

CHAPTER 195
ANIMAL FEEDING OPERATIONS
H.F. 519

AN ACT providing for the regulation of animal feeding operations, fees, the expenditure of moneys, penalties, and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 13.13, subsection 2, Code 1995, is amended to read as follows:

2. The farm assistance program coordinator shall contract with a nonprofit organization chartered in this state to provide mediation services as provided in chapters 654A and 654B, and 654C. ~~The contract shall be awarded to the organization by July 1, 1990.~~ The contract may be terminated by the coordinator upon written notice and for good cause. The organization awarded the contract is designated as the farm mediation service for the duration of the contract. The organization may, upon approval by the coordinator, provide mediation services other than as provided by law. The farm mediation service is not a state agency for the purposes of chapters 19A, 20, and 669.

Sec. 2. Section 13.15, unnumbered paragraph 1, Code 1995, is amended to read as follows:

The farm mediation service shall recommend rules to the farm assistance program coordinator. The coordinator shall adopt rules pursuant to chapter 17A to set the compensation of mediators and to implement this subchapter and chapters 654A, and 654B, and 654C.

Sec. 3. **NEW SECTION.** 159.27 DISPOSAL OF MANURE WITHIN DESIGNATED AREAS – ADOPTION OF RULES.

The department shall adopt rules relating to the disposal of manure in close proximity to a designated area. A person shall not dispose of manure on cropland within two hundred feet from a designated area, unless one of the following applies:

1. The manure is applied by injection or incorporation within twenty-four hours following the application.

2. An area of permanent vegetation cover exists for fifty feet surrounding the designated area and that area is not subject to manure application.

As used in this section, “designated area” means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface inlet, drinking water well, or lake, or a farm pond or privately owned lake as defined in section 462A.2. However, a “designated area” does not include a terrace tile inlet.

Sec. 4. **NEW SECTION.** 204.1 DEFINITIONS.

1. “Animal unit” means a unit of measurement used to determine the animal capacity of a confinement feeding operation, based upon the product of multiplying the number of animals of each species by the following:

a. Slaughter and feeder cattle	1.0
b. Mature dairy cattle	1.4
c. Butcher and breeding swine, over fifty-five pounds	0.4
d. Sheep or lambs	0.1
e. Horses	2.0
f. Turkeys	0.018
g. Broiler or layer chickens	0.01

2. “Animal weight capacity” means the same as defined in section 455B.161.

3. “Confinement feeding operation” means a confinement feeding operation as defined in section 455B.161.

4. “Department” means the department of agriculture and land stewardship.

5. “Fund” means the manure storage indemnity fund created in section 204.2.

6. “Indemnity fee” means the fee provided in section 204.3.

7. "Manure" means animal excreta or other commonly associated wastes of animals, including but not limited to bedding, litter, or feed losses.

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, as defined in section 455B.161.

9. "Permittee" means a person who 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. 5. NEW SECTION. 204.2 MANURE STORAGE INDEMNITY FUND.

1. A manure storage indemnity fund is created as a separate fund in the state treasury under the control of the department. The general fund of the state is not liable for claims presented against the fund.

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; 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 pursuant to chapter 455B, against permittees; 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 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 deposited in the fund 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, 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.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this chapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of revenue and finance pursuant to the order of the department. The fiscal year of the fund begins July 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

5. On August 31 following the close of each fiscal year, moneys which are not obligated or encumbered on June 30 of the past fiscal year, less the department's estimate of the cost to the fund for pending or unsettled claims, and which are in excess of one 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.

Sec. 6. NEW SECTION. 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. 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 cents per animal unit of capacity for confinement feeding operations.

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

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

b. For poultry, the amount of the fee shall be four 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. 7. NEW SECTION. 204.4 CLAIMS AGAINST THE FUND.

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. 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 department shall determine if a claim is eligible to be satisfied under this section, 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.

3. Upon a determination that the claim is eligible for payment, the department shall provide for payment of one hundred percent of the claim, as provided in this section. If at any time the department determines that there are insufficient moneys to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

4. In the event of payment of a claim under this section, the fund is subrogated to the extent of the amount of the payment to all rights, powers, privileges, and remedies of the county regarding the payment amount. The county shall render all necessary assistance to the department in securing the rights granted in this section. A case or proceeding initiated by a county which involves a claim submitted to the department shall not be compromised or settled without the consent of the department. A county shall not be eligible to submit a claim to the department if the county has compromised or settled a case or proceeding, without the consent of the department.

