

Sec. 5. Section 714.8, Code 2001, is amended by adding the following new subsection:
NEW SUBSECTION. 20. A contract seller who intentionally provides inaccurate information with regard to any matter required to be disclosed under section 558.70, subsection 1, or section 558A.4.

Sec. 6. **APPLICABILITY DATE.** This Act applies to residential real estate installment sales contracts entered into on or after the effective date of this Act by contract sellers who entered into four or more residential real estate installment sales contracts in the three hundred sixty-five days previous to a contract entered into on or after the effective date of this Act.

Approved April 26, 2002

CHAPTER 1137

ANIMAL FEEDING OPERATIONS AND ENVIRONMENTAL REGULATION

S.F. 2293

AN ACT relating to animal agriculture, providing for fees, providing for penalties, and including retroactive applicability and effective date provisions.

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

DIVISION I REGULATION OF ANIMAL FEEDING OPERATIONS

Section 1. Section 4.1, Code 2001, is amended by adding the following new subsection:
NEW SUBSECTION. 9A. "Internet" means the federated international system that is composed of allied electronic communication networks linked by telecommunication channels, that uses standardized protocols, and that facilitates electronic communication services, including but not limited to use of the world wide web; the transmission of electronic mail or messages; the transfer of files and data or other electronic information; and the transmission of voice, image, and video.

Sec. 2. Section 455B.109, subsection 4, Code 2001, 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 the civil penalties, arising out of violations ~~committed by~~ involving animal feeding operations under division II, part 2, shall be deposited in the ~~manure storage indemnity animal agriculture compliance~~ fund as created in section ~~455J.2~~ 455B.127. 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 also be deposited in the ~~manure storage indemnity animal agriculture compliance~~ fund as created in section 455J.2.

Sec. 3. Section 455B.110, subsection 3, Code 2001, is amended by striking the subsection.

PART 2
ANIMAL FEEDING OPERATIONS

Sec. 4. NEW SECTION. 455B.125 COUNTY ASSESSMENT OF FEES PROHIBITED.

A county shall not assess or collect a fee under this chapter for the regulation of animal agriculture, including but not limited to any fee related to the filing, consideration, or evaluation of an application for a construction permit pursuant to section 455B.200A or the filing of a manure management plan pursuant to section 455B.203.

Sec. 5. NEW SECTION. 455B.126 ANIMAL AGRICULTURE COMPLIANCE FEES — DELINQUENCIES.

If a fee imposed under this chapter for deposit into the animal agriculture compliance fund is delinquent, the department may charge interest on any amount of the fee that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue and finance pursuant to section 421.7. The interest amount shall be computed from the date that the fee is delinquent, unless the department designates a later date. The interest amount shall accrue for each month in which a delinquency is calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount shall become part of the amount of the fee due.

Sec. 6. NEW SECTION. 455B.127 ANIMAL AGRICULTURE COMPLIANCE FUND.

1. An animal agriculture compliance fund is created in the state treasury under the control of the department. The compliance fund is separate from the general fund of the state.

2. The compliance fund is composed of two accounts, the general account and the assessment account.

a. The general account is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the compliance fund. Unless otherwise specifically provided in statute, moneys required to be deposited in the compliance fund shall be deposited into the general account. The general account shall include moneys deposited into the account from all of the following:

(1) The construction permit application fee required pursuant to section 455B.200A.

(2) The manure management plan filing fee required pursuant to section 455B.203.

(3) Fees paid by persons required to be certified as commercial manure applicators or confinement site manure applicators pursuant to section 455B.203A.

(4) The collection of civil penalties assessed by the department and interest on civil penalties, arising out of violations involving animal feeding operations as provided in sections 455B.167 and 455B.207.

b. The assessment account is composed of moneys collected from the annual compliance fee required pursuant to section 455B.203C.

3. Moneys in the compliance fund are appropriated to the department exclusively to pay the expenses of the department in administering and enforcing the provisions of division II, part 2, and division III, part 1, subpart A,³ as necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. The department shall not transfer moneys from the compliance fund's assessment account to another fund or account, including but not limited to the fund's general account.

4. Moneys in the fund, which may be subject to warrants written by the director of revenue and finance, shall be drawn upon the written requisition of the director of the department of natural resources or an authorized representative of the director.

5. Notwithstanding section 8.33, any unexpended balance in the compliance fund at the end of the fiscal year shall be retained in the fund. Notwithstanding section 12C.7, subsection 2,

³ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §247, 262 herein

interest, earnings on investments, or time deposits of the moneys in the compliance fund shall be credited to the fund.

Sec. 7. Section 455B.161, subsections 2, 3, 4, 5, 9, 11, 16, 21, and 24, Code 2001, are amended to read as follows:

2. ~~“Anaerobic lagoon” means an impoundment used in conjunction with an animal feeding operation unformed manure storage structure, if the primary function of the impoundment structure is to store and stabilize organic wastes manure, the impoundment structure is designed to receive wastes manure on a regular basis, and the impoundment’s structure’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. b. An anaerobic treatment system which that includes collection and treatment facilities for all off gases.~~

3. ~~“Animal” means a domesticated animal belonging to the bovine, porcine, ovine, caprine, equine, or avian species classified as cattle, swine, horses, sheep, chickens or turkeys.~~

4. ~~“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.~~

5. ~~“Animal feeding operation structure” means an anaerobic lagoon or confinement feeding operation structure a confinement building, manure storage structure, or egg washwater storage structure.~~

9. ~~“Confinement feeding operation building” or “confinement building” means a building used in conjunction with a confinement feeding operation to house animals.~~

11. ~~“Confinement feeding operation structure” means a formed manure storage an animal feeding operation structure, egg washwater storage structure, earthen manure storage basin, or confinement building. A confinement feeding operation structure does not include an anaerobic lagoon that is part of a confinement feeding operation.~~

16. ~~“Formed manure storage structure” means a structure, either covered or uncovered, impoundment used to store manure from a confinement an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.~~

21. ~~“Small animal feeding operation” means an animal feeding operation which has an animal weight animal unit capacity of two hundred thousand pounds or less for animals other than bovine, or four hundred thousand pounds five hundred or less for bovine fewer animal units.~~

24. ~~“Unformed manure storage structure” means a covered or uncovered animal feeding operation structure in which impoundment used to store manure is stored, other than a formed manure storage structure, which is includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.~~

Sec. 8. Section 455B.161, Code 2001, is amended by adding the following new subsections:
NEW SUBSECTION. 6A. “Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor as follows:

- | | |
|-------------------------------------|-------|
| a. Slaughter or feeder cattle | 1.000 |
| b. Immature dairy cattle | 1.000 |

c. Mature dairy cattle 1.400
 d. Butcher or breeding swine weighing
 more than fifty-five pounds 0.400
 e. Swine weighing fifteen pounds or more
 but not more than fifty-five pounds 0.100
 f. Sheep or lambs 0.100
 g. Horses 2.000
 h. Turkeys 0.018
 i. Broiler or layer chickens 0.010

NEW SUBSECTION. 6B. "Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in sections 455B.161A and 455B.200B.

NEW SUBSECTION. 8A. "Commission" means the environmental protection commission created pursuant to section 455A.6.

NEW SUBSECTION. 18A. "Manure storage structure" means a formed manure storage structure or an unformed manure storage structure. A manure storage structure does not include an egg washwater storage structure.

NEW SUBSECTION. 18B. "Public thoroughfare" means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

NEW SUBSECTION. 19A. "Qualified confinement feeding operation" means a confinement feeding operation having an animal unit capacity of any of the following:

- a. For a confinement feeding operation maintaining animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation, five thousand three hundred thirty-three or more animal units.
- b. For a confinement feeding operation maintaining swine as part of a farrowing and gestating operation, two thousand five hundred or more animal units.
- c. For a confinement feeding operation maintaining swine as part of a swine farrow-to-finish operation, five thousand four hundred or more animal units.
- d. For a confinement feeding operation maintaining cattle, eight thousand five hundred or more animal units.

Sec. 9. Section 455B.161A, subsection 1, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

1. 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. For purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on or after March 21, 1996.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) (a) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than one thousand two hundred fifty animal units for swine maintained as part of a farrowing and gestating operation, less than two thousand seven hundred animal units for swine maintained as part of a farrow-to-finish operation, or less than four thousand animal units for cattle maintained as part of a cattle operation.

(2) (a) One thousand five hundred feet for a confinement feeding operation having an ani-

mal unit capacity of three thousand or more but less than five thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand five hundred feet for a confinement feeding operation having an animal unit capacity of one thousand two hundred fifty or more but less than two thousand animal units for swine maintained as part of a swine farrowing and gestating operation, two thousand seven hundred or more but less than five thousand four hundred animal units for swine maintained as part of a farrow-to-finish operation, or four thousand or more but less than six thousand five hundred animal units for cattle maintained as part of a cattle operation.

(3) (a) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of five thousand or more animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of two thousand or more animal units for swine maintained as part of a swine farrowing and gestating operation, five thousand four hundred animal units or more for swine maintained as part of a farrow-to-finish operation, or six thousand five hundred or more animal units for cattle maintained as part of a cattle operation.

Sec. 10. Section 455B.161A, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 3. In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned.

NEW SUBSECTION. 4. A confinement feeding operation structure is abandoned if the confinement feeding operation structure has been razed, removed from the site of a confinement feeding operation, filled in with earth, or converted to uses other than a confinement feeding operation structure so that it cannot be used as a confinement feeding operation structure without significant reconstruction.

NEW SUBSECTION. 5. All distances between locations of objects provided in this part shall be measured in feet from their closest points, as provided by rules adopted by the department. However, a distance between a public thoroughfare and a confinement feeding operation structure shall be measured from the portion of the right-of-way which is closest to the confinement feeding operation structure.

