

MAR 17 2005
Place On Calendar

HOUSE FILE 805
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 235)

Passed House, Date 4-19-05 Passed Senate, Date _____
Vote: Ayes 78 Nays 21 Vote: Ayes _____ Nays _____
Approved 5/23/05

A BILL FOR

1 An Act relating to animal feeding operations, by providing for
2 the regulation of open feedlot operations, and providing for
3 penalties.

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

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

HF 805

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

DIVISION I
OPEN FEEDLOT OPERATIONS
SUBCHAPTER I
GENERAL PROVISIONS

Section 1. NEW SECTION. 459A.101 TITLE.

This chapter shall be known and may be cited as the "Animal Agriculture Compliance Act for Open Feedlot Operations".

Sec. 2. NEW SECTION. 459A.102 DEFINITIONS.

1. "Alternative technology system" or "alternative system" means a system for open feedlot effluent control as provided in section 459A.303.

2. "Animal" means the same as defined in section 459.102.

3. "Animal feeding operation" means the same as defined in section 459.102.

4. "Animal unit" means the same as defined in section 459.102.

5. "Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation.

6. "A.S.T.M. international" means the American society for testing and materials international.

7. "Commission" means the environmental protection commission created pursuant to section 455A.6.

8. "Department" means the department of natural resources.

9. "Document" means any form required to be processed by the department under this chapter, including but not limited to applications for permits or related materials as provided in section 459A.205, soil and hydrogeologic reports as provided in section 459A.206, construction certifications as provided in section 459A.207, nutrient management plans as provided in section 459A.208, and notices required under this chapter.

10. "National pollutant discharge elimination system permit" means a permit issued by the department or the United States environmental protection agency pursuant to the federal

1 Water Pollution Control Act, Title 33, U.S.C., ch. 126, as
2 amended, and 40 C.F.R., pt. 124.

3 11. "Nutrient management plan" or "plan" means a plan
4 which provides for the management of open feedlot effluent and
5 the application of effluent as provided in section 459A.208.

6 12. "Open feedlot" means a lot, yard, corral, building, or
7 other area used to house animals in conjunction with an open
8 feedlot operation.

9 13. "Open feedlot effluent" or "effluent" means a
10 combination of manure, precipitation-induced runoff, or other
11 runoff from an open feedlot before its settleable solids have
12 been removed.

13 14. "Open feedlot operation" or "operation" means an
14 unroofed or partially roofed animal feeding operation if crop,
15 vegetation, or forage growth or residue cover is not
16 maintained as part of the animal feeding operation during the
17 period that animals are confined in the animal feeding
18 operation.

19 15. "Open feedlot operation structure" means an open
20 feedlot, settled open feedlot effluent basin, a solids
21 settling facility, or an alternative technology system.

22 16. "Research college" means an accredited public or
23 private college or university, including but not limited to a
24 university under the control of the state board of regents as
25 provided in chapter 262, or a community college under the
26 jurisdiction of a board of directors for a merged area as
27 provided in chapter 260C, if the college or university
28 performs research or experimental activities regarding animal
29 agriculture or agronomy.

30 17. "Settled open feedlot effluent" or "settled effluent"
31 means a combination of manure, precipitation-induced runoff,
32 or other runoff originating from an open feedlot after its
33 settleable solids have been removed.

34 18. "Settleable solids" or "solids" means that portion of
35 open feedlot effluent that meets all of the following

1 requirements:

2 a. The solids do not flow perceptibly under pressure.

3 b. The solids are not capable of being transported through
4 a mechanical pumping device designed to move a liquid.

5 c. The constituent molecules of the solids do not flow
6 freely among themselves but do show the tendency to separate
7 under stress.

8 19. "Settled open feedlot effluent basin" or "basin" means
9 an impoundment which is part of an open feedlot operation, if
10 the primary function of the impoundment is to collect and
11 store settled open feedlot effluent.

12 20. "Solids settling facility" means a basin, terrace,
13 diversion, or other structure or solids removal method which
14 is part of an open feedlot operation and which is designed and
15 operated to remove settleable solids from open feedlot
16 effluent. A solids settling facility shall not retain the
17 liquid portion of open feedlot effluent for more than seven
18 consecutive days following a precipitation event.

19 21. "Waters of the United States" means the same as
20 defined in 40 C.F.R., pt. 122, § 2, as that section exists on
21 the effective date of this Act.