5. If upon disposition of the real estate the county realizes an amount which exceeds the total amount of the delinquent real estate taxes, the county shall forward to the fund any excess amount which is not more than the amount expended by the fund to pay the claim by the county.

Sec. 8. NEW SECTION. 204.4A SITE CLEANUP.

A county which has acquired real estate containing a confinement feeding operation structure, as defined in section 455B.161, following the nonpayment of taxes pursuant to section 446.19, may cleanup the site, including removing and disposing of manure at any time. The county may seek reimbursement including by bringing an action for the costs of the removal and disposal from the person abandoning the real estate.

A person cleaning up a site located on real estate acquired by a county may dispose of any building or equipment used in 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. 204.5 NO STATE OBLIGATION.

This chapter does not imply any guarantee or obligation on the part of this state, or any of its agencies, employees, or officials, either elective or appointive, with respect to any agreement or undertaking to which this chapter relates.

Sec. 10. NEW SECTION. 204.6 DEPARTMENTAL RULES.

The department shall adopt administrative rules pursuant to chapter 17A necessary to administer this chapter.

Sec. 11. Section 260E.3, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 6. After August 31, 1995, a community college shall not enter into an agreement for a project which includes program services for employees of a confinement feeding operation as defined in section 455B.161.

Sec. 12. Section 455B.109, subsection 4, Code 1995, is amended to read as follows:

4. All civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state. However, civil penalties assessed by the department and interest on penalties, arising out of violations committed by animal feeding operations under division II, part 2, shall be deposited in the manure storage indemnity fund as created in section 204.2. Civil penalties assessed by the department and interest on the penalties arising out of violations committed by animal feeding operations under division III, which may be assessed pursuant to section 455B.191, shall be deposited in the manure storage indemnity fund as created in section 204.2.

Sec. 13. NEW SECTION. 455B.110 ANIMAL FEEDING OPERATIONS - COMMISSION APPROVAL.

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 shall not apply to an enforcement action in which the department enforces a civil penalty of three thousand dollars or less. This section shall also not apply to an order to terminate an emergency issued by the director pursuant to section 455B.175.

Sec. 14. Section 455B.134, subsection 3, paragraph f, subparagraph (1), unnumbered paragraph 2, Code 1995, is amended to read as follows:

Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to the effective date of this Act, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to the effective date of this Act, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand

pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation. ~~These separation distances apply to the construction of new facilities and the expansion of existing facilities.~~

ANIMAL FEEDING OPERATIONS REQUIREMENTS – NEW PART 2

Sec. 15. NEW SECTION. 455B.161 DEFINITIONS.

As used in this part, unless the context otherwise requires:

1. "Anaerobic lagoon" means an impoundment used in conjunction with an animal feeding operation, if the primary function of the impoundment is to store and stabilize organic wastes, the impoundment is designed to receive wastes on a regular basis, and the impoundment's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

- a. A confinement feeding operation structure.
- b. A runoff control basin which collects and stores only precipitation induced runoff from an animal feeding operation in which animals are confined to areas which are unroofed or partially roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.
- c. An anaerobic treatment system which includes collection and treatment facilities for all off gases.

2. "Animal" means a domesticated animal belonging to the bovine, porcine, ovine, caprine, equine, or avian species.

3. "Animal feeding operation" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. An animal feeding operation does not include a livestock market.

4. "Animal feeding operation structure" means an anaerobic lagoon or confinement feeding operation structure.

5. "Animal weight capacity" means the product of multiplying the maximum number of animals which the owner or operator confines in an animal feeding operation at any one time by the average weight during a production cycle.

6. "Commercial enterprise" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

7. "Confinement building" means a building used in conjunction with a confinement feeding operation to house animals.

8. "Confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed.

9. "Confinement feeding operation structure" means a formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon.

10. "Covered" means organic or inorganic material placed upon an animal feeding operation structure used to store manure as provided by rules adopted by the department after receiving recommendations which shall be submitted to the department by the college of agriculture at Iowa state university.

11. "Earthen manure storage basin" means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year.