Sec. 11. Section 455B.162, subsection 1, unnumbered paragraphs 1 and 2, Code 2001, are amended to read as follows:

Except as provided in ~~subsection subsections 3 and 6~~, and sections 455B.163 and 455B.165, this subsection applies to ~~animal confinement~~ feeding operation structures constructed on or after May 31, 1995, but prior to January 1, 1999; and to the expansion of structures constructed prior to January 1, 1999.

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

Sec. 12. Section 455B.162, subsection 2, unnumbered paragraph 1, Code 2001, is amended to read as follows:

Except as provided in ~~subsection subsections 3 and 6~~, and sections 455B.163 and 455B.165, this subsection applies to ~~animal confinement~~ feeding operation structures constructed on or after January 1, 1999, but prior to March 1, 2003, and to the expansion of structures constructed on or after January 1, 1999, but prior to March 1, 2003.

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

Sec. 13. Section 455B.162, subsection 3, unnumbered paragraph 1, Code 2001, is amended to read as follows:

Except as provided in subsection 6, and sections 455B.163 and 455B.165, this subsection applies to ~~animal confinement~~ feeding operation structures constructed on or after May 31, 1995, but prior to March 1, 2003; to the expansion of structures constructed on or after May 31, 1995, but prior to March 1, 2003; and to the expansion of structures constructed prior to May 31, 1995.

PARAGRAPH DIVIDED. The following table represents the minimum separation distance in feet required between ~~animal a confinement~~ feeding operation structures ~~structure~~ and a public use area; or between a confinement feeding operation structure and a residence not owned by the owner of the ~~animal confinement~~ feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution, if the residence, commercial enterprise, religious institution, or educational institution is located within the corporate limits of a city:

Sec. 14. Section 455B.162, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. Except as provided in subsections 3B and 6, and sections 455B.163 and 455B.165, this subsection applies to confinement feeding operation structures constructed on or after March 1, 2003, and to the expansion of confinement feeding operation structures constructed on or after March 1, 2003.

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

Type of structure	For a confinement feeding operation having an animal unit capacity of less than 1,000 animal units	For a confinement feeding operation having an animal unit capacity of 1,000 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
Anaerobic lagoon	1,875	2,500	3,000
Uncovered earthen manure storage basin	1,875	2,500	3,000
Uncovered formed manure storage structure	1,500	2,000	2,500
Covered earthen manure storage basin	1,250	1,875	2,375
Covered formed manure storage structure	1,250	1,875	2,375

Confinement building	1,250	1,875	2,375
Egg washwater storage structure	1,000	1,500	2,000

NEW SUBSECTION. 3B. Except as provided in subsection 6, and sections 455B.163 and 455B.165, this subsection applies to confinement feeding operation structures constructed on or after March 1, 2003, and to the expansion of confinement feeding operation structures constructed on or after March 1, 2003.

The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a public use area; or between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution, if the residence, commercial enterprise, religious institution, or educational institution is located within the corporate limits of a city:

Type of structure	For a confinement feeding operation having an animal unit capacity of less than 1,000 animal units	For a confinement feeding operation having an animal unit capacity of 1,000 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
Confinement feeding operation structure	1,875	2,500	3,000

Sec. 15. Section 455B.162, subsection 4, Code 2001, is amended to read as follows:

4. Except as provided in section 455B.165, ~~on and after January 1, 1999, an animal a confinement feeding operation structure shall not be constructed or expanded within one hundred feet from a public thoroughfare, including a road, street, or bridge which is constructed or maintained by the state or a political subdivision.~~

Sec. 16. Section 455B.162, subsection 6, paragraphs a and c, Code 2001, are amended by striking the paragraphs.

Sec. 17. Section 455B.162, subsection 6, paragraph b, Code 2001, is amended to read as follows:

b. ~~a. A Except as provided in paragraph "b", a qualified confinement feeding operation storing manure in a manure storage structure shall only use an animal feeding operation a manure storage structure which that 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.~~

~~b. The requirements of paragraph "a" do not apply to any of the following:~~

~~(1) A qualified confinement feeding operation which includes a confinement feeding operation structure constructed prior to May 31, 1995.~~

~~(2) A qualified confinement feeding operation that stores manure on a dry matter basis.~~

Sec. 18. Section 455B.163, subsections 1 and 2, Code 2001, are amended to read as follows:

1. a. ~~An animal~~ For a confinement feeding operation structure as constructed or expanded prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 455B.162, ~~subsections 1 and 3.~~

b. ~~An animal~~ For a confinement feeding operation structure as constructed or expanded on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 455B.162, ~~subsections 2 and 3.~~

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 455B.162, subsections 3A and 3B.

2. All of the following apply to the expansion of the ~~animal~~ confinement feeding operation:

a. No portion of the ~~animal~~ confinement 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~~ For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the animal confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

(a) May 31, 1995, for ~~an animal~~ a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999, or on

(b) January 1, 1999, for ~~an animal~~ a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

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

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

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) One thousand animal units.

Sec. 19. Section 455B.163, subsection 3, unnumbered paragraph 1, Code 2001, is amended to read as follows:

The ~~animal~~ confinement feeding operation ~~was includes a confinement feeding operation structure that is~~ constructed prior to ~~January 1, 1999~~ March 1, 2003, and is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures, if all of the following apply:

Sec. 20. Section 455B.163, subsection 3, paragraph a, Code 2001, is amended to read as follows:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the ~~animal~~ confinement feeding operation that utilizes all replacement formed manure storage structures.

Sec. 21. Section 455B.165, subsections 1, 4, and 5, Code 2001, are amended by striking the subsections.

Sec. 22. Section 455B.165, subsection 3, paragraph a, Code 2001, is amended to read as follows:

a. ~~An animal~~ A confinement feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located. ~~If an animal a~~ confinement feeding operation structure is constructed or expanded within the separation distance required between ~~an animal a~~ confinement feeding operation structure and a public thoroughfare as required pursuant to section 455B.162, the state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the distance separation requirement may execute a written waiver with the titleholder of the land where the structure is located. The animal confinement feeding operation structure shall be constructed or expanded under such terms and conditions that the parties negotiate.

Sec. 23. NEW SECTION. 455B.166 DEPARTMENT OF NATURAL RESOURCES — DEVELOPMENT OF COMPREHENSIVE PLANS AND PROGRAMS FOR AIR QUALITY.

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

a. “Airborne pollutant” means hydrogen sulfide, ammonia, or odor.

b. “Separated location” means a location or object from which a separation distance is required under section 455B.162, other than a public thoroughfare.

2. The department shall conduct a comprehensive field study to monitor the level of airborne pollutants emitted from animal feeding operations in this state, including but not limited to each type of confinement feeding operation structure.

3. a. After the completion of the field study, the department may develop comprehensive plans and programs for the abatement, control, and prevention of airborne pollutants originating from animal feeding operations in accordance with this section. The comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect. The department may adopt any comprehensive plans or programs in accordance with chapter 17A prior to implementation or enforcement of an air quality standard but in no event shall the plans and programs provide for the enforcement of an air quality standard prior to December 1, 2004.

b. Any air quality standard established by the department for animal feeding operations shall be based on and enforced at distances measured from a confinement feeding operation structure to a separated location. In providing for the enforcement of the standards, the department shall take all initial measurements at the separated location. If the department determines that a violation of the standards exists, the department may conduct an investigation to trace the source of the airborne pollutant. This section does not prohibit the department from entering the premises of an animal feeding operation in compliance with section 455B.103. The department shall comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

c. The department shall establish recommended best management practices, mechanisms, processes, or infrastructure under the comprehensive plans and programs in order to reduce the airborne pollutants emitted from an animal feeding operation.

d. The department shall provide a procedure for the approval and monitoring of alternative or experimental practices, mechanisms, processes, or infrastructure to reduce the airborne pollutants emitted from an animal feeding operation, which may be incorporated as part of the comprehensive plans and programs developed under this section.

Sec. 24. NEW SECTION. 455B.167 CIVIL PENALTY.

A person who violates this part shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109. Any civil penalty

collected shall be deposited in the animal agriculture compliance fund created in section 455B.127.

Sec. 25. Section 455B.171, subsections 2, 3, 4, 5, 6, 8, 20, 43, and 47, Code 2001, are amended by striking the subsections.

Sec. 26. Section 455B.191, subsection 8, Code 2001, is amended to read as follows:

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~~ animal agriculture compliance fund as created in section ~~455J.2~~ 455B.127.

SUBPART B ANIMAL FEEDING OPERATIONS

Sec. 27. Section 455B.200, Code 2001, is amended to read as follows:
455B.200 GENERAL.

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

2. Any provision referring generally to compliance with the requirements of this chapter as applied to animal feeding operations also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to permits or manure management plans required under this subpart. However, for purposes of approving or disapproving an application for a construction permit as provided in section 455B.200E, conditions for the approval of an application based on results produced by a master matrix are not requirements of this chapter until the department approves or disapproves an application based on those results.

3. The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in division I, unless otherwise provided in this section.⁴

Sec. 28. Section 455B.200A, subsections 1 through 4, Code 2001, are amended to read as follows:

1. The department shall ~~issue~~ approve or disapprove applications for permits for the construction, including the expansion, of ~~animal confinement~~ confinement feeding operation structures, ~~including structures which are part of confinement feeding operations, as provided by rules adopted pursuant to section 455B.200 this chapter.~~ The department's decision to approve or disapprove a permit for the construction of a confinement feeding operation⁵ shall be based on whether the application is submitted according to procedures required by the department and the application meets standards established by the department. A person shall not begin construction of a confinement feeding operation structure requiring a permit under this section, unless the department shall issue a first approves the person's application and issues to the person a construction permit to an animal feeding operation if an application is submitted according to procedures required by the department and. The department shall provide conditions for requiring when a person must obtain a construction permit.

a. Except as provided in paragraph "b", a person must obtain a permit to construct any of the following:

(1) A confinement feeding operation structure if after construction its confinement feeding operation would have an animal unit capacity of at least one thousand animal units.

