigations deemed necessary. While conducting an
23 20 investigation, the director may enter at any reasonable time
23 21 in and upon any private or public property to investigate any
23 22 actual or possible violation of this chapter, ~~or~~ chapter 459,
23 23 ~~subchapters II and III, chapter 459A,~~ or the rules or
23 24 standards adopted under this chapter, ~~or~~ chapter 459,
23 25 ~~subchapters II and III or chapter 459A.~~ However, the owner or
23 26 person in charge shall be notified.

23 27 Sec. 26. Section 455B.103A, subsections 1 and 5, Code
23 28 2005, are amended to read as follows:

23 29 1. If a permit is required pursuant to this chapter, ~~or~~
23 30 chapter 459, ~~or chapter 459A~~ for stormwater discharge or an
23 31 air contaminant source and a facility to be permitted is
23 32 representative of a class of facilities which could be
23 33 described and conditioned by a single permit, the director may
23 34 issue, modify, deny, or revoke a general permit for all of the
23 35 following conditions:

24 1 5. The enforcement provisions of division II of this
24 2 chapter and chapter 459, subchapter II, apply to general
24 3 permits for air contaminant sources. The enforcement
24 4 provisions of division III, part 1, of this chapter, ~~and~~
24 5 chapter 459, subchapter III, ~~and chapter 459A~~ apply to general
24 6 permits for stormwater discharge.

24 7 Sec. 27. Section 455B.105, subsection 3, 6, and 8, Code
24 8 2005, are amended to read as follows:

24 9 3. Adopt, modify, or repeal rules necessary to implement
24 10 this chapter, ~~and~~ chapter 459, ~~and chapter 459A,~~ and the rules
24 11 deemed necessary for the effective administration of the
24 12 department. When the commission proposes or adopts rules to
24 13 implement a specific federal environmental program and the
24 14 rules impose requirements more restrictive than the federal
24 15 program being implemented requires, the commission shall
24 16 identify in its notice of intended action or adopted rule
24 17 preamble each rule that is more restrictive than the federal
24 18 program requires and shall state the reasons for proposing or
24 19 adopting the more restrictive requirement. In addition, the
24 20 commission shall include with its reasoning a financial impact
24 21 statement detailing the general impact upon the affected
24 22 parties. It is the intent of the general assembly that the
24 23 commission exercise strict oversight of the operations of the
24 24 department. The rules shall include departmental policy
24 25 relating to the disclosure of information on a violation or
24 26 alleged violation of the rules, standards, permits or orders
24 27 issued by the department and keeping of confidential
24 28 information obtained by the department in the administration
24 29 and enforcement of this chapter, ~~and~~ chapter 459, ~~and chapter~~
24 30 ~~459A.~~ Rules adopted by the executive committee before January
24 31 1, 1981, shall remain effective until modified or rescinded by
24 32 action of the commission.

24 33 6. Approve all contracts and agreements under this
24 34 chapter, ~~and~~ chapter 459, ~~and chapter 459A~~ between the
24 35 department and other public or private persons or agencies.

25 1 8. Hold public hearings, except when the evidence to be
25 2 received is confidential pursuant to this chapter, chapter 22,
25 3 ~~or~~ chapter 459, ~~or chapter 459A,~~ necessary to carry out its
25 4 powers and duties. The commission may issue subpoenas
25 5 requiring the attendance of witnesses and the production of
25 6 evidence pertinent to the hearings. A subpoena shall be
25 7 issued and enforced in the same manner as provided in civil
25 8 actions.