22 Sec. 3. NEW SECTION. 459A.103 SPECIAL TERMS.

23 For purposes of this chapter, all of the following shall
24 apply:

25 1. a. Two or more open feedlot operations under common
26 ownership or common management are deemed to be a single open
27 feedlot operation if they are adjacent or utilize a common
28 area or system for open feedlot effluent disposal.

29 b. For purposes of determining whether two or more open
30 feedlot operations are adjacent, all of the following shall
31 apply:

32 (1) At least one open feedlot operation structure must be
33 constructed on or after July 17, 2002.

34 (2) An open feedlot operation structure which is part of
35 one open feedlot operation is separated by less than one

1 thousand two hundred fifty feet from an open feedlot operation
2 structure which is part of the other open feedlot operation.

3 c. For purposes of determining whether two or more open
4 feedlot operations are under common ownership, a person must
5 hold an interest in each of the open feedlot operations as any
6 of the following:

7 (1) A sole proprietor.

8 (2) A joint tenant or tenant in common.

9 (3) A holder of a majority equity interest in a business
10 association as defined in section 202B.102, including but not
11 limited to as a shareholder, partner, member, or beneficiary.

12 An interest in the open feedlot operation under
13 subparagraph (2) or (3) which is held directly or indirectly
14 by the person's spouse or dependent child shall be attributed
15 to the person.

16 d. For purposes of determining whether two or more open
17 feedlot operations are under common management, a person must
18 have significant control of the management of the day-to-day
19 operations of each of the open feedlot operations. Common
20 management does not include control over a contract livestock
21 facility by a contractor, as defined in section 202.1.

22 2. An open feedlot operation structure is "constructed"
23 when any of the following occurs:

24 a. Excavation commences for a proposed open feedlot
25 operation structure or proposed expansion of an existing open
26 feedlot operation structure.

27 b. Forms for concrete are installed for a proposed open
28 feedlot operation structure or the proposed expansion of an
29 existing open feedlot operation structure.

30 c. Piping for the movement of open feedlot effluent is
31 installed within or between open feedlot operation structures
32 as proposed or proposed to be expanded.

33 3. In calculating the animal unit capacity of an open
34 feedlot operation, the animal unit capacity shall include the
35 animal unit capacity of all open feedlots which are part of

1 the open feedlot operation, unless an open feedlot has been
2 abandoned as provided in this section. The animal unit
3 capacity of an open feedlot operation shall not include the
4 animal unit capacity of any confinement feeding operation
5 buildings as defined in section 459.102, which are part of the
6 open feedlot operation.

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

13 5. All distances between locations or objects provided in
14 this subchapter shall be measured in feet from their closest
15 points.

16 Sec. 4. NEW SECTION. 459A.104 GENERAL AUTHORITY --
17 COMMISSION AND DEPARTMENT -- PURPOSE -- COMPLIANCE.

18 1. The commission shall establish by rule adopted pursuant
19 to chapter 17A, requirements relating to the construction,
20 including expansion, or operation of open feedlot operations,
21 including related open feedlot operation structures.

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

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

1 provisions of this chapter shall prevail.

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

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

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

16 SUBCHAPTER II

17 DOCUMENTATION

18 Sec. 6. NEW SECTION. 459A.201 DOCUMENT PROCESSING
19 REQUIREMENTS.

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

25 2. a. The department shall provide for procedures for the
26 receipt, filing, processing, and return of documents in an
27 electronic format in the same manner as provided in section
28 459.302. The department shall provide for authentication of
29 the documents that may include electronic signatures as
30 provided in chapter 554D.

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

35 3. The department shall approve or disapprove an

1 application for a construction permit as provided in section
2 459A.205 within sixty days after receiving the permit
3 application. However, the applicant may deliver a notice
4 requesting a continuance. Upon receipt of a notice, the time
5 required for the department to act upon the application shall
6 be suspended for the period provided in the notice, but for
7 not more than thirty days after the department's receipt of
8 the notice. The applicant may submit more than one notice.
9 However, the department may provide that an application is
10 terminated if no action is required by the department for one
11 year following delivery of the application to the department.
12 The department may also provide for a continuance when it
13 considers the application. The department shall provide
14 notice to the applicant of the continuance. The time required
15 for the department to act upon the application shall be
16 suspended for the period provided in the notice, but for not
17 more than thirty days. However, the department shall not
18 provide for more than one continuance.

19 Sec. 7. NEW SECTION. 459A.205 PERMIT REQUIREMENTS --
20 SETTLED OPEN FEEDLOT EFFLUENT BASINS AND ALTERNATIVE
21 TECHNOLOGY SYSTEMS.