12. "Educational institution" means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

13. "Egg washwater storage structure" means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs.

14. "Formed manure storage structure" means a structure, either covered or uncovered, used to store manure from a confinement feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

15. "Livestock market" means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

16. "Manure" means animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.

17. "Public use area" means that 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.

18. "Religious institution" means a building in which an active congregation is devoted to worship.

19. "Small animal feeding operation" means an animal feeding operation which has an animal weight capacity of two hundred thousand pounds or less for animals other than bovine, or four hundred thousand pounds or less for bovine.

20. "Swine farrow-to-finish operation" means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle are conducted at one confinement feeding operation. Phases of the production cycle include, but are not limited to, gestation, farrowing, growing, and finishing.

Sec. 16. NEW SECTION. 455B.162 ANIMAL FEEDING OPERATIONS – NEW CONSTRUCTION AND EXPANSION.

The following shall apply to animal feeding operation structures constructed on or after the effective date of this Act; to the expansion of structures constructed on or after the effective date of this Act; or, except as provided in section 455B.163, to the expansion of structures constructed prior to the effective date of this Act:

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:

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 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
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

b. 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:

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 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
Animal feeding operation structure	1,250	1,875	2,500

2. 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 million or more pounds for bovine.

b. A qualified confinement feeding operation shall only use an animal feeding operation structure which employs bacterial action which is maintained by the utilization of air or oxygen, and which shall include aeration equipment. The type and degree of treatment technology required to be installed shall be based on the size of the confinement feeding operation, according to rules adopted by the department. The equipment shall be installed, operated, and maintained in accordance with the manufacturer’s instructions and requirements of rules adopted pursuant to this subsection.

c. This subsection shall not apply to a confinement feeding operation which stores manure as dry matter, or to an egg washwater storage structure. This subsection shall not apply to a confinement feeding operation, if the operation was constructed prior to the effective date of this Act, or the department issued a permit prior to the effective date of this Act for the construction of an animal feeding operation structure connected to a confinement feeding operation and the construction began prior to the effective date of this Act.

Sec. 17. NEW SECTION. 455B.163 DISTANCE SEPARATION REQUIREMENTS FOR ANIMAL FEEDING OPERATIONS – EXPANSION OF STRUCTURES CONSTRUCTED PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

An animal feeding operation which does not comply with the distance requirements of section 455B.162, on the effective date of this Act, may continue to operate regardless of

those separation distances. The animal feeding operation may be expanded on or after the effective date of this Act, regardless of those separation distances, if either of the following applies:

1. The animal feeding operation structure as constructed or expanded complies with the distance requirements of 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 the effective date of this Act.
 - (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.

Sec. 18. NEW SECTION. 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.

Sec. 19. NEW SECTION. 455B.165 DISTANCE SEPARATION REQUIREMENTS – EXEMPTIONS.

A separation distance requirement provided in this part shall not apply to the following:

1. A confinement feeding operation structure which provides for the storage of manure exclusively in a dry form.
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.
3. 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, under such terms and conditions that the parties negotiate. The written waiver 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 as it relates to the animal feeding operation structure.
4. An animal feeding operation which is constructed or expanded within the corporate limits of a city, or the area within a separation distance required pursuant to this part, if the city approves a waiver which shall be memorialized in writing. The written waiver becomes effective only upon recording 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 as it relates to the animal feeding operation structure. However, this subsection shall not affect a separation distance required between residences, educational institutions, commercial enterprises, bona fide religious institutions, or public use areas, as provided in this part.
5. An animal feeding operation structure which is located 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. 20. Section 455B.171, Code 1995, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. “Animal feeding operation” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days

or more in any twelve-month period, and all structures used for the storage of manure from animals in the animal feeding operation. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. An animal feeding operation does not include a livestock market as defined in section 455B.161.

NEW SUBSECTION. 1B. "Animal weight capacity" means the same as defined in section 455B.161.

NEW SUBSECTION. 1C. "Confinement feeding operation" means the same as defined in section 455B.161.

NEW SUBSECTION. 7A. "Manure" means the same as defined in section 455B.161.

NEW SUBSECTION. 7B. "Manure sludge" means the solid or semisolid residue produced during the treatment of manure in an anaerobic lagoon.