25 9 Sec. 28. Section 455B.105, subsection 11, paragraph a,
25 10 unnumbered paragraph 1, Code 2005, is amended to read as
25 11 follows:

25 12 Adopt, by rule, procedures and forms necessary to implement
25 13 the provisions of this chapter, ~~and~~ chapter 459, ~~and chapter~~
25 14 ~~459A~~ relating to permits, conditional permits, and general
25 15 permits. The commission may also adopt, by rule, a schedule
25 16 of fees for permit and conditional permit applications and a
25 17 schedule of fees which may be periodically assessed for
25 18 administration of permits and conditional permits. In
25 19 determining the fee schedules, the commission shall consider:

25 20 Sec. 29. Section 455B.111, subsection 1, paragraphs a and
25 21 b, Code 2005, are amended to read as follows:

25 22 a. A person, including the state of Iowa, for violating

25 23 any provision of this chapter; ~~or~~ chapter 459, subchapters I,
25 24 II, III, IV, and VI; chapter 459A; or a rule adopted pursuant
25 25 to this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
25 26 and VI; or chapter 459A.

25 27 b. The director, the commission, or any official or
25 28 employee of the department where there is an alleged failure
25 29 to perform any act or duty under this chapter; ~~or~~ chapter 459,
25 30 subchapters I, II, III, IV, and VI; chapter 459A; or a rule
25 31 adopted pursuant to this chapter; ~~or~~ chapter 459, subchapters
25 32 I, II, III, IV, and VI; or chapter 459A, which is not a
25 33 discretionary act or duty.

25 34 Sec. 30. Section 455B.111, subsection 5, Code 2005, is
25 35 amended to read as follows:

26 1 5. This section does not restrict any right under
26 2 statutory or common law of a person or class of person to seek
26 3 enforcement of provisions of this chapter, ~~or~~ chapter 459,
26 4 subchapters I, II, III, IV, and VI; chapter 459A; or a rule
26 5 adopted pursuant to this chapter; ~~or~~ chapter 459, subchapters
26 6 I, II, III, IV, and VI; or chapter 459A, or seek other relief
26 7 permitted under the law.

26 8 Sec. 31. Section 455B.112, Code 2005, is amended to read
26 9 as follows:

26 10 455B.112 ACTIONS BY ATTORNEY GENERAL.

26 11 In addition to the duty to commence legal proceedings at
26 12 the request of the director or commission under this chapter;
26 13 ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or
26 14 chapter 459A the attorney general may institute civil or
26 15 criminal proceedings, including an action for injunction, to
26 16 enforce the provisions of this chapter; ~~or~~ chapter 459,
26 17 subchapters I, II, III, IV, and VI; or chapter 459A including
26 18 orders or permits issued or rules adopted under this chapter;
26 19 ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or chapter
26 20 459A.

26 21 Sec. 32. Section 455B.113, subsection 1, Code 2005, is
26 22 amended to read as follows:

26 23 1. The director shall certify laboratories which perform
26 24 laboratory analyses of samples required to be submitted by the
26 25 department by this chapter; ~~or~~ chapter 459, subchapters I, II,
26 26 III, IV, and VI; or chapter 459A, or by rules adopted in
26 27 accordance with this chapter; ~~or~~ chapter 459, subchapters I,
26 28 II, III, IV, and VI; or chapter 459A; or by permits or orders
26 29 issued under this chapter; ~~or~~ chapter 459, subchapters I, II,
26 30 III, IV, and VI; or chapter 459A.

26 31 Sec. 33. Section 455B.115, Code 2005, is amended to read
26 32 as follows:

26 33 455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

26 34 Laboratory analysis of samples as required by this chapter;
26 35 ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or
27 1 chapter 459A; or by rules adopted, or by permits or orders
27 2 issued pursuant to this chapter; ~~or~~ chapter 459, subchapters
27 3 I, II, III, IV, and VI; or chapter 459A shall be conducted by
27 4 a laboratory certified by the director as having the necessary
27 5 competence, equipment, and capabilities to perform the
27 6 analysis. Analytical results from laboratories not
27 7 certificated shall not be accepted by the director.

27 8 Sec. 34. Section 455B.179, Code 2005, is amended to read
27 9 as follows:

27 10 455B.179 TRADE SECRETS PROTECTED.