22 1. The department shall approve or disapprove applications
23 for permits for the construction, including the expansion, of
24 settled open feedlot effluent basins and alternative
25 technology systems, as provided in this chapter. The
26 department's decision to approve or disapprove a permit for
27 the construction of a basin or alternative system shall be
28 based on whether the application is submitted according to
29 procedures and standards required by this chapter. A person
30 shall not begin construction of a basin or alternative system
31 requiring a permit under this section, unless the department
32 first approves the person's application and issues to the
33 person a construction permit.

34 2. The department shall issue a construction permit upon
35 approval of an application. The department shall approve the

1 application regardless of whether the applicant is required to
2 be issued a construction permit.

3 3. The department shall not approve an application for a
4 construction permit unless the applicant submits all of the
5 following:

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

8 b. An engineering report, construction plans, or
9 specifications prepared by a licensed professional engineer or
10 the natural resources conservation service of the United
11 States department of agriculture certifying that the
12 construction of the settled open feedlot effluent basin or
13 alternative technology system complies with the construction
14 design standards required in this chapter.

15 4. An open feedlot operation must be issued a construction
16 permit prior to any of the following:

17 a. The construction, including expansion, of a settled
18 open feedlot effluent basin or alternative technology system
19 if after construction the open feedlot operation has an animal
20 unit capacity of one thousand animal units or more.

21 b. The department has previously issued the open feedlot
22 operation a construction permit and any of the following
23 applies:

24 (1) The animal unit capacity of the open feedlot operation
25 will be increased to more than the design animal unit capacity
26 approved by the department in the previous construction
27 permit.

28 (2) The volume of open feedlot effluent stored at the open
29 feedlot operation would be more than the design volume
30 approved by the department in the previous construction
31 permit.

32 c. The open feedlot operation was discontinued for twenty-
33 four months or more and the animal unit capacity would be one
34 thousand animal units or more.

35 5. Prior to submitting an application for a construction

1 permit the applicant may submit a conceptual design and site
2 investigation report to the department for review and comment.

3 6. The application for the construction permit shall
4 include all of the following:

5 a. The name of the owner of the open feedlot operation and
6 the name of the open feedlot operation, including mailing
7 address and telephone number.

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

11 c. The location of the open feedlot operation.

12 d. A statement providing that the application is for any
13 of the following:

14 (1) The construction or expansion of a settled open
15 feedlot effluent basin or alternative technology system for an
16 existing open feedlot operation which is not expanding.

17 (2) The construction or expansion of a settled open
18 feedlot effluent basin or alternative technology system for
19 the expansion of an existing open feedlot operation.

20 (3) The construction of a settled open feedlot effluent
21 basin or alternative technology system for a proposed new open
22 feedlot operation.

23 e. The animal unit capacity for each animal species in the
24 open feedlot operation before and after the proposed
25 construction.

26 f. An engineering report, construction plans, and
27 specifications prepared by a licensed professional engineer or
28 by the United States natural resource conservation service,
29 for the settled open feedlot operation effluent basin or
30 alternative technology system.

31 g. A soils and hydrogeologic report of the site, as
32 required in section 459A.206.

33 h. Information, including but not limited to maps,
34 drawings, and aerial photos that clearly show the location of
35 the open feedlot operation and all existing and proposed

1 settled open feedlot effluent basins or alternative technology
2 systems, clean water diversions, other pertinent features or
3 structures, the location of any other open feedlot operations
4 under common ownership or common management and located within
5 one thousand two hundred fifty feet of the open feedlot
6 operation, and the location of public water supply systems or
7 private wells which are within an area which is equal to a
8 multiple of two times the applicable separation distance.

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

12 (1) Information showing that the proposed open feedlot
13 operation meets criteria for siting as established by rules
14 adopted by the department. However, if the site does not meet
15 the criteria, the information shall show substantially
16 equivalent alternatives to meeting such criteria.

17 (2) The results of predictive computer modeling for the
18 proposed alternative technology system to determine
19 suitability of the proposed site for the system and to predict
20 performance of the system as compared to the use of a settled
21 open feedlot effluent basin.

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

24 7. A construction permit for an open feedlot operation
25 expires as follows:

26 a. If construction does not begin within one year after
27 the date the construction permit is issued.

28 b. If construction is not completed within three years
29 after the date the construction permit is issued. However,
30 the department may grant an extension of time to begin or
31 complete construction upon a showing of just cause by the
32 construction permit applicant.