(2) The confinement feeding operation structure is an unformed manure storage structure.

⁴ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §250, 262 herein

⁵ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §251, 262 herein

b. A person is not required to obtain a permit to construct a confinement feeding operation structure, if any of the following apply:

(1) The confinement feeding operation structure, if constructed, would be part of a small animal feeding operation. However, the person must obtain a permit under this section if the confinement feeding operation structure is an unformed manure storage structure.

(2) The confinement feeding operation structure is part of a confinement feeding operation which is owned by a research college conducting research activities as provided in section 455B.206.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application meets standards established by the department, if the application is submitted to the county board of supervisors in the county where the proposed confinement feeding operation is to be located as required pursuant to section 455B.200E, and the application meets the requirements of this chapter. If a county submits an approved recommendation pursuant to a construction evaluation resolution filed with the department, the application must also achieve a satisfactory rating produced by the master matrix used by the board or department under section 455B.200E. The department shall approve the application regardless of whether the animal feeding operation applicant is required to obtain such to⁶ be issued a construction permit. The department shall not require that a person obtain a permit for the construction of an animal feeding operation structure if the structure is part of a small animal feeding operation. For purposes of this section, an animal feeding operation structure includes a manure storage structure.

2. 3. The department shall not issue approve an application for a construction permit for the construction of an animal feeding operation structure which is part of a confinement feeding operation unless the person applicant submits all of the following:

a. An indemnity fee as provided in section 455J.3 which that the department shall deposit into the manure storage indemnity fund created in section 455J.2.

b. A manure management plan as provided in section 455B.203 and manure management plan filing fee as provided in section 455B.203C.

c. A construction permit application fee as provided in section 455B.203C.

3A. The applicant may submit a master matrix as completed by the applicant.

3. 4. a. A confinement feeding operation meets threshold requirements under this paragraph if the confinement feeding operation after construction of a proposed confinement feeding operation structure would have a minimum animal unit capacity of the following:

(1) Three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation or cattle maintained as part of a cattle operation.

(2) One thousand two hundred fifty animal units for swine maintained as part of a swine farrowing and gestating operation.

(3) Two thousand seven hundred fifty animal units for swine maintained as part of a farrow-to-finish operation.

(4) Four thousand animal units for cattle maintained as part of a cattle operation.

b. The department shall not issue approve an application for a construction permit for the construction of unless the following apply:

(1) If the application is for a permit to construct an unformed manure storage structure, the application must include a statement approved by a professional engineer certifying that the construction of the unformed manure storage structure complies with the construction design standards required in this subpart.

(2) If the application is for a permit to construct three or more animal confinement feeding operation structures unless the applicant files, the application must include a statement approved by a professional engineer registered pursuant to chapter 542B certifying providing that the construction of the animal confinement feeding operation structures will not impede the drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction. For

⁶ According to enrolled Act

a confinement feeding operation that meets threshold requirements, the statement must be approved by a professional engineer. Otherwise, if the application is for a permit to construct a formed manure storage structure, the statement must be part of the construction design statement as provided in section 455B.200C.

(3) If the application is for a permit to construct a formed manure storage structure, other than for a confinement feeding operation meeting threshold requirements, the applicant must include a construction design statement as provided in section 455B.200C. An application for a permit to construct a formed manure storage structure as part of a confinement feeding operation that meets threshold requirements must include a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the requirements of this subpart.

(4) The department may only require that an application for a permit to construct a formed manure storage structure or egg washwater storage structure that is part of a confinement feeding operation meeting threshold requirements include an engineering report, construction plans, or specifications prepared by a licensed professional engineer or the natural resources conservation service of the United States department of agriculture.

4. 5. Prior As a condition to issuing a permit to a person approving an application for the construction of an animal feeding operation a construction permit, the department may require any of the following:

a. The installation of a related pollution control device or practice, including but not limited to the installation and operation of a hydrological water pollution monitoring system for an exclusively earthen unformed manure storage structure according to rules which shall be adopted by the department.

b. The department's approval of the installation of any proposed system to permanently lower the groundwater table at a site as part of the construction of an unformed manure storage structure, as is necessary to ensure that the unformed manure storage structure does not pollute groundwater sources, including providing for standards as provided in section 455B.205.

Sec. 29. Section 455B.200A, subsections 5 through 8, Code 2001, are amended by striking the subsections.

Sec. 30. Section 455B.200B, unnumbered paragraph 1, Code 2001, is amended to read as follows:

For purposes of this part subpart, all of the following shall apply:

Sec. 31. Section 455B.200B, subsection 1, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

1. 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. In addition, for purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on and after May 21, 1998.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) One thousand two hundred fifty feet for confinement feeding operations having a combined animal unit capacity of less than one thousand animal units.

(2) Two thousand five hundred feet for confinement feeding operations having a combined animal unit capacity of one thousand animal units or more.

Sec. 32. Section 455B.200B, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 3. In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned as provided in section 455B.161A.

NEW SUBSECTION. 4. All distances between locations or objects provided in this subpart shall be measured in feet from their closest points.

NEW SUBSECTION. 5. a. The department shall designate by rule each one hundred year floodplain in this state according to the location of the one hundred year floodplain. A person shall not be prohibited from constructing a confinement feeding operation⁷ on a one hundred year floodplain unless the one hundred year floodplain is designated by rule in accordance with this subsection.

b. (1) Until the effective date of rules adopted by the department to designate the location of each one hundred year floodplain in this state, a person shall not construct a confinement feeding operation structure on land that contains a soil type classified as alluvial unless the one⁸ of the following applies:

(a) If the person does not apply for a construction permit as provided in section 455B.200A, the person must petition the department for a declaratory order pursuant to section 17A.9 to determine whether the location of the proposed confinement feeding operation structure is located on a one hundred year floodplain. The department shall issue a declaratory order in response to the petition, notwithstanding any other provision provided in section 17A.9 to the contrary, within thirty days from the date that the petition is filed with the department.

(b) If the person does apply for a construction permit as provided in section 455B.200A, the person must identify that the land contains a soil type classified as alluvial. The department shall determine whether the land is located on a one hundred year floodplain.

(2) The department shall provide in its declaratory order or its approval or disapproval of a construction permit application a determination regarding whether the confinement feeding operation is to be located on a one hundred year floodplain, whether the confinement feeding operation may be constructed at the location, and any conditions for the construction.

(3) This paragraph "b" is repealed on the effective date that rules are adopted by the department pursuant to paragraph "a". The department shall provide a caption on the adopted rule as published in the Iowa administrative bulletin as provided in section 17A.4, stating that this paragraph is repealed as provided in this subparagraph subdivision. The director of the department shall deliver a copy of the adopted rule to the Iowa Code editor.⁹

NEW SUBSECTION. 6. As used in this subpart, unless the context otherwise requires:

a. "Critical public area" means land as designated by the department pursuant to rules adopted pursuant to chapter 17A, if all of the following apply:

(1) The land is part of a public park, preserve, or recreation area that is owned or managed by the federal government; by the department, including under chapter 461A or 465C; or by a political subdivision.

(2) The land has a unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system.

b. "Designated wetland" means land designated as a protected wetland by the United States department of the interior or the department of natural resources, including but not limited to a protected wetland as defined in section 456B.1, if the land is owned and managed by the federal government or the department of natural resources. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.

c. "Document" means any form required to be processed by the department under this subpart regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in section 455B.200A, manure management plans as provided in section 455B.203, comment or evaluation by a county board of supervisors consider-

⁷ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §252, 262 herein

⁸ According to enrolled Act

⁹ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §253, 262 herein

ing an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to section 455B.200E, and notices required under those sections.

d. "High-quality water resource" means that part of a water source or wetland that the department has designated as any of the following:

(1) A high-quality water (Class "HQ") or a high-quality resource water (Class "HQR") according to 567 IAC ch. 61, in effect on January 1, 2001.

(2) A protected water area system, according to a state plan adopted by the department in effect on January 1, 2001.

e. "Karst terrain" means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

f. "Major water source" means a water source that is a lake, reservoir, river, or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding which has been identified by rules adopted by the commission.

g. "One hundred year floodplain" means the land adjacent to a major water source, if there is at least a one percent chance that the land will be inundated in any one year, according to calculations adopted by rules adopted pursuant to section 455B.200. In making the calculations, the department shall consider available maps or data compiled by the federal emergency management agency.

h. "Professional engineer" means a person engaged in the practice of engineering as defined in section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to section 542B.17.

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

j. "Water source" means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

Sec. 33. NEW SECTION. 455B.200C CONSTRUCTION DESIGN STATEMENT — FORMED MANURE STORAGE STRUCTURES.

1. a. Except as provided in paragraph "b", a person shall not construct a formed manure storage structure, unless the person submits a construction design statement for filing with the department.

b. The following persons are not required to submit a construction design statement with the department:

(1) A person who constructs a formed manure storage structure as part of a small animal feeding operation.

(2) A person who submits a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the construction design standards required in this subpart, including a person required to submit such a statement as part of an application for a construction permit pursuant to section 455B.200A.

2. The construction design statement must include all of the following:

a. A summary description of the type of formed manure storage structure proposed to be constructed, including whether such formed manure storage structure is to be constructed of concrete.

b. (1) If the formed manure storage structure is to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that such person will construct the formed manure storage structure in accordance with the construction design standards required in this subpart.

(2) If the formed manure storage structure is not to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that

such person will construct the formed manure storage structure in accordance with the construction design standards required in this subpart.

c. If a construction permit is required pursuant to section 455B.200A for the construction of three or more confinement feeding operation structures that include a formed manure storage structure, the contractor¹⁰ must provide that the construction of the formed manure storage structure will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction.

d. A manure management plan as required in section 455B.203 which may be submitted as part of an application for a construction permit as provided in section 455B.200A.

