

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed Emergency after Notice

Pursuant to the authority of Iowa Code section 455B.200, the Environmental Protection Commission hereby amends Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

In accordance with 2002 Iowa Acts, Senate File 2293, the amendments revise minimum separation distances for both the land application of manure and construction of confinement feeding operation structures; include a methodology for the collection of an annual compliance fee; require the submission of annual manure management plan updates; modify the site inspection and construction permit application review process; amend Table 6 and delete Table 7; and incorporate the master matrix into Chapter 65.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 13, 2002, as ARC 2101B.

In response to comments received during the public comment period and the public hearing, the following changes were made to the rules published under Notice:

1. In subrules 65.10(1) and 65.16(3) the term “county officer” was changed to “county official or employee.”

2. Subrule 65.10(3) [now subrule 65.10(4)] was amended to make it clear that the county will only be notified and allowed to attend a site inspection if the county has adopted and submitted a construction evaluation resolution and adopted recommendation.

3. The term “complete” was removed from 65.10(4) [now subrule 65.10(5)], consistent with SF 2293. Language was added to make it clear that if applicant does not submit information requested to complete an application in a timely manner, the permit will be denied and the producer must reapply.

4. The procedures in subrules 65.10(4) through 65.10(8) [now subrules 65.10(5) through 65.10(9)] for processing the permit application, notifying the county, and requesting and conducting a hearing were revised substantially in order to reconcile statutory provisions and clarify the procedures, again, in response to public comments. Preliminary determinations will be made only in cases where the county has a right to demand a hearing; otherwise the applicant will get a final approval or disapproval, subject to the applicant’s right to contest the decision. In cases where the county demands a hearing before the commission, the applicant must choose whether to demand a contested case hearing at that time; if a contested case is not demanded, the decision of the commission is final agency action. Minor revisions were made to subrule 65.10(8) now subrule 65.10(9), relating to procedures in commission hearings.

5. Subrule 65.16(3) was changed to clarify that it is the producer’s duty to provide documentation to the department that the updated manure management plan was filed with the county.

7. The Master Matrix retains the requirement to obtain minimum scores in all three subcategories, and to obtain a minimum 50 percent overall score. The minimum score in each subcategory was reduced from 30 percent to 25 percent. A mitigating factor relating to

subtherapeutic use of antibiotics is not included in the Matrix. Mitigating factor #36, relating to use of low-phytase corn was deleted because the commission felt it was too difficult to enforce. A new mitigating factor relating to demonstrated community support was added. Minor clarifications were made to Mitigating Factors 22, 23, and 38 in response to comments.

8. The introductory paragraph to the Master Matrix, Appendix C, was revised to make it clear that the applicant selects the factors that are to be applied to the facility.

9. At the end of Table 6, the parenthetical exclusions from the required separation distances for the right-of-way of a thoroughfare, relating to dry manure storage and permanent vegetation, are deleted to conform with Senate File 2293, section 21.

These rules were approved at the January 21, 2003 meeting of the Environmental Protection Commission

Pursuant to Iowa Code section 171A.5(2)“b”(1), these amendments shall become effective on March 1, 2003, as provided by 2002 Iowa Acts, Senate File 2293, section 62.

These amendments are intended to implement 2002 Iowa Acts, Senate File 2293.

The following amendments are adopted.

ITEM 1. Amend rule 567--65.1(455B) as follows:

Amend the following definitions:

“Abandoned ~~animal~~ confinement feeding operation structure” means the ~~animal~~ 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 ~~an animal~~ a confinement feeding operation structure so that it cannot be ~~put back into service~~ used as a confinement feeding operation structure without significant ~~construction activity~~ reconstruction.

“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~~ structure is to store and stabilize ~~organic wastes~~ manure, the ~~impoundment structure~~ 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:

1. ~~A confinement feeding operation structure.~~

~~2.~~ 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.

~~3~~ 2. An anaerobic treatment system ~~which~~ that includes collection and treatment facilities for all off gases.

"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.