33 8. The department may suspend or revoke a construction
34 permit or refuse to renew a permit expiring under this section
35 if it determines that the operation of the open feedlot

1 operation constitutes a clear, present, and impending danger
2 to public health or the environment.

3 9. This section does not require a person to obtain a
4 permit to construct a basin or alternative system if the basin
5 or system is part of an open feedlot operation which is owned
6 by a research college conducting research activities as
7 provided in section 459A.105.

8 Sec. 8. NEW SECTION. 459A.206 SETTLED OPEN FEEDLOT
9 EFFLUENT BASINS -- SOILS AND HYDROGEOLOGIC REPORT.

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

14 The report shall be submitted with the construction permit
15 application as provided in section 459A.205. The report shall
16 include all of the following:

17 1. A description of the steps to determine the soils and
18 hydrogeologic conditions at the proposed construction site, a
19 description of the geologic units encountered, and a
20 description of the effects of the soil and groundwater
21 elevation and direction of flow on the construction and
22 operation of the basin.

23 2. The subsurface soil classification of the site. A
24 subsurface soil classification shall be based on A.S.T.M
25 international designation D-2487-92 or D-2488-90.

26 3. The results of at least three soil corings reflecting
27 the continuous soil profile taken for each basin. The soil
28 corings shall be taken and used in determining subsurface soil
29 characteristics and groundwater elevation and direction of
30 flow of the proposed site for construction. The soil corings
31 shall be taken as follows:

32 a. By a qualified person ordinarily engaged in the
33 practice of taking soil cores and in performing soil testing.

34 b. At locations that reflect the continuous soil profile
35 conditions existing within the area of the proposed basin,

1 including conditions found near the corners and the deepest
2 point of the proposed basin. The soil corings shall be taken
3 to a minimum depth of ten feet below the bottom elevation of
4 the basin.

5 c. By a method such as hollow stem auger or other method
6 that identifies the continuous soil profile and does not
7 result in the mixing of soil layers.

8 Sec. 9. NEW SECTION. 459A.207 CONSTRUCTION
9 CERTIFICATION.

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

16 a. The basin was constructed in accordance with the design
17 plans submitted to the department as part of an application
18 for a construction permit pursuant to section 459A.205. If
19 the actual construction deviates from the approved plans, the
20 certification shall identify all changes and certify that the
21 changes were consistent with all applicable standards of this
22 section.

23 b. The basin was inspected by the licensed professional
24 engineer after completion of construction and before
25 commencement of operation.

26 2. A written record of an investigation for tile lines,
27 including the findings of the investigation and actions taken
28 to comply with subchapter III, shall be submitted as part of
29 the construction certification.

30 Sec. 10. NEW SECTION. 459A.208 NUTRIENT MANAGEMENT PLAN
31 -- REQUIREMENTS.

32 1. The owner of an open feedlot operation required to have
33 a national pollution discharge elimination permit shall
34 develop and maintain a nutrient management plan meeting the
35 requirements of this section by December 31, 2006.

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

3 3. A person shall not remove open feedlot effluent from an
4 open feedlot operation structure which is part of an open
5 feedlot operation for which a nutrient management plan is
6 required under this section, unless the department approves a
7 nutrient management plan as required in this section. The
8 department may adopt rules allowing a person to remove open
9 feedlot effluent from an open feedlot operation structure
10 until the nutrient management plan is approved or disapproved
11 by the department according to terms and conditions required
12 by rules adopted by the department.

13 4. The department shall not approve an application for a
14 permit to construct a settled open feedlot effluent basin
15 unless the owner of the open feedlot operation applying for
16 approval submits a nutrient management plan together with the
17 application for the construction permit as provided in section
18 459A.205. The nutrient management plan shall be approved or
19 disapproved as part of the construction permit application. A
20 nutrient management plan using an alternative technology
21 system shall not include requirements for settled effluent
22 that enters the alternative technology system.

23 5. A nutrient management plan must be authenticated by the
24 person required to submit the nutrient management plan as
25 required by the department in accordance with section
26 459A.208.

27 6. A nutrient management plan shall include all of the
28 following:

29 a. Restrictions on the application of open feedlot
30 effluent based on all of the following:

31 (1) Calculations necessary to determine the land area
32 required for the application of open feedlot effluent from an
33 open feedlot operation based on nitrogen use levels in order
34 to obtain optimum crop yields according to a crop schedule
35 specified in the nutrient management plan, and according to

1 requirements adopted by the department.

2 (2) A phosphorus index established pursuant to section
3 459.312.