3. Unless the construction design statement is part of a construction permit application as provided in section 455B.200A, the department shall file the construction design statement. Otherwise, the department shall approve or disapprove the construction design statement as part of the construction permit application. The construction design statement shall be considered filed on the date that it is first received by the department. The department may request information from the person submitting the construction design statement if the department determines that it is incorrect or incomplete. Within thirty days after filing the construction design statement, the department shall notify the person that the construction design statement is filed and request any additional information.

Sec. 34. NEW SECTION. 455B.200D DOCUMENT PROCESSING REQUIREMENTS.

1. The department shall adopt and promulgate forms required to be completed in order to comply with this subpart including forms for documents that the department shall make available on the internet.

2. a. The department shall provide for procedures for the receipt, filing, processing, and return of documents in an electronic format, including but not limited to the transmission of documents by the internet. The department shall provide for authentication of the documents that may include electronic signatures as provided in chapter 554D.

b. The department shall to every extent feasible provide for the processing of permits and manure management plans required under this subpart using electronic systems, including programming, necessary to ensure the completeness and accuracy of the documents in accordance with the requirements of this subpart.

Sec. 35. NEW SECTION. 455B.200E CONSTRUCTION PERMIT APPLICATION PROCEDURE — COMMENTS — MASTER MATRIX.

1. a. The department shall deliver a copy or require the applicant to deliver a copy of the application for a permit to construct, including expanding, a confinement feeding operation structure pursuant to section 455B.200A, including supporting documents, to the county board of supervisors in the county where the confinement feeding operation structure subject to the permit is proposed to be constructed.

b. The county auditor or other county officer designated by the county board of supervisors may accept the application on behalf of the board. If the department requires the applicant to deliver a copy of the application to the county board of supervisors, the board shall notify the department that the board has received the application according to procedures required by the department.

2. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the county may provide comment to the department on a construction permit application for a confinement feeding operation structure.

a. The board shall provide for comment as follows:

(1) The board shall publish a notice that the board has received the application in a newspaper having a general circulation in the county.

(2) The notice shall include all of the following:

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

¹⁰ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §254, 262 herein

(b) The name of the township where the confinement feeding operation structure is to be constructed.

(c) Each type of confinement feeding operation structure proposed to be constructed.

(d) The animal unit capacity of the confinement feeding operation if the construction permit were to be approved.

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

(f) Procedures for providing public comments to the board as provided by the board.

b. The board may hold a public hearing to receive public comments regarding the application. The county board of supervisors may submit comments by the board and the public to the department as provided in this section, including but not limited to all of the following:

(1) The existence of an object or location not included in the application that benefits from a separation distance requirement as provided in section 455B.162 or 455B.204.

(2) The suitability of soils and the hydrology of the site where construction of a confinement feeding operation structure is proposed.

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

(4) Whether the construction of a proposed confinement feeding operation structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

3. A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the department for filing. If the board has submitted such resolution to the department, the board may evaluate the construction permit application and submit an adopted recommendation to the department to approve or disapprove a construction permit application as provided in this subsection. The board must make its decision to recommend approval or disapproval of the permit application as provided in this subsection.

a. For the expansion of a confinement feeding operation that includes a confinement feeding operation structure constructed prior to April 1, 2002, the board shall not evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if after the expansion of the confinement feeding operation, its animal unit capacity is one thousand six hundred sixty-six animal units or less.

b. The board must conduct an evaluation of the application using the master matrix as provided in section 455B.200F. The board's recommendation may be based on the master matrix as provided¹¹ or may be based on comments under this section regardless of the results of the master matrix.

c. In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria which is part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into a manure management plan as provided in section 455B.203.

d. The board's adopted recommendation to the department shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

4. The department must receive the county board of supervisor's comments or evaluation for approval or disapproval of an application for a construction permit not later than thirty days following the applicant's delivery of the application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must approve or disapprove an application for a construction permit within sixty days following the applicant's delivery of the application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the

¹¹ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §255, 262 herein

period provided in the notice, but for not more than thirty days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may provide that an application is terminated if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days. However, the department shall not provide for more than one continuance.

5. a. The department shall approve an application for a construction permit if the board of supervisors which has filed a county construction evaluation resolution submits an adopted recommendation to approve the construction permit application which may be based on a satisfactory rating produced by the master matrix to the department and the department determines that the application meets the requirements of this chapter. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of the adopted recommendation of the board. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

b. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter as provided in section 455B.200. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter, the department shall conduct an independent evaluation of the application using the master matrix. The department shall approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

c. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter as provided in section 455B.200.

6. The department may conduct an inspection of the site on which the construction is proposed after providing at a minimum twenty-four hours notice or upon receiving consent from the construction permit applicant. The county board of supervisors that has adopted a construction evaluation resolution may designate a county employee to accompany a departmental official during the site inspection. The county employee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county employee accompanies the departmental official. The departmental official and the county employee shall comply with standard biosecurity requirements customarily required by the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

7. Upon written request by a county resident, the county board of supervisors shall forward to the county resident a copy of the board's adopted recommendation, any county comments to the department on the permit application, and the department's responses, as provided in chapter 22.

8. a. The department shall deliver a notice to the applicant within three days of the department's decision to approve or disapprove an application for a construction permit. If the board of supervisors has submitted an adopted recommendation to the department for the approval or disapproval of a construction permit application as provided in this section, the department shall notify the board of the department's decision to approve or disapprove the application at the same time.

b. (1) The applicant may contest the department's decision by requesting a hearing and may elect to have the hearing conducted before an administrative law judge pursuant to chapter 17A or before the commission. If the applicant and a board of supervisors are both contesting the department's decision, the applicant may request that the commission conduct the hearing on a consolidated basis. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The department, upon petition by the applicant, shall deliver to the administrative law judge or the commission a copy of the board of supervisors' recommendation together with the results produced by its master matrix and any supporting data or documents submitted with the results, comments submitted by the board to the department, and the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. If the commission hears the case, its decision shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the applicant or board files a demand for a hearing.

(2) A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's decision by requesting a hearing before the commission. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The board may request that the department submit a copy of the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. The decision by the commission shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the board initiates the proceeding.

c. Judicial review of the decision of either the department or the commission may be sought in accordance with the terms of chapter 17A.

9. An applicant for a construction permit may withdraw the permit application from consideration by the department at any time by filing a written request with the department. The filing of the request shall not prejudice the right of the applicant to resubmit the application.

Sec. 36. NEW SECTION. 455B.200F MASTER MATRIX.

1. The department shall adopt rules for the development and use of a master matrix. The purpose of the master matrix is to provide a comprehensive assessment mechanism in order to produce a statistically verifiable basis for determining whether to approve or disapprove an application for the construction, including expansion, of a confinement feeding operation structure requiring a permit pursuant to section 455B.200A.

a. The master matrix shall be used to establish conditions for the construction of a confinement feeding operation structure and for the implementation of manure management practices, which conditions shall be included in the approval of the construction permit or the original manure management plan as applicable. The master matrix shall be used to determine all of the following:

(1) The appropriate location to construct a confinement feeding operation structure, including the proximity and orientation of a proposed confinement feeding operation structure to objects or locations for which separation distances are required pursuant to sections 455B.162 and 455B.204.

(2) The appropriate type of a confinement feeding operation structure required to be constructed, including the type and size of the manure storage structure, or the installation of a related pollution-control device.

b. The master matrix shall be designed to produce quantifiable results based on the scoring of objective criteria according to an established value scale. Each criterion shall be assigned points corresponding to the value scale. The master matrix shall consider risks and factors mitigating risks if the confinement feeding operation structure were constructed according to the application.

c. The master matrix may be a computer model. However, the master matrix must be a prac-

tical tool for use by persons when completing applications and by persons when scoring applications. To every extent feasible, the master matrix shall include criteria presented in the form of questions that may be readily scored according to ascertainable data and upon which reasonable persons familiar with the location of a proposed construction site would not ordinarily disagree.

2. The master matrix shall include criteria valuing environmental and community impacts, for use by county boards of supervisors and the department. The master matrix shall include definite point selections for all criteria provided in the master matrix. The master matrix shall provide only for scoring of positive points and shall not provide for deduction of points. The master matrix shall provide for a minimum threshold score required to receive a satisfactory rating. The master matrix shall be structured to ensure that it feasibly provides for a satisfactory rating. Criteria valuing environmental impacts shall account for animal agriculture's relationship to quality of the environment and the conservation of natural resources, and may include factors that refer to all of the following:

- (a) Topography.
- (b) Surface water drainage characteristics.
- (c) The suitability of the soils and the hydrology or hydrogeology of the site.
- (d) The proximity to public use areas and critical public areas.
- (e) The proximity to water sources, including high-quality water resources.

Sec. 37. Section 455B.201, Code 2001, is amended by adding the following new subsection: NEW SUBSECTION. 2A. The department may require that the owner of a confinement feeding operation install and operate a water pollution monitoring system as part of an unformed manure storage structure.

Sec. 38. Section 455B.203, subsections 1 and 2, Code 2001, are amended to read as follows:

1. The following persons shall submit a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation, if the animal any of the following apply:

(1) The confinement feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation structure was required to be constructed pursuant to a construction permit approved by rules adopted by the department.

b. (2) The owner of a confinement feeding operation, if the confinement feeding operation is required to be constructed pursuant to a permit issued by the department. The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to section 455B.200A or whether the person has submitted a prior manure management plan.

c. b. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

1A. Not more than one confinement feeding operation shall be covered by a single manure management plan.

1B. The owner of a confinement feeding operation who is required to submit a manure management plan under this section shall submit an updated manure management plan to the department on an annual basis. The department shall provide for a date that each updated manure management plan is required to be submitted to the department. The department may provide for staggering the dates on which updated manure management plans are due. To satisfy the requirements of an updated manure management plan, an owner of a confinement feeding operation may, in lieu of a¹² submitting a complete plan, file a document stating that the manure management plan has not changed, or state all of the changes made since the original manure management plan or a previous updated manure management plan was submitted and approved.