"Animal feeding operation" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. For purposes of water quality regulation, Iowa Code section ~~455B.171~~ 455B.200B as amended by 2002 Iowa Acts, Senate File 2293, section 31, provides that 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. For purposes of the separation distances in Iowa Code section 455B.162, Iowa Code section ~~455B.161~~ 455B.161A as amended by 2002 Iowa Acts, Senate File 2293, section 9, provides that 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. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. The Code of Federal Regulations at 40 CFR §122.23 (1995) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for manure disposal. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 455B.162, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. No change.

"Animal feeding operation structure" means ~~an anaerobic lagoon, formed manure storage structure, egg washwater storage structure, earthen manure storage basin, or a confinement building, manure storage structure, or egg washwater storage structure.~~

"Animal unit" means a unit of measurement ~~used to determine the animal capacity of an animal feeding operation,~~ based upon the product of multiplying the number of animals ~~in~~ of each species category by ~~the following~~ a special equivalency factor, as follows:

1. Slaughter and feeder cattle1.000
2. Immature dairy cattle1.000
- ~~2~~ 3. Mature dairy cattle1.400
- ~~3~~ 4. Butcher ~~and~~ or breeding swine, ~~over~~ weighing more than 55 pounds ...0.400
- ~~4~~ 5. Swine ~~between~~ weighing 15 and pounds or more but not more than
55 pounds0.100
- ~~5~~ 6. Sheep or lambs0.100
- ~~6~~ 7. Horses2.000
- ~~7~~ 8. Turkeys0.018
- ~~8~~ 9. Broiler or layer chickens0.0100

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

"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.

“Designated area” means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or a ~~farm pond or privately owned lake as defined in Iowa Code section 462A.2~~ water source. A designated area does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

"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. Similar materials may include, but are not limited to, plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed manure storage structure shall have the structural integrity to withstand expected internal and external load pressures.

“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, ~~which can support~~ 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. Major water sources in the state are listed in Table 1 and Table 2 at the end of this chapter.

“Manure storage structure” means ~~an aerobic structure, anaerobic lagoon, earthen manure storage basin, or a~~ formed manure storage structure ~~used to store manure as a part of a~~ confinement feeding operation or an unformed manure storage structure. Manure A manure storage structure does not include an egg washwater storage structure.

“Qualified confinement feeding operation” means a confinement feeding operation ~~constructed or expanded under a construction permit issued on or after May 31, 1995, and~~ which has an animal weight unit capacity of:

1. ~~2,000,000~~ 5,333 or more ~~pounds~~ for animals other than ~~animals kept in a swine as part of a farrowing and gestating operation or farrow-to-finish operation or bovine cattle kept in a confinement feeding as part of a cattle operation;~~

2. 2,500 or more for a swine farrowing and gestation operation;

3. 5,400 or more for a swine farrow-to-finish operation ~~having an animal weight capacity of 2,500,000 or more pounds; or a confinement feeding operation having an animal weight capacity of 8,000,000 or more pounds for bovine.~~

4. 8,500 or more for a confinement feeding operation maintaining cattle.

“Small animal feeding operation” means an animal feeding operation which has an animal weight unit capacity of ~~200,000 pounds or less for animals other than bovine, or 400,000 pounds~~ 500 or less for bovine fewer animal units.

"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 ~~or egg washwater storage structure,~~ which is includes an anaerobic lagoon, ~~earthen~~ aerobic structure, or earthen manure storage basin.

Insert the following new definitions in alphabetical order:

"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 Iowa Code sections 455B.161A as amended by 2002 Iowa Acts, Senate

File 2293, section 9, and 455B.200B as amended by 2002 Iowa Acts, Senate File 2293, sections 3 to 32.

"Document" means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in Iowa Code section 455B.200A as amended by 2002 Iowa Acts, Senate File 2293, sections 28 and 29, manure management plans as provided in Iowa Code section 455B.203 as amended by 2002 Iowa Acts, Seante File 2293, sections 38 to 41, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to 2002 Iowa Acts, Senate File 2293, section 35, and notices required under those sections.

"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.

"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. If a 25-foot vertical separation distance can be maintained between the bottom of an unformed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

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

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

"Water of the state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

"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.

ITEM 2. Amend subrule 65.3(3), paragraph "g," as follows:

g. Designated areas. A person shall not apply manure on ~~cropland~~ land within 200 feet from a designated area, or in the case of a high quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or ~~by surface application with incorporation occurring within 24 hours after application~~ on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 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.