4 b. Information relating to the land application of the
5 open feedlot effluent, including all of the following:

6 (1) Nutrient levels of the open feedlot effluent.

7 (2) Application methods, the timing of the application,
8 and the location of the land where the application occurs.

9 (3) If the location of the application is on land other
10 than land owned or rented for crop production by the person
11 applying for a construction or national pollutant discharge
12 elimination system permit, the plan shall include a copy of
13 each written agreement executed between the person and the
14 landowner or the person renting the land for crop production
15 where the open feedlot effluent will be applied.

16 c. An estimate of the open feedlot effluent volume or
17 weight produced by the open feedlot operation.

18 d. Information which shows all of the following:

19 (1) There is adequate storage of open feedlot effluent,
20 including procedures to ensure proper operation and
21 maintenance of the storage structures.

22 (2) The proper management of animal mortalities to ensure
23 that animals are not disposed of in an open feedlot operation
24 structure or a treatment system that is not specifically
25 designed to treat animal mortalities.

26 (3) Surface drainage prior to contact with an open feedlot
27 structure is diverted, as appropriate, from the open feedlot
28 operation.

29 (4) Animals kept in the open feedlot operation will not
30 have direct contact with waters of the United States.

31 (5) Chemicals or other contaminants handled on-site are
32 not disposed of in an open feedlot operation structure or a
33 treatment system that is not specifically designed to treat
34 such chemicals or contaminants.

35 7. If an open feedlot operation uses an alternative

1 technology system as provided in section 459A.303, the
2 nutrient management plan is not required to provide for
3 settled effluent that enters the alternative technology
4 system.

5 8. A person required to develop and maintain a nutrient
6 management plan shall maintain a current nutrient management
7 plan and maintain records sufficient to demonstrate compliance
8 with the nutrient management plan. Chapter 22 shall not apply
9 to the records which shall be kept confidential by the
10 department and its agents and employees. The contents of the
11 records are not subject to disclosure except as follows:

12 a. Upon waiver by the person receiving the permit.

13 b. In a contested case proceeding commenced under chapter
14 17A. Notwithstanding section 17A.19, the proceeding shall be
15 closed.

16 c. When required by subpoena or court order.

17 9. A person required to authenticate a nutrient management
18 plan who is found in violation of the terms and conditions of
19 the plan shall not be subject to an enforcement action other
20 than the assessment of a civil penalty pursuant to section
21 459A.502.

22 SUBCHAPTER III

23 DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

24 Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN FEEDLOT
25 EFFLUENT BASINS -- CONSTRUCTION DESIGN STANDARDS -- RULES.

26 If the department requires that a settled open feedlot
27 effluent basin be constructed according to construction design
28 standards, regardless of whether the department requires the
29 owner to be issued a construction permit under section
30 459A.205, any construction design standards for the basin
31 shall be established by rules as provided in chapter 17A that
32 exclusively account for special design characteristics of open
33 feedlot operations and related basins, including but not
34 limited to the dilute composition of settled open feedlot
35 effluent as collected and stored in the basins.

1 Sec. 12. NEW SECTION. 459A.302 SETTLED OPEN FEEDLOT
2 EFFLUENT BASINS -- CONSTRUCTION REQUIREMENTS.

3 A settled open feedlot effluent basin required to be
4 constructed pursuant to a construction permit issued pursuant
5 to section 459A.205 shall meet all of the following
6 requirements:

7 1. a. Prior to constructing a settled open feedlot
8 effluent basin, the site for the basin shall be investigated
9 for a drainage tile line. The investigation shall be made by
10 digging a core trench to a depth of at least six feet deep
11 from ground level at the projected center of the berm of the
12 basin. If a tile line is discovered, one of the following
13 solutions shall be implemented:

14 (1) The tile line shall be rerouted around the perimeter
15 of the basin.

16 (2) The tile line shall be replaced with a nonperforated
17 tile under the basin floor. There must be a minimum of three
18 feet between the tile and the basin floor.

19 b. A written record of the investigation shall be
20 submitted as part of the construction certification required
21 under section 459A.207.

22 2. a. The settled open feedlot effluent basin shall be
23 constructed with a minimum separation of two feet between the
24 top of the liner of the basin and the seasonal high-water
25 table.

26 b. If drainage tile around the perimeter of the basin is
27 installed a minimum of two feet below the top of the basin
28 liner to artificially lower the seasonal high-water table, the
29 top of the basin's liner may be a maximum of four feet below
30 the seasonal high-water table. The seasonal high-water table
31 may be artificially lowered by gravity flow tile lines,
32 nongravity mechanical systems that use pumping equipment, or
33 other similar system.