¹² According to enrolled Act

1C. The department shall deliver a copy of the manure management plan or require the person submitting the manure management plan to deliver a copy of the manure management plan to all of the following:

a. The county board of supervisors in the county where the manure storage structure owned by the person is located.

b. The county board of supervisors in the county where the manure storage structure is proposed to be constructed. If the person is required to be issued a permit for the construction of the manure storage structure as provided in section 455B.200A, the manure management plan shall accompany the application for the construction permit as provided in section 455B.200A.

c. The county board of supervisors in the county where the manure is to be applied.

The manure management plan shall be filed with the county board of supervisors. The county auditor or other county officer may accept the manure management plan on behalf of the board.

2. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section. The manure management plan shall be submitted by the owner of the confinement feeding operation as provided by the department on forms prescribed by the department in accordance with section 455B.200D. The owner of a confinement feeding operation required to submit a manure management plan for the construction of a manure storage structure may remove manure from another manure storage structure that is constructed, if the department has approved a manure management plan covering that manure storage structure. The department may adopt rules allowing a person to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department. The department shall approve or disapprove a manure management plan within sixty days of the date that the department receives a completed plan.

2A. The department shall not approve an original manure management plan unless the plan is accompanied by a manure management plan filing fee required pursuant to section 455B.203C. The department shall not approve an updated manure management plan unless the updated manure management plan is accompanied by an annual compliance fee required pursuant to section 455B.203C.

2B. a. The department shall not issue approve an application for a permit for the construction of to construct a confinement feeding operation or a related animal feeding operation structure unless the applicant owner of the confinement feeding operation applying for approval submits a an original manure management plan together with an the application for the construction permit as provided in section 455B.200A.

b. The department shall not file a construction design statement as provided in section 455B.200C, unless the owner of the confinement feeding operation structure submits an original manure management plan together with the construction design statement. The construction design statement and manure management plan may be submitted as part of a¹³ construction permit as provided in section 455B.200A.

2C. A manure management plan must be authenticated by the person required to submit the manure management plan as required by the department in accordance with section 455B.200D.

2D. The department shall approve or disapprove a manure management plan according to procedures established by the department:

a. For an original manure management plan submitted due to the construction of a confinement feeding operation structure, the department shall approve or disapprove the manure management plan as follows:

(1) If the confinement feeding operation structure is constructed pursuant to a construction

¹³ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §256, 262 herein

permit issued pursuant to section 455B.200A, the manure management plan shall be approved or disapproved as part of the construction permit application.

(2) If the confinement feeding operation structure is not constructed pursuant to a construction permit issued pursuant to section 455B.200A, the manure management plan shall be approved or disapproved within sixty days from the date that the department receives the manure management plan.

b. For an original manure management plan submitted for a reason other than the construction of a confinement feeding operation structure, the manure management plan shall be approved within sixty days from the date that the department receives the manure management plan.

c. For an updated manure management plan, the manure management plan shall be approved within thirty days from the date that the department receives the updated manure management plan.

Sec. 39. Section 455B.203, subsection 3, paragraph a, Code 2001, is amended to read as follows:

a. Restrictions on the application of manure based on all of the following:

(1) 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 manure management plan, and according to requirements adopted by the department after receiving recommendations from the animal agriculture consulting organization provided for in 1995 Iowa Acts, chapter 195, section 37.

(2) (a) A phosphorus index. The department shall establish a phosphorus index by rule in order to determine the manner and timing of the application to a land area of manure originating from a confinement feeding operation. The phosphorus index shall provide for the application of manure on a field basis. The phosphorus index shall be used to determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices. The phosphorus index shall be based on the field office technical guide for Iowa as published by the United States department of agriculture, natural resources conservation service, which sets forth nutrient management standards.

(b) The department shall develop a state comprehensive nutrient management strategy. Prior to developing the state comprehensive nutrient management strategy, the department shall complete all of the following:

(i) The development of a comprehensive state nutrient budget for the maximum volume, frequency, and concentration of nutrients for each watershed that addresses all significant sources of nutrients in a water of this state on a watershed basis.

(ii) The assessment of the available nutrient control technologies required to identify and assess their effectiveness.

(iii) The development and adoption of administrative rules pursuant to chapter 17A required to establish a numeric water quality standard for phosphorus.

(c) Regardless of the development of the state comprehensive nutrient management strategy as provided in subparagraph subdivision (b), the department shall adopt rules required to establish a phosphorus index. The department shall cooperate with the United States department of agriculture natural resource conservation service technical committee for Iowa to refine and calibrate the phosphorus index in adopting the rules. Rules adopted by the department pursuant to this subparagraph shall become effective on July 1, 2003.

(d) The department shall conduct a study that considers the effects on waters of this state from phosphorus originating from municipal and industrial sources and from farm and lawn and garden use. The department shall report the results of its study to the general assembly by January 1, 2004.

(e) A person submitting a manure management plan shall include a phosphorus index as part of the manure management plan as follows:

(i) A person who has submitted an original manure management plan prior to April 1, 2002, shall not be required to submit a manure management plan update which includes a phosphorus index, until on and after the four-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(ii) A person required to submit an original manure management plan on and after April 1, 2002, but prior to the date that is sixty days after the department's rules adopted to implement the phosphorus index become effective, shall not be required to submit a manure management plan update that includes a phosphorus index until on and after the two-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(iii) A person required to submit an original manure management plan on and after the date that is sixty days after the department's rules adopted to implement the phosphorus index become effective shall include the phosphorus index as part of the original manure management plan and updated manure management plans.

Subparagraph subdivisions (b) through (e) and this paragraph are repealed on the date that any person who has submitted an original manure management plan prior to April 1, 2002, is required to submit a manure management plan update which includes a phosphorus index as provided in subparagraph subdivision (c).¹⁴ subparagraph subdivision part (i). The department shall publish a notice in the Iowa administrative bulletin published immediately prior to that date, and the director of the department shall deliver a copy of the notice to the Iowa Code editor.

Sec. 40. Section 455B.203, subsection 4, Code 2001, is amended to read as follows:

4. ~~A person confinement feeding operation~~ 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. The manure management plan shall be a replacement original manure management plan rather than a manure management plan update. However, the habitual violator required to submit a replacement original manure management plan must submit an annual compliance fee in the same manner as if the habitual violator were submitting an updated manure management plan.

Sec. 41. Section 455B.203, subsection 7, Code 2001, is amended to read as follows:

7. A person ~~submitting~~ required to authenticate a manure management plan ~~submitted to the department~~ who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than ~~the~~ assessment of a civil penalty pursuant to section 455B.191 ~~455B.207~~.

Sec. 42. Section 455B.203A, subsection 6, paragraph b, Code 2001, is amended by striking the paragraph.

Sec. 43. NEW SECTION. 455B.203C COMPLIANCE FEES.

1. The department shall establish, assess, and collect all of the following compliance fees:

a. A construction permit application fee that is required to accompany an application submitted to the department for approval to construct a confinement feeding operation structure as provided in section 455B.200A. The amount of the construction permit application fee shall not exceed two hundred fifty dollars.

b. A manure management plan filing fee that is required to accompany an original manure management plan submitted to the department for approval as provided in section 455B.203. However, the manure management plan required to be filed as part of an application for a construction permit shall be paid together with the construction permit application fee. The amount of the manure management plan filing fee shall not exceed two hundred fifty dollars.

c. An annual compliance fee that is required to accompany an updated manure management plan submitted to the department for approval as provided in section 455B.203. The

¹⁴ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §257, 262 herein

amount of the annual compliance fee shall not exceed a rate of fifteen cents per animal unit based on the animal unit capacity of the confinement feeding operation covered by the manure management plan. If the person submitting the manure management plan is a contract producer, as provided in chapter 202, the active contractor shall be assessed the annual compliance fee.

d. Fees paid by persons required by the department to be certified as commercial manure applicators or confinement site manure applicators pursuant to section 455B.203A.

2. a. Except as provided in paragraph "b", fees collected by the department shall be deposited into the animal agriculture compliance fund created in section 455B.127. Moneys collected from all fees other than the annual compliance fee shall be deposited into the compliance fund's general account. Moneys collected from the annual compliance fee shall be deposited into the compliance fund's assessment account.

b. Receipts that are required to be received by the department from persons required to be certified pursuant to section 455B.203A may be used to compensate a person who teaches continuing instructional courses in lieu of deposit into the compliance fund.

3. At the end of each fiscal year the department shall determine the balance of unencumbered and unobligated moneys in the assessment account of the animal agriculture compliance fund created pursuant to section 455B.127. If on that date the balance of unencumbered and unobligated moneys in the account is one million dollars or more, the department shall adjust the rate of the annual compliance fee for the following fiscal year. The adjusted rate for the annual compliance fee shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not one million dollars or more.

Sec. 44. Section 455B.204, subsection 1, Code 2001, is amended by striking the subsection.

Sec. 45. Section 455B.204, subsections 2 through 4, Code 2001, are amended to read as follows:

2. Except as provided in subsection 3 ~~4~~, the following shall apply:

a. ~~An animal~~ A confinement feeding operation structure shall not be constructed closer than five hundred feet away from a ~~the~~ surface intake, ~~of an agricultural drainage well~~. ~~A confinement feeding operation structure shall not be constructed closer than one thousand feet from a wellhead, or cistern of an agricultural drainage well, or known sinkhole. However, the department may adopt rules requiring an increased separation distance under this paragraph in order to protect the integrity of a water of this state. The increased separation distance shall not be more than two thousand feet. If the department exercises its discretion to increase the separation distance requirement, the department shall not approve an application for the construction of a confinement feeding operation structure within that separation distance as provided in section 455B.200A.~~

b. ~~An animal~~ A confinement feeding operation structure shall not be constructed if the ~~animal~~ confinement feeding operation structure as constructed is closer than any of the following:

(1) ~~Two~~ Five hundred feet away from a ~~waterecourse~~ water source other than a major water source.