ITEM 3. Amend subrule 65.9(1) by rescinding paragraph “n.”

ITEM 4. Amend rule 567--65.10(455B) as follows:

~~567—65.10(455B) County participation in site inspections and the construction~~ Construction
permit application review process, site inspections and complaint investigations.

65.10(1) Delivery of application to county. The applicant for a construction permit for a confinement feeding operation or related animal feeding operation structure shall deliver in person or by certified mail a copy of the permit application and manure management plan to the county board of supervisors of the county where the confinement feeding operation or related animal feeding operation structure is proposed to be constructed. Receipt of the application and manure management plan by the county auditor or other county official or employee designated by the county board of supervisors is deemed receipt of the application and manure management plan by the county board of supervisors. Documentation of the delivery or mailing of the permit application and manure management plan shall be forwarded to the department.

65.10(2) ~~County~~ Public notice and county comment. ~~The county board of supervisors may submit comments by the board and public regarding compliance of the construction permit application and manure management plan with the requirements in this chapter and Iowa Code chapter 455B for obtaining a construction permit.~~

a. ~~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 a construction permit as provided in this chapter, including rules adopted by the department pursuant to Iowa Code section 455B.200. The comments shall be delivered to the department~~

within 30 days after receipt of the application by the county board of supervisors in order to be considered in the permit review process. Public notice. The county board of supervisors shall publish a notice that the board has received the construction permit application in a newspaper having general circulation in the county. The county board shall publish the notice as soon as possible but no later than 14 days after receiving the permit application. The notice shall include all of the following:

(1) The name of the person applying to receive the construction permit;

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

(3) Each type of confinement feeding operation structure proposed to be constructed;

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

(5) The time when and the place where the application may be examined as provided in Iowa Code section 22.2;

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

The county shall submit to the department, within 30 days of receipt of the construction permit application, proof of publication to verify that the county provided public notice as required in this paragraph.

b. County comment. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the board may submit to the department comments by the board and the public regarding compliance of the construction permit application and manure management plan with the requirements in this chapter and Iowa Code chapter 455B for obtaining a construction permit. Comments may include, but are not limited to, the following:

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

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

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

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

65.10(3) Inspection of proposed construction site. The department may conduct an inspection of the site on which construction of the confinement feeding operation is proposed after providing a minimum of 24 hours' notice to the construction permit applicant or sooner with the consent of the applicant. If the county in which the proposed facility is located has adopted and submitted a construction evaluation resolution pursuant to subrule (3), and has not failed subsequently to submit an adopted recommendation, the county may designate a county employee to accompany a department official during the site inspection. In such cases, tThe department shall notify the county board of supervisors or county designee at least three days prior to conducting an inspection of the site where construction of the confinement feeding operation is proposed ~~in the permit application. The county board of supervisors may designate a county employee to accompany a departmental official during the site inspection.~~ The county designee shall have the same right to access to the site's real estate on which construction of the

confinement feeding operation is proposed as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official. The departmental official and the county designee shall comply with standard biosecurity requirements customarily required by the owner of the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

65.10(4) ~~Waiting period. The department shall not approve or disapprove the application until 30 days following delivery of the application to the county board of supervisors.~~

Determination by the department. The department must receive the county board of supervisors' comments or evaluation for approval or disapproval of an application for a construction permit not later than 30 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 render a determination or a preliminary determination to

approve or disapprove an application for a construction permit within 60 days following the

applicant's delivery of an 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 period provided in the notice,

but for not more than 30 days after the department's receipt of the notice. The applicant may

submit more than one notice. However, the department may terminate an application 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 30 days. However, the department shall not provide

for more than one continuance. If review of the application is delayed due to it being incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline of action, the permit may be denied and a new application will be required if the applicant wishes to proceed.