27 11 Upon a satisfactory showing by any person to the director
27 12 that public disclosure of any record, report, permit, permit
27 13 application, or other document or information or part thereof
27 14 would divulge methods or processes entitled to protection as a
27 15 trade secret, any such record, report, permit, permit
27 16 application, or other document or part thereof other than
27 17 effluent data and analytical results of monitoring of public
27 18 water supply systems, shall be accorded confidential
27 19 treatment. Notwithstanding the provisions of chapter 22, a
27 20 person in connection with duties or employment by the
27 21 department shall not make public any information accorded
27 22 confidential status; however, any such record or other
27 23 information accorded confidential status may be disclosed or
27 24 transmitted to other officers, employees, or authorized
27 25 representatives of this state or the United States concerned
27 26 with carrying out this part of this division; ~~or~~ chapter 459,
27 27 subchapter III, or chapter 459A; or when relevant in any
27 28 proceeding under this part of this division; ~~or~~ chapter 459,
27 29 subchapter III; or chapter 459A.

27 30 Sec. 35. Section 455B.182, Code 2005, is amended to read
27 31 as follows:

27 32 455B.182 FAILURE CONSTITUTES CONTEMPT.

27 33 Failure to obey any order issued by the department with

27 34 reference to a violation of this part of this division; ~~or~~
27 35 chapter 459, subchapter III; ~~or chapter 459A;~~ or any rule
28 1 promulgated or permit issued pursuant thereto shall constitute
28 2 prima facie evidence of contempt. In such event the department
28 3 may certify to the district court of the county in which such
28 4 alleged disobedience occurred the fact of such failure. The
28 5 district court after notice, as prescribed by the court, to
28 6 the parties in interest shall then proceed to hear the matter
28 7 and if it finds that the order was lawful and reasonable it
28 8 shall order the party to comply with the order. If the person
28 9 fails to comply with the court order, that person shall be
28 10 guilty of contempt and shall be fined not to exceed five
28 11 hundred dollars for each day that the person fails to comply
28 12 with the court order. The penalties provided in this section
28 13 shall be considered as additional to any penalty which may be
28 14 imposed under the law relative to nuisances or any other
28 15 statute relating to the pollution of any waters of the United
28 16 States or related to public water supply systems and a
28 17 conviction under this section shall not be a bar to
28 18 prosecution under any other penal statute.

28 19 Sec. 36. Section 455B.185, Code 2005, is amended to read
28 20 as follows:

28 21 455B.185 DATA FROM DEPARTMENTS.

28 22 The commission and the director may request and receive
28 23 from any department, division, board, bureau, commission,
28 24 public body, or agency of the state, or of any political
28 25 subdivision thereof, or from any organization, incorporated or
28 26 unincorporated, which has for its object the control or use of
28 27 any of the water resources of the state, such assistance and
28 28 data as will enable the commission or the director to properly
28 29 carry out their activities and effectuate the purposes of this
28 30 part 1 of division III; ~~and~~ chapter 459, subchapter III; ~~or~~
28 31 ~~chapter 459A~~. The department shall reimburse such agencies
28 32 for special expense resulting from expenditures not normally a
28 33 part of the operating expenses of any such agency.

28 34 Sec. 37. Section 459.102, subsection 2, paragraph a, Code
28 35 2005, is amended to read as follows:

29 1 a. A settled open feedlot effluent basin ~~that collects and~~
29 2 ~~stores only precipitation-induced runoff from an open feedlot~~
29 3 ~~as defined in section 459A.102.~~

29 4 Sec. 38. Section 459.102, subsections 37, 45, and 46, Code
29 5 2005, are amended by striking the subsections.

29 6 Sec. 39. Section 459.309, Code 2005, is repealed.

29 7 EXPLANATION

29 8 This bill relates to animal feeding operations. The bill
29 9 creates a new Code chapter 459A which regulates open feedlot
29 10 operations. The new Code chapter supplements provisions in
29 11 Code chapter 459, the "Animal Agriculture Compliance Act",
29 12 which regulates all animal feeding operations but in
29 13 particular confinement feeding operations. In addition, the
29 14 bill amends provisions in Code chapters 455B and 459 which
29 15 address civil penalties imposed upon animal feeding operations
29 16 that violate the provisions of Code chapter 459.