34 3. Drainage tile may be installed to artificially lower
35 the seasonal high-water table at a settled open feedlot

1 effluent basin, if all of the following conditions are
2 satisfied:

3 a. A device to allow monitoring of the water in the
4 drainage tile lines and a device to allow shutoff of the flow
5 in the drainage tile lines are installed, if the drainage tile
6 lines do not have a surface outlet accessible on the property
7 where the settled open feedlot effluent basin is located.

8 b. Drainage tile lines are installed horizontally at least
9 twenty-five feet away from the settled open feedlot effluent
10 basin. Tile lines shall be placed in a vertical trench and
11 encased in granular material which extends upward to the level
12 of the seasonal high-water table.

13 c. For purposes of this section, the seasonal high-water
14 table means the "seasonal high-water table" as determined by a
15 professional engineer pursuant to the following requirements:

16 (1) The seasonal high-water table shall be determined by
17 evaluating soil profile characteristics such as color and
18 mottling from soil corings, soil test pits, or other soil
19 profile evaluation methods, water level data from soil corings
20 or other sources, and other pertinent information.

21 (2) If drainage tile to artificially lower the seasonal
22 high-water table is installed as required by this section, the
23 level to which the seasonal high-water table will be lowered
24 will be the seasonal high-water table.

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

28 5. A settled open feedlot effluent basin constructed on a
29 floodplain or within a floodway of a river or stream shall
30 comply with rules of the department.

31 6. The liner of a settled open feedlot effluent basin
32 shall comply with all of the following:

33 a. The liner shall comply with any of the following
34 permeability standards:

35 (1) The liner shall be constructed to have a percolation

1 rate that shall not exceed one-sixteenth inch per day at the
2 design depth of the basin as determined by percolation tests
3 conducted by the professional engineer. If a clay soil liner
4 is used, the liner shall be constructed with a minimum
5 thickness of twelve inches or the minimum thickness necessary
6 to comply with the percolation rate in this section, whichever
7 is greater.

8 (2) The liner shall be constructed at optimum moisture
9 content not less than ninety-five percent of the maximum
10 density as determined by a standard five-point proctor test
11 performed at the site of the open feedlot operation by the
12 professional engineer. If a clay soil liner is used, the
13 liner shall be constructed with a minimum thickness of twelve
14 inches.

15 b. If a synthetic liner is used, the liner shall be
16 installed to comply with the percolation rate required in this
17 section.

18 7. The owner of an open feedlot operation using a settled
19 open feedlot effluent basin shall inspect the berms of the
20 basin at least semiannually for evidence of erosion. If the
21 inspection reveals erosion which may impact the basin's
22 structural stability or the integrity of the basin's liner,
23 the owner shall repair the berms.

24 Sec. 13. NEW SECTION. 459A.303 ALTERNATIVE TECHNOLOGY
25 SYSTEMS.

26 In lieu of using a settled open feedlot effluent basin as
27 provided in section 459A.301 to meet the open feedlot effluent
28 control requirements of section 459A.401, an open feedlot
29 operation may use an alternative technology system for open
30 feedlot effluent control that provides an equivalent level of
31 open feedlot effluent control that would be achieved by using
32 a settled open feedlot effluent basin. The department shall
33 adopt rules establishing alternative technology systems.

34
35

SUBCHAPTER IV
OPEN FEEDLOT EFFLUENT CONTROL

1 Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT EFFLUENT
2 CONTROL METHODS.

3 An open feedlot operation shall provide for the management
4 of settleable solids and other effluent by using an open
5 feedlot effluent control method as follows:

6 1. All settleable solids from open feedlot effluent shall
7 be removed prior to discharge into a waters of the United
8 States.

9 a. The settleable solids shall be removed by use of a
10 solids settling facility. The construction of a solids
11 settling facility is not required where existing site
12 conditions provide for removal of settleable solids prior to
13 discharge to a waters of the United States.

14 b. The removal of settleable solids shall be deemed to
15 have occurred when the velocity of flow of the open feedlot
16 effluent has been reduced to less than point five feet per
17 second for a minimum of five minutes. A solids settling
18 facility shall have sufficient capacity to store settled
19 solids between periods of land application and to provide
20 required flow-velocity reduction for open feedlot effluent
21 flow volumes resulting from a precipitation event of less
22 intensity than a ten-year, one-hour frequency event. A solids
23 settling facility which receives open feedlot effluent shall
24 provide a minimum of one square foot of surface area for each
25 eight cubic feet of open feedlot effluent per hour resulting
26 from a ten-year, one-hour frequency precipitation event.