The department will approve or disapprove an application as follows:

a. 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 and Iowa Code chapter 455B. The department will disapprove the application if it does not meet such requirements.

b. If the board of supervisors for the county in which the confinement feeding operation is proposed to be constructed has filed a county construction evaluation resolution and 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, the department shall preliminarily approve an application for a construction permit if the department determines that the application meets the requirements of this chapter and Iowa Code chapter 455B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapter 455B regardless of the adopted recommendation of the board of supervisors. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code chapter 455B.

c. 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 and Iowa Code chapter 455B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapter 455B regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter and Iowa Code chapter 455B, the department shall conduct an independent evaluation of the application using the master matrix. The department shall preliminarily approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall preliminarily 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 subrule to determine if an application meets the requirements of this chapter and Iowa Code chapter 455B.

65.10(5) Departmental notification of permit application decision. Within three days following the department's ~~decision~~ determination or preliminary determination to approve or disapprove the application for a construction permit, the department shall deliver a notice of the decision to the ~~county board of supervisors~~ applicant.

a. If the county board of supervisors has submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department shall notify the board of the department's preliminary decision to approve or disapprove the application at the same time. For a preliminary decision to approve an ~~approved~~ application, the notice shall consist of a copy of the draft construction permit ~~as issued~~. For a ~~disapproved~~ preliminary decision to disapprove an application, the notice shall consist of a copy of the department's letter of preliminary denial. The preliminary decision to approve or disapprove an application becomes final without further proceedings if neither the county board

of supervisors nor the applicant demands a hearing before the commission or appeals pursuant to 65.10(6) and 65.10(7).

b. If the county board of supervisors has not submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department notice shall include the construction permit or letter of denial. The applicant may appeal the permit or denial as provided in 65.10(7).

65.10(6) County demand for hearing. The A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application by filing a written demand for a hearing before the commission. Due to the need for expedited scheduling, the county board of supervisors shall, as soon as possible but not later than 14 days following receipt of the department's notice of preliminary decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that ~~it~~ the board intends to file a demand for hearing. The demand for hearing shall be mailed to Director, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, and must be postmarked within 14 days following receipt of the department's notice of preliminary decision. The demand shall include a statement providing all reasons why the application should be approved or disapproved according to legal requirements in this chapter and Iowa Code chapter 455B; legal briefs and any other documents to be considered by the commission or a statement indicating that no other documents will be submitted for consideration by the commission; and a statement indicating whether oral argument before the commission is desired.

65.10(7) Applicant demand for hearing; appeal. The applicant may contest the department's decision or preliminary decision to approve or disapprove an application by filing a written

demand for a hearing. The applicant may elect to have the hearing conducted as a contested case before an administrative law judge pursuant to chapter 7, or before the commission pursuant to subrule (8). The demand for hearing shall indicate which procedure the applicant elects.

a. Applicant demand for hearing before the commission. Due to the need for expedited scheduling, the applicant shall, as soon as possible but not later than 14 days following receipt of the department's notice of preliminary decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that the applicant intends to file a demand for hearing; provided however, in cases in which the applicant would not demand a hearing unless the county demanded one, the applicant will be allowed an additional three working days to file a demand. It is the responsibility of the applicant to communicate with the department to determine if a county demand has been filed. The demand for hearing shall be mailed to Director, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, and must be postmarked within 14 days following receipt of the department's notice of preliminary decision, or such longer time as authorized in this paragraph. The demand shall include a statement providing all reasons why the application should be approved or disapproved without specified conditions according to legal requirements in this chapter and Iowa Code chapter 455B; legal briefs and any other documents to be considered by the commission or a statement indicating that no other documents will be submitted for consideration by the commission; and a statement indicating whether oral argument before the commission is desired. If both the applicant and a county board of supervisors are contesting the department's preliminary decision, the applicant may request that the commission conduct the hearing on a consolidated basis.

b. Applicant contested case appeal. The applicant may appeal a permit or letter of denial according to the contested case procedures set forth in 561—Chapter 7; provided however, if the county has demanded a hearing pursuant to subrule (6), a demand for hearing must be filed within the time frames set forth in paragraph “a.” If both the applicant and a county board of supervisors are contesting the department’s preliminary decision, the applicant may request that the hearings be consolidated and conducted as a contested case.