29 17 DIVISION I == OPEN FEEDLOT OPERATIONS. This division
29 18 creates new Code chapter 459A which is designated the "Animal
29 19 Agriculture Compliance Act for Open Feedlot Operations".

29 20 The division provides a number of definitions, many of
29 21 which mirror or closely resemble definitions, in Code chapter
29 22 459. An "open feedlot operation" (operation) is an unroofed
29 23 or partially roofed area where there is no crop, vegetation,
29 24 or forage growth, if animals are maintained there for 45 days
29 25 or more in any 12-month period. The bill regulates manure and
29 26 precipitation-induced runoff originating from the operation
29 27 which is referred to as open feedlot effluent (effluent) and
29 28 which includes liquids and solids. The bill regulates three
29 29 types of structures associated with the removal and collection
29 30 of effluent: (1) a settled open feedlot effluent basin
29 31 (basin) used to impound the liquid effluent for removal, (2)
29 32 an alternative technology system (alternative system) which
29 33 provides for another method to impound and specifically to
29 34 move the liquid effluent directly to land, and (3) a solids
29 35 settling facility (facility) which is a structure or other
30 1 method which removes solids from the effluent and stores the
30 2 solids.

30 3 Often operations are required to be issued a construction
30 4 permit and a operating permit by the department of natural
30 5 resources. (See 567 IAC 65.) An operation may be issued a
30 6 national pollutant discharge elimination system (NPDES)
30 7 permit. This division principally provides for the three
30 8 types of structures allowed to be constructed as part of an
30 9 open feedlot operation.

30 10 The division provides for special terms, including
30 11 provisions to determine when a construction permit is
30 12 required.

30 13 The division specifies when two or more operations are
30 14 under common ownership or common management and are therefore
30 15 regulated as a single entity. The division also provides a
30 16 method to calculate animal unit capacity. (See Code section
30 17 459.301.)

30 18 The division provides general authority to the
30 19 environmental protection commission and the department to
30 20 regulate open feedlot operations. It provides that the
30 21 purpose of the new Code chapter is to supplement applicable
30 22 provisions of Code chapter 459. It provides that if there is
30 23 a conflict between its provisions and Code chapter 459, the
30 24 new provisions prevail. (See Code section 459.103.)

30 25 The division provides an exception to regulation for
30 26 research activities and experiments performed under the
30 27 authority and regulations of a research college. (See Code
30 28 section 459.318.)

30 29 The division requires the department to adopt and
30 30 promulgate forms and to provide for procedures for the
30 31 receipt, filing, processing, and return of documents in an
30 32 electronic format. It also requires the department to approve
30 33 or disapprove an application for a construction permit within
30 34 60 days after receiving the permit application. (See Code
30 35 section 459.302.)

31 1 The division requires the department to approve or
31 2 disapprove construction permits for basins and alternative
31 3 systems prior to construction. A person other than a research
31 4 college must be issued a permit if after construction the
31 5 operation would have an animal unit capacity of at least 1,000
31 6 animal units. It also requires that a new permit is required
31 7 if the open feedlot capacity is expanded to exceed the animal
31 8 unit capacity or the storage capacity under the old permit.
31 9 (See Code section 459.303.)

31 10 The division requires an owner of an open feedlot operation
31 11 required to have a national pollution discharge elimination
31 12 permit to develop a nutrient management plan by December 31,
31 13 2006. It prohibits a person from removing open feedlot
31 14 effluent from an open feedlot operation unless the department
31 15 approves the plan. The division provides that if an open
31 16 feedlot operation uses an alternative technology system, its
31 17 nutrient management plan is not required to provide for
31 18 settled effluent that enters the alternative technology
31 19 system. The plan must also address restrictions on the
31 20 application of open feedlot effluent including nitrogen use, a
31 21 phosphorus index, and application. The owner is required to
31 22 maintain the nutrient management plan and records necessary to
31 23 demonstrate compliance. (See Code section 459.312.)