NEW SUBSECTION. 23A. "Small animal feeding operation" means the same as defined in section 455B.161.

Sec. 21. Section 455B.173, subsection 3, unnumbered paragraph 1, Code 1995, is amended to read as follows:

Establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions, including the viability of a system pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system, or for the discharge of any pollutant ~~or for the disposal of water wastes resulting from poultry and livestock operations~~. The rules specifying the conditions under which the director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

Sec. 22. Section 455B.173, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 12. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations. The rules shall include, but are not limited to, minimum manure control requirements, requirements for obtaining permits, and departmental evaluations of animal feeding operations. 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. The department shall collect an indemnity fee as provided in section 204.3 prior to the issuance of a construction permit. The department shall not approve 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 structure 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. The department shall deposit moneys collected in indemnity fees in the manure storage indemnity fund created in section 204.2. The department shall issue a permit for 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. 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 structure by the department. 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. However, the sixty-day requirement shall not apply to an application, if the applicant is not required to obtain a permit in order

to construct an animal feeding operation structure or to operate an animal feeding operation. The department shall deliver a copy or require the applicant to deliver a copy of the application for a construction permit to the county board of supervisors in the county where the confinement feeding operation or confinement feeding operation structure subject to the permit is to be located. The department shall not approve the application or issue a construction permit until thirty days following delivery of the application to the county board of supervisors. The department shall consider comments from the county board of supervisors, regarding compliance by the applicant with the legal requirements for the construction of the confinement feeding operation structure as provided in this chapter, and rules adopted by the department pursuant to this chapter, if the comments are delivered to the department within fourteen days after receipt of the application by the county board of supervisors. Prior to granting 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, if, after an on-site inspection, the department determines that the site presents an extraordinary potential for groundwater pollution. A person shall not obtain a permit for the construction of a confinement feeding operation, unless the person develops a manure management plan as provided in section 455B.203. The department shall not issue a permit to a person under this paragraph 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. The department shall not issue a permit to a person under this paragraph 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. 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. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to the classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

Sec. 23. Section 455B.191, Code 1995, is amended by adding the following new subsections:

NEW SUBSECTION. 7. The department may impose a civil penalty upon a habitual violator which shall not exceed twenty-five thousand dollars for each day the violation continues. The increased penalty may be assessed for each violation committed subsequent to the violation which results in classifying the person as a habitual violator. A person shall be classified as a habitual violator, if the person has committed three or more violations as described in this subsection. To be considered a violation that is applicable to a habitual violator determination, a violation must have been committed on or after January 1, 1995. In addition, each violation must have been referred to the attorney general for legal action under this chapter, and each violation must be subject to the assessment of a civil penalty or a court conviction, in the five years prior to the date of the latest violation provided in this subsection, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A person shall be removed from the classification of habitual violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. An violation must relate to one of the following:

a. The construction or operation of a confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation, or the installation or use of a

related pollution control device or practice, for which the person must obtain a permit, in violation of this chapter, or rules adopted by the department, including the terms or conditions of the permit.

b. Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for a confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation, or the installation of a related pollution control device or practice for which the person must obtain a construction permit.

c. Failing to obtain a permit or approval by the department in violation of this chapter or departmental rule which requires a permit to construct or operate a confinement feeding operation or use a confinement feeding operation structure, anaerobic lagoon, or a pollution control device or practice which is part of a confinement feeding operation.

d. Operating a confinement feeding operation, including a confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation, or a related pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

e. Failing to submit a manure management plan as required pursuant to section 455B.203, or operating a confinement feeding operation without having a manure management plan approved by the department.

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.

NEW SUBSECTION. 8. Moneys assessed and collected in civil penalties and interest earned on civil penalties, arising out of a violation involving an animal feeding operation shall be deposited in the manure storage indemnity fund as created in section 204.2.

ANIMAL FEEDING OPERATIONS

Sec. 24. NEW SECTION. 455B.201 MINIMUM MANURE CONTROL.

1. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state.

2. Manure from an animal feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, guidelines adopted pursuant to this chapter, and section 159.27, shall be deemed as compliance with this requirement.