65.10~~(7)~~ (8) Decision by the commission. The director shall schedule ~~the matter~~ hearing on a demand pursuant to subrules (6) or (7)“a” for consideration at the next regular meeting of the commission and notify the county board of supervisors and the applicant of the time and place. However, if the next regular meeting of the commission will take place more than 35 days after receipt of the demand for hearing, the director shall schedule a special in-person meeting or an electronic meeting of the commission pursuant to Iowa Code section 21.8. The director shall provide the applicant with copies of all documents submitted by the county board of supervisors and a copy of the department’s file on the permit application within three days after receipt of the county board of supervisors’ comments. The applicant may submit responses or other documents for consideration by the commission postmarked or hand-delivered at least 14 days prior to the date of consideration by the commission. Consideration by the commission is not a contested case, ~~and, unless otherwise determined by the commission,~~ Oral participation before the commission will be limited to time periods specified by the commission and, unless otherwise determined by the commission, to argument by ~~one~~ one representatives ~~each~~ from the county board of supervisors, the applicant and the department. The decision by the commission shall be stated on the record and shall be final agency action pursuant to Iowa Code chapter 17A. If the commission reverses or modifies the department’s decision, the department shall issue the

appropriate ~~superseding~~ permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

65.10~~(8)~~ (9) Complaints of violations of Iowa Code chapter 455B and this rule, which are received by the department or are forwarded to the department by a county, following a county board of ~~supervisor's~~ supervisors' determination that a complainant's allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

a. to i. No change.

ITEM 5. Amend subrule 65.11(2) as follows:

65.11(2) Separation from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, ~~major~~ water sources and ~~water courses~~ major water sources shall be as specified in Iowa Code section 455B.204 and summarized in Table 6 ~~and Table 7~~ at the end of this chapter.

ITEM 6. Amend subrule 65.16(1) as follows:

65.16(1) In accordance with Iowa Code section ~~455B.202~~ 455B.203 as amended by 2002 Iowa Acts, Senate File 2293, section 38, the following persons are required to submit manure management plans to the department, including an original manure management plan and an updated manure management plan, as required by this rule:

a. No change.

b. The ~~owners~~ owner of a confinement feeding ~~operations~~ operation, other than a small animal feeding operation, if ~~the~~ one of the following applies:

~~(1) The confinement feeding operation was constructed or expanded after May 31, 1985, and regardless of whether the confinement feeding operation structure was required to have a construction permit. Owners of confinement feeding operations which submitted a manure management plan are not required to submit a new plan if the plan meets the requirements of Iowa Code section 455B.200 which are summarized in 65.17(455B). Persons who have previously submitted manure management plans which do not meet the current plan requirements, and persons who have not previously submitted a manure management plan but are now required to do so, have until July 1, 1999, to submit a manure management plan which meets the requirements.~~

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to Iowa Code section 455B.200A as amended by 2002 Iowa Acts, Senate File 2293, sections 28 and 29, or whether the person has submitted a prior manure management plan.

c. and d. No change.

ITEM 7. Amend rule 567--65.16(455B) by adding the following **new** subrule 65.16(3) and by renumbering existing subrules 65.16(3) through 65.16(6) as 65.16(4) through 65.16(7):

65.16(3) Scope of manure management plan; updated plans; annual compliance fee.

a. Each confinement feeding operation required to submit a manure management plan shall be covered by a separate manure management plan.

b. The owner of a confinement feeding operation who is required to submit a manure management plan under this rule shall submit an updated manure management plan on an annual basis to the department. The updated plan must reflect all amendments made during the period

of time since the previous manure management plan submission. The owner of the animal feeding operation shall also submit the updated manure management plan on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. If the owner of the animal feeding operation has not previously submitted a manure management plan to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied, the owner must submit a complete manure management plan to each required county. The county auditor or other county official or employee designated by the county board of supervisors may accept the updated plan on behalf of the board. The updated plan shall include documentation that the county board of supervisors or other designated county official or employee received the manure management plan update. The department will stagger the dates by which the updated manure management plans are due and will notify each confinement feeding operation owner of the date on which the updated manure management plan is due. To satisfy the requirements of an updated manure management plan, an owner of a confinement feeding operation must submit one of the following:

- (1) A complete manure management plan;
- (2) A department-approved document stating that the manure management plan submitted in the prior year has not changed; or
- (3) A department-approved document listing all the changes made since the previous manure management plan was submitted and approved.

c. An annual compliance fee of \$0.15 per animal unit at the animal feeding operation shall accompany an annual manure management plan update submitted to the department for

approval. The annual compliance fee is based on the animal unit capacity of the confinement feeding operation stated in the updated annual manure management plan submission. If the person submitting the manure management plan is a contract producer, as provided in Iowa Code chapter 202, the active contractor shall pay the annual compliance fee.