31 24 The division provides design standards for basins. The
31 25 division eliminates Code section 459.309 which requires
31 26 departmental rules to account for special design
31 27 characteristics of open feedlot operations and rewrites the
31 28 provision as part of the new Code chapter.

31 29 The division provides for design standards for basins
31 30 required to be issued a construction permit. It requires that
31 31 the applicant submit a soils and hydrogeologic report
31 32 including soil corings. It requires that the basin be
31 33 constructed with a minimum separation between the top of the
31 34 liner of the basin and the seasonal high-water table. It also
31 35 provides that drainage tile may be installed to artificially
32 1 lower the seasonal high-water table. In that case, monitoring
32 2 equipment must be installed. The division requires that the
32 3 basin be constructed with a minimum separation distance
32 4 between the bottom of the basin and a bedrock formation. It
32 5 allows the basin to be constructed within a floodplain. The
32 6 owner must submit to the department a certification by a
32 7 licensed professional engineer certifying that the basin was
32 8 constructed in accordance with design plans. (See Code
32 9 section 459.308.)

32 10 The division provides for the management of effluent by
32 11 using conventional open feedlot effluent control methods or an
32 12 alternative. Under the conventional method, settleable solids
32 13 from open feedlot effluent must be removed prior to discharge
32 14 into a waters of the United States by using a solids settling
32 15 facility, and includes standards for rate of flow and minimum
32 16 application area. It also provides that an open feedlot
32 17 operation that operates pursuant to a national pollutant
32 18 discharge elimination system permit cannot discharge effluent
32 19 into the waters of this United States. There is one exception
32 20 in which the discharge is due to an extraordinary

32 21 precipitation event.

32 22 The division also requires the department to adopt rules
32 23 which allow for alternative technology systems as long as they
32 24 provide an equivalent level of open feedlot effluent control
32 25 that would be achieved by using a conventional open feedlot
32 26 control method.

32 27 The division provides that settled open feedlot effluent
32 28 must be applied in a manner which does not cause surface water
32 29 or groundwater pollution. (See Code section 459.311.)

32 30 The division provides that the owner of an open feedlot
32 31 operation who discontinues the use of the operation must
32 32 remove all open feedlot effluent from related open feedlot
32 33 operation structures used to store open feedlot effluent
32 34 within six months. (See Code section 459.311.)

32 35 The division provides for enforcement. The department and
33 1 the attorney general are responsible for enforcement. (See
33 2 Code section 459.103.)

33 3 The division provides that a person who violates its
33 4 provisions is subject to a civil penalty of up to \$5,000 for
33 5 each offense. The moneys collected in civil penalties are to
33 6 be deposited in the general fund of the state. (See Code
33 7 section 459.603, as amended by the bill.)

33 8 DIVISION II == CIVIL PENALTIES. Generally, civil penalties
33 9 are required to be deposited in the general fund of the state.
33 10 Provisions in Code chapters 455B and 459 provide an exception.
33 11 In the case of violations involving animal feeding operations,
33 12 moneys assessed in civil penalties are required to be
33 13 deposited into the animal agriculture compliance fund
33 14 controlled by the department for purposes of regulating animal
33 15 feeding operations under that chapter. This bill provides
33 16 that the penalties are to be deposited into the general fund.

33 17 DIVISION III == CONFORMING AMENDMENTS. This division
33 18 amends provisions in a number of Code sections which refer to
33 19 Code chapter 459. The provisions were added after provisions
33 20 in Code chapter 455B and other Code chapters relating to
33 21 animal feeding operations were transferred and consolidated
33 22 pursuant to 2002 Acts, ch 1137, and 2002 Acts, 2nd Ex, ch
33 23 1003.

33 24 LSB 2404YC 81

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