(2) ~~Five hundred~~ One thousand feet away from a major water source.

(3) ~~Two thousand five hundred feet away from a designated wetland.~~

c. (1) ~~A waterecourse~~ water source, other than a major water source, shall not be constructed, expanded, or diverted, if the ~~waterecourse~~ water source as constructed, expanded, or diverted is closer than ~~two~~ five hundred feet away from ~~an animal~~ a confinement feeding operation structure.

d. (2) A major water source shall not be constructed, expanded, or diverted, if the ~~major~~ major water source as constructed, expanded, or diverted is closer than ~~five hundred~~ one thousand feet from ~~an animal~~ feeding a confinement operation structure.

(3) A designated wetland shall not be established, if the designated wetland is closer than two thousand five hundred feet away from a confinement feeding operation structure.

3. A confinement feeding operation structure shall not be constructed on land that is part of a one hundred year floodplain as designated by rules adopted by the department pursuant to section 455B.200B.

3. 4. A separation distance required in subsection 2 shall not apply to any of the following:

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

b. A confinement feeding operation building, an egg washwater storage structure, or a manure storage structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier, including construction design standards.

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

Sec. 46. Section 455B.204A, Code 2001, is amended to read as follows:

455B.204A DISPOSAL APPLICATION OF MANURE WITHIN DESIGNATED AREAS — ADOPTION OF RULES.

1. The department shall adopt rules relating to the disposal application of manure in close proximity to a designated area.

2. A Except as otherwise provided in this subsection, a person shall not dispose of apply manure on cropland land located within two hundred feet from a designated area, unless one of the following applies:

1. a. The manure is land applied by injection or incorporation within twenty-four hours following the application on the same date as the manure was land applied.

2. b. An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for fifty feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and that the area of permanent vegetation cover is not subject to manure application.

c. The department adopts rules requiring an increased separation distance for the application of manure located in proximity to a high quality water resource in order to protect the integrity of the high quality water resource. However, the department shall not provide for an increased separation distance requirement that is more than four times the separation distance requirement otherwise applicable under this section.

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, designated wetland, or lake, or a farm pond or privately owned lake as defined in section 462A.2 water source. However, a “designated area” does not include a terrace tile inlet.

Sec. 47. Section 455B.205, subsection 1, Code 2001, is amended to read as follows:

1. The department shall establish by rule engineering adopt rules requiring construction design standards for the construction of unformed manure storage structures required to be constructed pursuant to a construction permit issued under pursuant to section 455B.200A.

Sec. 48. Section 455B.205, subsection 2, unnumbered paragraph 1, Code 2001, is amended to read as follows:

The construction design standards for unformed manure storage structures established by the department shall account for special design characteristics of animal confinement feeding operations, including all of the following:

Sec. 49. Section 455B.205, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. A person shall not construct an unformed manure storage structure on karst terrain or on an area that drains into a known sinkhole.

Sec. 50. NEW SECTION. 455B.205A CONSTRUCTION DESIGN STANDARDS — FORMED MANURE STORAGE STRUCTURES.

The department shall adopt rules establishing construction design standards for formed manure storage structures that are part of confinement feeding operations other than small animal feeding operations.

1. The department may provide for different standards based on criteria developed by the department, which may include any of the following:

a. The animal unit capacity of the manure storage structure's confinement feeding operation or the manure storage structure's manure volume capacity.

b. Whether the manure storage structure stores manure in an exclusively dry form.

c. Whether the manure storage structure is part of a confinement feeding operation building.

d. The use of concrete, including its use for the structure's footings, walls, or floor.

2. The construction design standards shall be based, to every extent possible, on uniform standards such as available standards promulgated by the American society for testing and materials. The department may require that all or any part of a formed manure storage structure be constructed of concrete.

3. The construction design standards for concrete shall provide for all of the following:

a. The concrete's minimum compressive strength calculated on a pounds-per-square-inch basis.

b. The use of reinforcement, including but not limited to the grade, amount, and location of steel rebar or fiberglass, wire mesh or fabric, or similar materials set in the concrete, or the use of exterior braces to support joints.

c. The depth of footings.

d. The thickness of the footings, the floor and walls.

4. A person shall only construct a formed manure storage structure on karst terrain or an area which drains into a known sinkhole pursuant to upgraded construction design standards necessary to ensure that the structure does not pollute groundwater sources.

Sec. 51. NEW SECTION. 455B.207 CIVIL PENALTY.

A person who violates this subpart shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.191. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 455B.127.

Sec. 52. Section 455I.1, unnumbered paragraph 1, Code 2001, is amended by striking the unnumbered paragraph.

Sec. 53. Section 455J.1, subsections 1 through 5 and subsections 7 and 8, Code 2001, are amended by striking the subsections.

Sec. 54. Section 455J.3, subsection 1, unnumbered paragraph 1, Code 2001, is amended to read as follows:

If the confinement feeding operation has an animal weight unit capacity of less than ~~six hundred twenty five thousand pounds~~ one thousand animal units, the following shall apply:

Sec. 55. Section 455J.3, subsection 2, unnumbered paragraph 1, Code 2001, is amended to read as follows:

If the confinement feeding operation has an animal weight unit capacity of ~~six hundred twenty five thousand~~ one thousand or more ~~pounds~~ animal units but less than ~~one million two hundred fifty thousand pounds~~ three thousand animal units, the following shall apply:

Sec. 56. Section 455J.3, subsection 3, unnumbered paragraph 1, Code 2001, is amended to read as follows:

If the confinement feeding operation has an animal ~~weight unit~~ capacity of ~~one million two hundred fifty thousand~~ three thousand or more ~~pounds~~ animal units, the following shall apply:

Sec. 57. Section 455J.4, Code 2001, is amended to read as follows:

455J.4 MANURE MANAGEMENT PLAN — INDEMNITY FEE REQUIRED.

An indemnity fee shall be assessed upon persons required to submit a an original manure management plan as provided in section 455B.203, but not required to obtain a construction permit pursuant to section 455B.200A. A person required to submit a replacement original manure management plan shall not be assessed an indemnity fee. The amount of the fees fee shall be ten cents per animal unit of capacity for the confinement feeding ~~operations~~ operation covered by the manure management plan.

Sec. 58. NEW SECTION. 481A.151 RESTITUTION FOR POLLUTION CAUSING INJURY TO WILD ANIMALS.

1. A person who is liable for polluting a water of this state in violation of state law, including this chapter, shall also be liable to pay restitution to the department for injury caused to a wild animal by the pollution. The amount of the restitution shall also include the department's administrative costs for investigating the incident. The administration of this section shall not result in a duplication of damages collected by the department under section 455B.392, subsection 1, paragraph "c".

2. The commission shall adopt rules providing for procedures for investigations and the administrative assessment of restitution amounts. The rules shall establish an opportunity to appeal a departmental action including by a contested case proceeding under chapter 17A. A final administrative decision assessing an amount of restitution may be enforced by the attorney general at the request of the director.

3. Rules adopted by the commission shall provide for methods used to determine the extent of an injury and the monetary values for the loss of injured wild animals based on species.

a. The rules shall provide for methods used to count dead fish and to calculate restitution values. The rules may incorporate methods and values published by the American fisheries society. To every extent practicable, the values shall be based on the estimates of lost recreational angler opportunities where applicable. As an alternative method of valuation, the rules may provide that for fish species that are protected by catch limits, possession limits, size limits, or closed seasons applicable to anglers, liquidated damages apply. The amount of the liquidated damages shall not exceed fifteen dollars per fish. For fish species that are classified by the commission as endangered or threatened, the rules may establish liquidated damages not to exceed one thousand dollars per fish.

b. The rules shall provide guidelines for estimating the extent of loss of a species that is affected by a pollution incident but which would not be practical to count in sample areas. The rules may establish liquidated damage amounts for species whose replacement cost is difficult to determine.

4. Moneys collected by the department in restitution shall be deposited into the state fish and game protection fund. The moneys shall be used exclusively to support restoration or improvement of fisheries, including but not limited to aquatic habitat improvement projects as provided in rules adopted by the commission. However, moneys collected from restitution paid for investigative costs shall be used as determined by the director.

Sec. 59. MANURE STORAGE INDEMNITY FUND — TEMPORARY TRANSFER. Notwithstanding section 455J.2, the department is authorized to temporarily transfer any amount of the unobligated and unencumbered balance of the manure storage indemnity fund as provided under section 455J.2 to the general account of the animal agriculture compliance fund as created in section 455B.127, as enacted in this Act, for use as provided in section 455B.127.

The department shall return the amount transferred under this section to the manure storage indemnity fund according to a schedule established by the department upon the collection of compliance fees deposited into the animal agriculture compliance fund pursuant to section 455B.203C. Notwithstanding section 455B.127, the department may return moneys from the assessment account of the animal agriculture compliance fund to the manure storage indemnity fund if at any time moneys are not sufficiently available to make the return from the general account of the animal agriculture compliance fund.

Sec. 60. FORMED MANURE STORAGE STRUCTURES — CONSTRUCTION DESIGN STANDARDS. Until the effective date of rules adopted by the department providing construction design standards for formed manure storage structures as provided in section 455B.205A, as enacted in this Act, the department's rules providing construction design standards used in the construction of formed manure storage structures shall apply to formed manure storage structures as provided in section 455B.205A, regardless of whether a formed manure storage structure must be constructed pursuant to a permit issued under section 455B.200A, as amended by this Act. However, this section does not apply to a manure storage structure that stores manure exclusively on a dry-matter basis.