3. The owner of the confinement feeding operation which discontinues the use of the operation shall remove all manure from related confinement feeding operation structures used to store manure, by a date specified in an order issued to the operation by the department, or six months following the date that the confinement feeding operation is discontinued, whichever is earlier.

4. A person shall not apply manure by spray irrigation equipment, except as provided by rules which shall be adopted by the department pursuant to chapter 17A.

Sec. 25. NEW SECTION. 455B.203 MANURE MANAGEMENT PLAN - REQUIREMENTS.

1. In order to receive a permit for the construction of a confinement feeding operation 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.

2. A manure management plan shall include all of the following:

a. Calculations necessary to determine the land area required for the application of manure from a confinement feeding operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the plan, and according

to requirements adopted by the department after receiving recommendations from the animal agriculture consulting organization provided for in this Act.

b. Manure nutrient levels as determined by either manure testing or accepted standard manure nutrient values.

c. Manure application methods, timing of manure application, and the location of the manure application.

d. If the location of the application is on land other than land owned by the person applying for the construction permit, the plan shall include a copy of each written agreement executed between the person and the landowner where the manure will be applied.

e. An estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation.

f. Methods, structures, or practices to prevent or diminish soil loss and potential surface water pollution.

g. Methods or practices to minimize potential odors caused by the application of manure by the use of spray irrigation equipment.

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

4. A person receiving a permit for the construction of a confinement feeding operation 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:

a. Upon waiver by the person receiving the permit.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

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.

6. A person submitting a manure management plan who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to section 455B.191.

Sec. 26. NEW SECTION. 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 a lake, 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. However, no distance separation is required between a location or object and a farm pond or privately owned lake, as defined in section 462A.2.

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.

Sec. 27. NEW SECTION. 654C.1 DEFINITIONS.

As used in this chapter, unless otherwise required:

1. "Animal feeding operation structure" means the same as defined in section 455B.161.
2. "Dispute" means a controversy between an owner and a neighbor, which arises from negotiations between the parties to establish an animal feeding operation structure within the separation distance.
3. "Farm mediation service" means the organization selected pursuant to section 13.13.
4. "Neighbor" means a person benefiting from a separation distance required pursuant to section 455B.162, including a person owning a residence other than the owner of the animal feeding operation, a commercial enterprise, bona fide religious institution, educational institution, or a city, authorized to execute a waiver.
5. "Owner" means the owner of an animal feeding operation, as defined in section 455B.161, which utilizes an animal feeding operation structure.
6. "Participate" or "participation" means attending a mediation meeting, and having knowledge about and discussing issues concerning a subject relating to a dispute.
7. "Waiver" means a waiver executed between an owner and a neighbor as provided in section 455B.165.

Sec. 28. NEW SECTION. 654C.2 MEDIATION PROCEEDINGS.

1. A person who is an owner or a neighbor may file a request for mediation with the farm mediation service. Upon receipt of the request for mediation, the farm mediation service shall conduct an initial consultation with each party to the dispute privately and without charge. Mediation shall be cancelled after the initial consultation, unless both parties agree to proceed.
2. Both parties to the dispute shall file with the farm mediation service information required by the service to conduct mediation.
3. Unless mediation is cancelled, within twenty-one days after receiving a mediation request, the farm mediation service shall send a mediation meeting notice to all parties to the dispute setting a time and place for an initial mediation meeting between the parties and a mediator directed by the farm mediation service to assist in mediation. An initial mediation meeting shall be held within twenty-one days of the issuance of the mediation meeting notice.

Sec. 29. NEW SECTION. 654C.3 DUTIES OF THE MEDIATOR.

At the initial mediation meeting and subsequent meetings, the mediator shall:

1. Listen to all involved parties.
2. Attempt to mediate between all involved parties.
3. Encourage compromise and workable solutions.
4. Advise, counsel, and assist the parties in attempting to arrive at an agreement for the future conduct of relations among themselves.

Sec. 30. NEW SECTION. 654C.4 MEDIATION PERIOD.

The mediator may call mediation meetings during the mediation period, which is up to forty-two days after the farm mediation service received the mediation request. However, if all parties consent, mediation may continue after the end of the mediation period.

Sec. 31. NEW SECTION. 654C.5 MEDIATION AGREEMENT.