27 2. Except as provided in this subsection, an open feedlot
28 operation that operates pursuant to a national pollutant
29 discharge elimination system permit shall not discharge open
30 feedlot effluent from an open feedlot operation structure into
31 a waters of this United States. An open feedlot operation may
32 discharge open feedlot effluent into the waters of the United
33 States due to a precipitation event, if any of the following
34 apply:

35 a. For an open feedlot operation that houses cattle, other

1 than veal cattle, the operation is designed, constructed,
2 operated, and maintained to contain all open feedlot effluent
3 resulting from a twenty-five-year, twenty-four-hour
4 precipitation event.

5 b. For an open feedlot operation that houses veal calves,
6 swine, chickens, or turkeys, the operation is designed,
7 constructed, operated, and maintained to contain all open
8 feedlot effluent resulting from a one-hundred-year, twenty-
9 four-hour precipitation event.

10 3. An open feedlot operation designed, constructed, and
11 operated in accordance with the requirements of an open
12 feedlot effluent control system as provided in rules adopted
13 by the department shall be deemed to be in compliance with
14 this section, unless a discharge from the open feedlot
15 operation causes a violation of state water quality standards
16 as provided in chapter 455B, division III.

17 4. The control of open feedlot effluent may be
18 accomplished by the use of a solids settling facility, settled
19 open feedlot effluent basin, alternative technology system, or
20 any other open feedlot effluent control structure or practice
21 approved by the department. The department may require the
22 diversion of surface drainage prior to contact with an open
23 feedlot operation structure. Solids shall be settled from
24 open feedlot effluent before the effluent enters a settled
25 open feedlot basin or alternative technology system.

26 Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT EFFLUENT
27 CONTROL -- ALTERNATIVE CONTROL PRACTICES.

28 If because of topography or other factors related to the
29 site of an open feedlot operation it is economically or
30 physically impractical to comply with open feedlot effluent
31 control requirements using the open feedlot effluent controls
32 in section 459A.401, the department shall allow the use of
33 other open feedlot effluent control practices if those
34 practices will provide an equivalent level of open feedlot
35 effluent control that would be achieved by using an open

1 feedlot effluent control method pursuant to section 459A.401.

2 Sec. 16. NEW SECTION. 459A.410 EFFLUENT APPLICATION
3 REQUIREMENTS.

4 Open feedlot effluent shall be applied in a manner which
5 does not cause surface water or groundwater pollution.
6 Application in accordance with the provisions of state law,
7 including this chapter, rules adopted pursuant to the
8 provisions of state law, including this chapter, and
9 guidelines adopted pursuant to this chapter, shall be deemed
10 as compliance with this section.

11 Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF
12 OPERATIONS.

13 The owner of an open feedlot operation who discontinues the
14 use of the operation shall remove all open feedlot effluent
15 from related open feedlot operation structures used to store
16 open feedlot effluent, as soon as practical but not later than
17 six months following the date the open feedlot operation is
18 discontinued.

19 SUBCHAPTER V

20 ENFORCEMENT

21 Sec. 18. NEW SECTION. 459A.501 GENERAL.

22 The department and the attorney general shall enforce the
23 provisions of this chapter in the same manner as provided in
24 chapter 455B, division I, unless otherwise provided in this
25 chapter.

26 Sec. 19. NEW SECTION. 459A.502 VIOLATIONS -- CIVIL
27 PENALTY.

28 A person who violates this chapter shall be subject to a
29 civil penalty which shall be established, assessed, and
30 collected in the same manner as provided in section 455B.191.
31 Any civil penalty collected and interest on a civil penalty
32 shall be deposited in the animal agriculture compliance fund
33 created in section 459.401. A person shall not be subject to
34 a penalty under this section and a penalty under chapter 459
35 for the same violation.

DIVISION II

CONFORMING AMENDMENTS

1
2
3 Sec. 20. Section 455B.103, subsections 3 and 4, Code 2005,
4 are amended to read as follows:

5 3. Contract, with the approval of the commission, with
6 public agencies of this state to provide all laboratory,
7 scientific field measurement and environmental quality
8 evaluation services necessary to implement the provisions of
9 this chapter, ~~and chapter 459, subchapters-II-and-III~~ and
10 chapter 459A. If the director finds that public agencies of
11 this state cannot provide the laboratory, scientific field
12 measurement and environmental evaluation services required by
13 the department, the director may contract, with the approval
14 of the commission, with any other public or private persons or
15 agencies for such services or for scientific or technical
16 services required to carry out the programs and services
17 assigned to the department.