Sec. 61. INTERIM APPROVAL OF CONSTRUCTION PERMITS FOR CONFINEMENT FEEDING OPERATION STRUCTURES — COUNTY PARTICIPATION AND RIGHTS OF APPLICANTS AND COUNTY BOARDS OF SUPERVISORS. This section applies to an applicant for a construction permit pursuant to section 455B.200A, as amended by this Act, and to a county board of supervisors that submits comments regarding a permit for the construction of a confinement feeding operation structure pursuant to section 455B.200A, as amended by this Act. Notwithstanding section 455B.200E, as enacted in this Act, all of the following shall apply:

1. The department shall not approve the application until thirty days following delivery of the application to the county board of supervisors.

2. The department shall consider and respond to comments submitted by the county board of supervisors regarding compliance by the applicant with the legal requirements for approving the construction permit in the same manner as provided pursuant to section 455B.200A, Code of Iowa 2001.

3. The department shall notify the county board of supervisors prior to conducting an inspection of the site on which the construction is proposed in the permit application, and the county may accompany a departmental official during the site inspection, in the same manner as provided in section 455B.200A, Code of Iowa 2001.

4. Upon written request by a county resident, the county board of supervisors shall forward a copy of the board's comments and the department's responses to the county resident as provided in chapter 22.

5. The department shall notify the applicant and county board of supervisors of the county in which a confinement feeding operation structure subject to a construction permit is proposed to be constructed. The notice shall state the department's decision to approve or disapprove an application for the construction permit which shall be delivered to the applicant and board in the same manner as provided for counties in section 455B.200A, Code of Iowa 2001. The applicant may contest the department's decision by filing a demand for a hearing before an administrative law judge or the environmental protection commission. The board may contest the department's decision by filing a demand for a hearing before the commission. The applicant shall contest the decision and the commission shall conduct the proceeding and render a decision in the same manner as provided in section 455B.200E, as enacted by this Act.

Sec. 62. ESTABLISHMENT OF A MASTER MATRIX — TECHNICAL ADVISORY COMMITTEE.

1. The department of natural resources shall adopt rules establishing a master matrix as

required pursuant to section 455B.200F according to recommendations made to the department by a technical advisory committee established pursuant to this section. The technical advisory committee shall be composed of all of the following:

- a. A designee of the secretary of agriculture.
- b. A designee of the director of the department of natural resources.
- c. A designee of the president of the university of Iowa.
- d. A designee of the president of Iowa state university.
- e. A representative of the Iowa environmental council.
- f. A representative of the Iowa state association of counties.
- g. A representative of the Iowa farm bureau federation.
- h. A representative of the Iowa's farmers union.
- i. Two representatives of organizations representing livestock producers who shall be jointly designated to the department of natural resources by the Iowa pork producers association, the Iowa cattlemens' association, the Iowa dairy products association, the Iowa poultry association, and the Iowa turkey federation.

The department of natural resources shall provide administrative support to the committee. The attorney general shall appoint an assistant attorney general to provide the committee with legal counsel and assistance.

2. In establishing the scoring system for the master matrix, only positive points shall be used. The master matrix shall be designed as a menu of items with positive points assigned to each item within the selection list. The matrix shall not include any deduction of points.

3. The department shall adopt rules pursuant to chapter 17A in order to carry out the requirements of this section. Based on the committee's recommendations to establish a master matrix, the department shall provide a draft of a notice of intended action to the environmental protection commission not later than during its September 2002 meeting. The department's notice of intended action shall not be published later than in the November 27, 2002, issue of the Iowa administrative bulletin. The notice of intended action required under this section shall include a statement of the terms or substance of the intended action in the manner provided for in section 17A.4. The rules shall take effect on March 1, 2003.

Sec. 63. DEPARTMENT OF NATURAL RESOURCES — APPROVAL OF APPLICATIONS FOR CONSTRUCTION PERMITS — USING INTERIM MATRIX.

1. Notwithstanding sections 455B.200A and 455B.200F, the department shall approve or disapprove an application for a permit to construct a confinement feeding operation structure pursuant to section 455B.200A, if an application is submitted according to procedures required by the department, the application meets standards established under chapter 455B, as amended by this Act, and the application complies with the requirements of this section. This section does not apply to the expansion of a confinement feeding operation that includes a confinement feeding operation structure constructed prior to April 1, 2002, due to the construction or expansion of a confinement feeding operation structure if after the expansion of the confinement feeding operation, its animal unit capacity is one thousand six hundred sixty-six animal units or less.

2. This section applies on and after the date that the department publishes a notice in the Iowa administrative bulletin commencing its evaluation of applications under this section.

3. The department shall approve or disapprove an application based on an interim matrix. The interim matrix shall be used to award points as provided in this subsection. In order to be issued a construction permit, a person must achieve one hundred points. The points shall be awarded as follows:

- a. The following criteria shall apply to separation distances. The separation distances provided in this paragraph shall apply in addition to separation distances required for confinement feeding operation structures or for the application of manure originating from confinement feeding operations as provided in chapter 455B, divisions II and III, as provided in the 2001 Code of Iowa, unless otherwise provided in this paragraph "a".

(1) The following criteria shall apply to require additional separation distances between a proposed confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution as provided in section 455B.162:

- (a) Two hundred fifty or more feet but less than five hundred feet: five points.
- (b) Five hundred or more feet but less than seven hundred fifty feet: ten points.
- (c) Seven hundred fifty or more feet but less than one thousand feet: fifteen points.
- (d) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
- (e) One thousand two hundred fifty or more feet: twenty-five points.

(2) The following criteria shall apply to require additional separation distances between a proposed confinement feeding operation structure and a public use area as provided in section 455B.162 or a primary highway as defined in section 306C.10:

- (a) Two hundred fifty or more feet but less than five hundred feet: five points.
- (b) Five hundred or more feet but less than seven hundred fifty feet: ten points.
- (c) Seven hundred fifty or more feet but less than one thousand feet: fifteen points.
- (d) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
- (e) One thousand two hundred fifty or more feet: twenty-five points.

(3) The following criteria shall apply to require additional separation distances between a proposed confinement feeding operation structure and a major water source as provided in section 455B.204 or a high-quality water resource as defined in section 455B.200B, as enacted in this Act:

- (a) Two hundred fifty or more feet but less than five hundred feet: five points.
- (b) Five hundred or more feet but less than seven hundred fifty feet: ten points.
- (c) Seven hundred fifty or more feet but less than one thousand feet: fifteen points.
- (d) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
- (e) One thousand two hundred fifty or more feet: twenty-five points.

(4) The following criteria shall apply to require additional separation distances between a proposed confinement feeding operation structure and a critical public area as defined in section 455B.200B, subsection 6, as enacted by this Act:

- (a) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
- (b) One thousand two hundred fifty or more feet: twenty-five points.

(5) The following criteria shall apply to require an additional separation distance of five hundred or more feet between a proposed confinement feeding operation structure and a watercourse, other than a major water source, as provided in section 455B.204: five points.

(6) The following criteria shall apply to require additional separation distances between the application of manure originating from a confinement feeding operation and a residence not owned by the owner of the confinement feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution as provided in section 455B.162:

- (a) Two hundred fifty or more feet but less than five hundred feet: five points.
- (b) Five hundred or more feet but less than seven hundred fifty feet: ten points.
- (c) Seven hundred fifty or more feet but less than one thousand feet: fifteen points.
- (d) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
- (e) One thousand two hundred fifty or more feet: twenty-five points.

An applicant who incorporates manure by injection shall be entitled to the following: fifteen points.

(7) The following criteria shall apply to require an additional separation distance between the application of manure originating from a confinement feeding operation and a public use area as provided in section 455B.162 or a primary highway as defined in section 306C.10:

- (a) Two hundred fifty or more feet but less than five hundred feet: five points.
 - (b) Five hundred or more feet but less than seven hundred fifty feet: ten points.
 - (c) Seven hundred fifty or more feet but less than one thousand feet: fifteen points.
 - (d) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
 - (e) One thousand two hundred fifty or more feet: twenty-five points.
- An applicant who incorporates manure by injection shall be entitled to the following: fifteen points.
- (8) The following criteria shall apply to require additional separation distances between the application of manure originating from a confinement feeding operation and a critical public area as defined in section 455B.200B, subsection 6, as enacted in this Act:
 - (a) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
 - (b) One thousand two hundred fifty or more feet: twenty-five points.
 - (9) The following criteria shall apply to require additional separation distances between the application of manure originating from a confinement feeding operation and a major water source:
 - (a) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
 - (b) One thousand two hundred fifty or more feet: twenty-five points.
 - (10) The following criteria shall apply to require additional separation distances between the application of manure originating from a confinement feeding operation and a high-quality water resource as defined in section 455B.200B, as enacted in this Act:
 - (a) Five hundred or more feet but less than seven hundred fifty feet: ten points.
 - (b) Seven hundred fifty or more feet but less than one thousand feet: fifteen points.
 - (c) One thousand or more feet but less than one thousand two hundred fifty feet: twenty points.
 - (d) One thousand two hundred fifty or more feet: twenty-five points.
 - (11) The following points shall be awarded if an additional separation distance is required for the application of manure originating from a confinement feeding operation and a water-course other than a major water source as provided in section 455B.204: five points.
 - b. The following points shall be awarded if a confinement feeding operation is located on land owned or operated by the same family for three or more years: fifteen points.
 - c. The following points shall be awarded if the owner of the confinement feeding operation owns the animals maintained by the confinement feeding operation and provides substantial labor in providing for their maintenance: ten points.
 - d. The following criteria shall apply to a confinement feeding operation located on land owned by one of the following persons:
 - (1) A person who resides on the land: five points.
 - (2) A person who closest resides to the proposed confinement feeding operation structure: ten points.
 - (3) A person who performs the majority of the physical work which significantly contributes to the operation: ten points.
 - (4) A person who is involved in making substantial improvements to the confinement feeding operation, if the improvements do not provide for expansion by more than one hundred fifty percent of the animal unit capacity of the confinement feeding operation: ten points.
 - (5) A person who qualifies as a beginning farmer as defined in section 175.2: fifteen points.
 - e. The following criteria shall apply to an owner of a confinement feeding operation who provides for the following manure management practices:
 - (1) The incorporation of manure within twenty-four hours: five points.
 - (2) The use of a cover over a manure storage structure or a natural crust or oil sprinkling: five points.