1. If an agreement is reached between all parties, the mediator shall draft a written mediation agreement, which shall be signed by the parties. The mediation agreement shall provide for a waiver which the mediator shall file in the office of the recorder of deeds of the county in which the benefited land is located, as provided in section 455B.165. The mediator shall forward a mediation agreement to the farm mediation service.
2. The parties agreeing to mediation shall participate in at least one mediation meeting. A party to a dispute may be represented by another person, if the person participates in mediation and has authority to discuss the dispute on behalf of the party being represented. This section does not require a party to reach an agreement. This section does not

require a person to change a position, alter an activity which is a subject of the dispute, alter an application for a permit for construction of an animal feeding operation, or restructure a contract.

3. The parties to the mediation agreement may enforce the mediation agreement as a legal contract.

4. If the parties do not agree to proceed with mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation proceedings were not conducted or concluded or that the parties did not reach an agreement.

Sec. 32. NEW SECTION. 654C.6 EXTENSION OF DEADLINES.

Upon petition by all parties, the farm mediation service may, for good cause, extend a deadline imposed by section 654C.2 or 654C.4 for up to thirty days.

Sec. 33. NEW SECTION. 654C.7 EFFECT OF MEDIATION.

An interest in property or rights and obligations under a contract are not affected by the failure of a person to obtain a mediation agreement.

Sec. 34. Section 657.1, Code 1995, is amended to read as follows:

657.1 NUISANCE – WHAT CONSTITUTES – ACTION TO ABATE.

Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to unreasonably interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof.

Sec. 35. Section 657.2, subsection 1, Code 1995, is amended to read as follows:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

Sec. 36. NEW SECTION. 657.11 ANIMAL FEEDING OPERATIONS.

1. The purpose of this section is to protect animal agricultural producers who manage their operations according to state and federal requirements from the costs of defending nuisance suits, which negatively impact upon Iowa's competitive economic position and discourage persons from entering into animal agricultural production. This section is intended to promote the expansion of animal agriculture in this state by protecting persons engaged in the care and feeding of animals. The general assembly has balanced all competing interests and declares its intent to protect and preserve animal agricultural production operations.

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 not a public or private nuisance under this chapter or under principles of common law, and that the animal feeding operation does not unreasonably and continuously 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 shall not apply if the injury to a person or damage to property is proximately caused by a failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

3. The rebuttable presumption may be overcome by clear and convincing evidence of both of the following:

a. The animal feeding operation unreasonably and continuously interferes with another person's comfortable use and enjoyment of the person's life or property.

b. The injury or damage is proximately caused by the negligent operation of the animal feeding operation.

4. The rebuttable presumption created by this section shall apply regardless of the established date of operation or expansion of the animal feeding operation. The rebuttable presumption 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.

5. 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.

6. A person who brings a losing cause of action against a person for whom the rebuttable presumption created 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.

7. The rebuttable presumption created in this section does not apply to an injury to a person or damages to property caused by the animal feeding operation before the effective date of this Act.

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 each appoint one member to 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. 38. INDEMNITY FEES – PRIOR PERMITTEES. 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.161, as enacted in this Act, prior to the effective date of this Act. However, an indemnity fee shall not be imposed upon a person who has received a construction permit more than ten years prior to the effective date of this Act. 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. After the date required for payment, the department shall transfer all outstanding claims to the department of agriculture and land stewardship. The department of natural resources shall deliver to 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, 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. 39. NOTICE. The department of natural resources shall provide a written notice to persons required to develop and comply with a manure management plan as provided in section 455B.203, as enacted in this Act, not later than nine months after the effective date of this Act. The notice shall include information from section 455B.203, as enacted by this Act, regarding delayed dates of compliance.

Sec. 40. DELAYED IMPLEMENTATION OF CERTAIN REQUIREMENTS. Notwithstanding this Act, the following shall apply:

1. The department of natural resources shall adopt all rules required to implement section 455B.203, as enacted by this Act, not later than six months following the effective date of this Act.

2. A person issued a permit for the construction of a confinement feeding operation before the effective date of this Act shall submit a manure management plan to the department of natural resources not later than one year after the adoption of departmental rules necessary to implement the manure management plan requirements of section 455B.203, as enacted in this Act. However, if a person required to submit a delayed plan pursuant to this subsection violates section 455B.202,* the person shall be required to submit the plan to the department not later than one hundred twenty days following notice by the department.