ITEM 8. Amend 567--Chapter 65 by rescinding Appendix C and inserting the following new appendix in lieu thereof:

ITEM 9. Amend 567—Chapter 65, Table 6, as follows:

TABLE 6

Required Separation Distances – Swine, Sheep, Horses, and Poultry, and Beef and Dairy Cattle

DISTANCES TO BUILDINGS AND PUBLIC USE AREAS					
Type of Structure	Animal Weight Unit (AU) Capacity (lbs.)	Residences, Businesses, Churches, Schools		Public Use Areas	
		Unincorporated Areas	Incorporated Areas		
Anaerobic lagoons and uncovered earthen manure storage basins	<200,000 <1,000 AU	1,250	1,875 feet	1,250	1,875 feet
	200,000 to <625,000	1,250	2,500 feet	1,250	2,500 feet
	1,000 to <3,000 AU	1,875	3,000 feet	1,875	3,000 feet
	625,000 to <1,250,000	1,875	3,000 feet	1,875	3,000 feet
	3,000 AU or more	2,500	2,500 feet	2,500	2,500 feet
Covered earthen manure storage basins	<200,000 <1,000 AU	1,000	1,250 feet	1,250	1,875 feet
	200,000 to <625,000	1,000	1,875 feet	1,250	2,500 feet
	1,000 to <3,000 AU	1,250	2,375 feet	1,875	3,000 feet
	625,000 to <1,250,000	1,250	2,375 feet	1,875	3,000 feet
	3,000 AU or more	1,875	1,875 feet	2,500	2,500 feet
Uncovered formed manure storage structures	<200,000 <1,000 AU	None	1,500 feet	None	1,875 feet
	200,000 to <625,000	1,250	2,000 feet	1,250	2,500 feet
	1,000 to <3,000 AU	1,500	2,500 feet	1,875	3,000 feet
	625,000 to <1,250,000	1,500	2,500 feet	1,875	3,000 feet
	3,000 AU or more	2,000	2,000 feet	2,500	2,500 feet
Confinement buildings and covered formed manure storage structures	<200,000 <1,000 AU	None	1,250 feet	None	1,875 feet
	200,000 to <625,000	1,000	1,875 feet	1,250	2,500 feet
	1,000 to <3,000 AU	1,250	2,375 feet	1,875	3,000 feet
	625,000 to <1,250,000	1,250	2,375 feet	1,875	3,000 feet
	3,000 AU or more	1,875	1,875 feet	2,500	2,500 feet
Egg washwater storage structures	<200,000 <1,000 AU	None	1,000 feet	None	1,875 feet
	200,000 to <625,000	50	1,500 feet	1,250	2,500 feet
	1,000 to <3,000 AU	1,000	2,000 feet	1,875	3,000 feet
	625,000 to <1,250,000	1,000	2,000 feet	1,875	3,000 feet
	3,000 AU or more	1,500	1,500 feet	2,500	2,500 feet

DISTANCES TO WELLS [no change]

OTHER DISTANCES FOR ANIMAL FEEDING OPERATION STRUCTURES regardless of animal weight unit capacity	
Surface intake of an agricultural drainage well or water sources other than major (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet
Wellhead, cistern of agricultural drainage well, known sinkhole or major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	1,000 feet
Surface intake, wellhead, or cistern of agricultural drainage wells, known sinkholes or major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	500 feet

Watercourses other than major water sources (Excluding farm ponds, privately owned lakes or when a secondary containment barrier is provided)	200 feet
Right-of-way of a thoroughfare maintained by a political subdivision (Excluding small feeding operations.)	100 feet

ITEM 10. Amend 567—Chapter 65 by rescinding Table 7 and striking all references to Table 7.

Date

Jeffrey R. Vonk, Director

(N:65f.doc/mg)