(3) Participation in the United States department of agriculture natural resource and conservation program referred to as the “filter strip program at 33 feet”: ten points.

(4) The installation of a filter designed to reduce odors from exhaust fans: ten points.

(5) The utilization of feed or feed additives containing low phytase corn or the feeding of phytase: ten points.

(6) The utilization of a biofilter or impermeable cover: ten points.

(7) The utilization of a methane digester (recovery) system for energy or an anaerobic digester: twenty-five points.

(8) The utilization of landscaping or other similar controls approved by the department: ten points.

(9) The establishment or expansion of a filter strip from thirty-three feet or more up to one hundred twenty feet: fifteen points.

(10) The construction of a secondary containment structure: fifteen points.

(11) The construction of a manure storage structure beneath a confinement feeding operation structure building: ten points.

(12) Participation in the United States department of agriculture natural resource and conservation service program referred to as the “contour buffer strip program”: twenty-five points.

f. The following points shall be awarded if the confinement feeding operation provides for the distribution of bulk dry animal nutrient products, the person receiving the product agrees that the product will be incorporated, and the person who incorporates the manure includes the condition as part of the person’s manure management plan: twenty-five points.

Sec. 64. 1995 Iowa Acts, chapter 195, section 37, as amended by 1998 Iowa Acts, chapter 1209, section 40, is repealed.

Sec. 65. INTERIM APPROVAL OF APPLICATIONS FOR CONSTRUCTION PERMITS — REPEAL. The section of this Act providing for the interim approval of applications for construction permits by the department of natural resources is repealed March 1, 2003.

Sec. 66. INTERIM COUNTY PARTICIPATION REPEAL. The section of this Act providing for interim county participation in the approval of construction permits for confinement feeding operation structures is repealed March 1, 2003, and the rights of applicants’ boards of supervisors to contest departmental decisions. However, the provisions of the section shall continue to apply to applications received by a county board of supervisors prior to March 1, 2003.¹⁵

DIVISION II
DIRECTIONS TO CODE EDITOR,
CHANGE THE NAME OF TERMS AND
TRANSFER TO NEW TITLE¹⁶

Sec. 67. CHANGE OF NAME OF TERMS.

1. The Code editor is directed to change the term “animal feeding operation structure” or “an animal feeding operation structure” to “confinement feeding operation structure” or “a confinement feeding operation structure” wherever the term appears in section 455B.161A, subsection 2, Code 2001; section 455B.162, subsection 3, Code 2001; section 455B.163, subsection 3, paragraph “d”, Code 2001; section 455B.165, subsection 3, paragraph “b”, and subsections 6 and 8, Code 2001; section 455B.200B, subsection 2, Code 2001; and section 455B.202, subsection 2, paragraphs “c” and “d”, Code 2001.

2. The Code editor is directed to change the term “animal feeding operation structures” to “confinement feeding operation structures” wherever the term appears in section 455B.161A, subsection 2, paragraph “c”, Code 2001; section 455B.200B, subsection 2, Code 2001; and section 455B.162, unnumbered paragraph 1, Code 2001.

¹⁵ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §258, 262 herein

¹⁶ New “CHAPTER” probably intended

3. The Code editor is directed to change the term “animal feeding operation” or “an animal feeding operation” to “confinement feeding operation” or “a confinement feeding operation” wherever it appears in section 455B.163, unnumbered paragraph 1, Code 2001; section 455B.163, subsection 3, paragraph “c”, Code 2001; section 455B.165, subsection 6, Code 2001; and section 455B.205, subsection 3, paragraph “b”, Code 2001.

4. The Code editor is directed to change the phrase “confinement feeding operation structure or anaerobic lagoon which is part of a confinement feeding operation” to “confinement feeding operation structure” wherever the phrase appears in section 455B.191, subsection 7, Code 2001.

5. The Code editor is directed to change the phrase “an animal feeding operation structure which is part of a confinement feeding operation” to “a confinement feeding operation structure” wherever the phrase appears in section 455B.202, subsection 2, Code 2001.

6. The Code editor is directed to change the term “bovine” to “cattle” wherever the term appears in Code section 455B.162, Code 2001.

Sec. 68. DIRECTIONS TO THE CODE EDITOR.

1. The Code editor is directed to transfer and consolidate provisions concerning animal agriculture into new chapter 456D, consistent with this section and the authority of the Code editor pursuant to chapter 2B. As part of this transfer and consolidation, the Code editor shall divide the chapters into subchapters as follows:

a. Subchapter 1 shall include a new section stating the following: This chapter shall be known and may be cited as the “Animal Agriculture Compliance Act”. Section 455B.161, as amended by this Act, shall be transferred to subchapter 1. Section 455B.171, subsections 7, 33, and 44, shall be transferred and consolidated into section 455B.161 as transferred to subchapter 1. Section 455J.1, subsections 4, 6, and 9, shall be transferred and consolidated into section 455B.161 as transferred to subchapter 1. Section 455B.200B, subsection 6, as enacted by this Act, shall be consolidated into section 455B.161 as transferred to subchapter 1. Section 455B.200, as amended by this Act, shall also be transferred to subchapter 1.

b. Chapter 455B, division II, part 2, including sections amended or enacted by this Act, with the exception of section 455B.164, shall be transferred to new chapter 456D, as subchapter 2.

c. Chapter 455B, division III, part 1, subpart A,¹⁷ as enacted in this Act, with the exception of section 455B.200, as amended by this Act, and section 455B.207, as enacted by this Act, shall be transferred to new chapter 456D, as subchapter 3.

d. Sections 455B.125 through 455B.127, as enacted by this Act, shall be transferred to new chapter 456D, as subchapter 4.

e. Chapter 455J, with the exception of section 455J.1, shall be transferred to new chapter 456D, as subchapter 5.

f. Section 455B.110, as amended by this Act, is transferred to new chapter 456D, as subchapter 6. Sections 455B.167, and 455B.207, as enacted by this Act; section 455B.191, subsection 7, Code 2001, and section 455B.191, subsection 8, as amended by this Act; and section 455B.104, subsection 2, are transferred as new sections to new subchapter 6.

2. The Code editor is directed to transfer chapter 455I to new chapter 456C. Subchapter 1 shall include section 455I.1, subsections 1 through 4 and 6 through 13, Code 2001. Subchapter 2 shall include a new section stating the following: As used in this subchapter, unless the context otherwise requires, “department” means the department of natural resources. Subchapter 2 shall include sections 455I.2 through 455I.7. Subchapter 3 shall include a new section stating the following: As used in this subchapter, unless the context otherwise requires, “department” means the department of agriculture and land stewardship. The Code editor is directed to transfer sections 159.28 through 159.29B, Code 2001, to new chapter 456C, subchapter 3.¹⁸

Sec. 69. Section 455B.164, Code 2001, is repealed.

¹⁷ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §259, 262 herein

¹⁸ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §260, 262 herein

DIVISION III
RETROACTIVE APPLICABILITY AND EFFECTIVE DATES

Sec. 70. RETROACTIVE APPLICATION.

1. If the provisions of this Act would apply to require that a person must be issued a construction permit as provided in section 455B.200A, as amended by this Act, upon the enactment of this Act, for the construction of a confinement feeding operation structure, the requirements of section 455B.200A, as amended by this Act, shall apply retroactively as provided in this section. The provisions of this Act shall apply retroactively only if all of the following are satisfied:

a. An application for a permit to construct the confinement feeding operation structure was submitted to the department on or after April 1, 2002, but prior to the enactment of this Act, regardless of whether the department has approved the application; a manure management plan was submitted to the department without a construction permit as provided in 567 IAC 65.16(2) on or after April 1, 2002, but prior to the enactment of this Act regardless of whether the department has approved the manure management plan; or construction of a confinement feeding operation structure has not begun upon the enactment of this Act and the person would otherwise be required to submit a manure management plan prior to the construction of the confinement feeding operation structure as provided in section 455B.203, as amended in this Act.

b. The department has not received evidence that an applicant or person submitting or required to submit a manure management plan as provided in subsection 2, has incurred commitments based on a reliance of the law as the law existed on March 31, 2002. The commitments must constitute a legal obligation for performance by the person to construct a confinement feeding operation structure. The applicant or other person required to submit the evidence to the department must submit such evidence not later than twenty-one days after the effective date of this Act.¹⁹

2. This Act shall not apply retroactively other than as provided in this section. The department shall approve or disapprove a pending construction permit application or manure management plan not subject to subsection 1 and a person may construct a confinement feeding operation structure according to the applicable requirements of the 2001 Code of Iowa and rules adopted by the department and in effect on March 31, 2002.

3. Until March 1, 2003, the department shall use the interim matrix as provided in this Act in lieu of the master matrix required to be used pursuant to section 455B.200E.

Sec. 71. EFFECTIVE DATES.

1. Except as provided in subsections 2 and 3, this Act, being deemed of immediate importance, takes effect upon enactment.

2. The sections of this Act amending sections 455B.162, 455B.163, 455B.204, and 455B.204A, take effect on March 1, 2003. Sections 455B.200C and 455B.200E, as enacted in this Act, take effect on March 1, 2003. The provisions of section 455B.205A, as enacted by this Act, as the provisions apply to confinement feeding operations storing manure exclusively on a dry matter basis, take effect upon the effective date of rules adopted to implement section 455B.205A.

3. Notwithstanding section 455B.203, as amended by this Act, a person shall not be required to submit a manure management plan update earlier than March 1, 2003. The department shall adopt rules necessary to administer this Act including these sections on and after the enactment of this Act.

Approved April 29, 2002

¹⁹ See 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, §261, 262 herein