Sec. 41. PILOT PROJECT - TESTING OF ANIMAL FEEDING OPERATIONS. The department of natural resources shall, to the extent moneys are appropriated by the Seventy-sixth General Assembly, conduct a study of ten animal feeding operations and their structures, including confinement feeding operations and confinement feeding operation structures all as defined in section 455B.161 as enacted in this Act, and manure management and disposal systems used by such operations. The operations and their structures or systems must have been constructed or installed on or before July 1, 1985. The study shall determine the extent to which operations and their structures and manure management and disposal systems contribute to point and nonpoint contamination of the state's groundwater and surface water. A person owning or operating an animal feeding operation may cooperate with the department in carrying out this section. The ten animal feeding operations subject to the study shall be selected by the Leopold center for sustainable agriculture as created pursuant to section 266.39. The identity of the ten animal feeding operations shall be confidential and not subject to chapter 22. The findings of the study shall not be used in a case or proceeding brought against a person based upon a violation of state law. The department shall report its findings and recommendations to the general assembly not later than January 1, 1997.

Sec. 42. INTERIM STUDY COMMITTEE - LIVESTOCK PRODUCTION.

1. The legislative council is requested to establish an interim study committee to examine the practices engaged in by packers, processors, and buyers, including persons regulated by the grain inspection, packers and stockyards administration, United States department of agriculture, under the federal Packers and Stockyards Act of 1921, as amended, 21 U.S.C. § 181, et seq. The interim committee shall study the following issues:

a. The increasing degree of vertical integration of the livestock market by packers and processors, including threats to economic competition, independent production, and consumer protection.

b. Market practices engaged in by packers, processors, or buyers which increasingly threaten open and fair markets, by establishing arbitrary and inconsistent pricing without public disclosure or price discovery mechanisms, including price differences based on the time of delivery, transaction volume, and private pricing arrangements under contract.

2. The interim committee shall hold a public hearing in each congressional district.

3. The interim committee shall report its findings and recommendations to the general assembly not later than the first day of the 1996 legislative session, unless another date is established by the legislative council.

*Section 455B.202 not enacted

Sec. 43. SEVERABILITY. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the invalidity does 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. 44. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 31, 1995

CHAPTER 196

SCHOOL-TO-WORK TRANSITION SYSTEM – CAREER PATHWAYS PROGRAM H.F. 565

AN ACT relating to a school-to-work transition system and the establishment of a career pathways program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 256.38 SCHOOL-TO-WORK TRANSITION SYSTEM.

1. It is the policy of the state of Iowa to provide an education system that prepares the students of this state to meet the high skills demands of today's workplace. The general assembly recognizes the need to prepare students for any postsecondary opportunity that leads to high-wage, high-skill careers. In order to meet this need, the high school curriculum must be redesigned so students appreciate the relevance of academic course work, reach higher levels of learning in science, math, and communications skills, and acquire the ability to apply this knowledge. Career pathways will modify high school curricula and instruction to provide students with opportunities to achieve high levels of skills and knowledge within a broad range of related career areas, which will require a variety of levels of preparation.

2. The departments of education, employment services, and economic development shall develop a statewide school-to-work transition system in consultation with local school districts, community colleges, and labor, business, and industry interests. The system shall be designed to attain the following objectives:

- a. Motivate youths to stay in school and become productive citizens.
- b. Set high standards by promoting higher academic performance levels.
- c. Connect work and learning so that the classroom is linked to worksite learning and experience.
- d. Ready students for work in order to improve their prospects for immediate employment after leaving school through career pathways that provide significant opportunity to continued education and career development.
- e. Engage employers and workers by promoting their participation in the education of youth in order to ensure the development of a skilled, flexible, entry-level workforce.
- f. Provide a framework to position the state to access federal resources for state youth apprenticeship systems and local programs.

Sec. 2. NEW SECTION. 256.39 CAREER PATHWAYS PROGRAM.

1. If the general assembly appropriates moneys for the establishment of a career pathways program, the department of education shall develop a career pathways grant program, criteria for the formation of ongoing career pathways consortia in each merged area, and guidelines and a process to be used in selecting career pathways consortium grant recipients, including a requirement that grant recipients shall provide matching funds