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

28 Sec. 21. Section 455B.103A, subsection 1, unnumbered
29 paragraph 1, Code 2005, is amended to read as follows:

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

1 following conditions:

2 Sec. 22. Section 455B.103A, subsection 5, Code 2005, is
3 amended to read as follows:

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

10 Sec. 23. Section 455B.105, subsections 3, 6, and 8, Code
11 2005, are amended to read as follows:

12 3. Adopt, modify, or repeal rules necessary to implement
13 this chapter, and chapter 459, and chapter 459A, and the rules
14 deemed necessary for the effective administration of the
15 department. When the commission proposes or adopts rules to
16 implement a specific federal environmental program and the
17 rules impose requirements more restrictive than the federal
18 program being implemented requires, the commission shall
19 identify in its notice of intended action or adopted rule
20 preamble each rule that is more restrictive than the federal
21 program requires and shall state the reasons for proposing or
22 adopting the more restrictive requirement. In addition, the
23 commission shall include with its reasoning a financial impact
24 statement detailing the general impact upon the affected
25 parties. It is the intent of the general assembly that the
26 commission exercise strict oversight of the operations of the
27 department. The rules shall include departmental policy
28 relating to the disclosure of information on a violation or
29 alleged violation of the rules, standards, permits or orders
30 issued by the department and keeping of confidential
31 information obtained by the department in the administration
32 and enforcement of this chapter, and chapter 459, and chapter
33 459A. Rules adopted by the executive committee before January
34 1, 1981, shall remain effective until modified or rescinded by
35 action of the commission.

1 6. Approve all contracts and agreements under this
2 chapter, and chapter 459, and chapter 459A between the
3 department and other public or private persons or agencies.

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

12 Sec. 24. Section 455B.105, subsection 11, paragraph a,
13 unnumbered paragraph 1, Code 2005, is amended to read as
14 follows:

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

23 Sec. 25. Section 455B.109, subsection 4, Code 2005, is
24 amended to read as follows:

25 4. a. At Except as provided in paragraph "b", civil
26 penalties assessed by the department and interest on the
27 penalties shall be deposited in the general fund of the state.
28 ~~However,--civil~~

29 b. The following provisions shall apply to animal feeding
30 operations:

31 (1) Civil penalties assessed by the department and
32 interest on the civil penalties, arising out of violations
33 involving animal feeding operations under chapter 459,
34 subchapter II, shall be deposited in the animal agriculture
35 compliance fund as created in section 459.401.

1 (2) Civil penalties assessed by the department and
2 interest on the penalties arising out of violations committed
3 by animal feeding operations under chapter 459, subchapter
4 III, which may be assessed pursuant to section 455B.191 or
5 459.604, shall also be deposited in the animal agriculture
6 compliance fund.

7 (3) Civil penalties assessed by the department and
8 interest on the civil penalties, arising out of violations
9 involving open feedlot operations under chapter 459A, shall be
10 deposited in the animal agriculture compliance fund as created
11 in section 459.401.

12 Sec. 26. Section 455B.111, subsection 1, paragraphs a and
13 b, Code 2005, are amended to read as follows:

14 a. A person, including the state of Iowa, for violating
15 any provision of this chapter; or chapter 459, subchapters I,
16 II, III, IV, and VI; chapter 459A; or a rule adopted pursuant
17 to this chapter; or chapter 459, subchapters I, II, III, IV,
18 and VI; or chapter 459A.

19 b. The director, the commission, or any official or
20 employee of the department where there is an alleged failure
21 to perform any act or duty under this chapter; or chapter 459,
22 subchapters I, II, III, IV, and VI; chapter 459A; or a rule
23 adopted pursuant to this chapter; or chapter 459, subchapters
24 I, II, III, IV, and VI; or chapter 459A, which is not a
25 discretionary act or duty.

26 Sec. 27. Section 455B.111, subsection 5, Code 2005, is
27 amended to read as follows:

28 5. This section does not restrict any right under
29 statutory or common law of a person or class of person to seek
30 enforcement of provisions of this chapter, or chapter 459,
31 subchapters I, II, III, IV, and VI; chapter 459A; or a rule
32 adopted pursuant to this chapter; or chapter 459, subchapters
33 I, II, III, IV, and VI; or chapter 459A, or seek other relief
34 permitted under the law.

35 Sec. 28. Section 455B.112, Code 2005, is amended to read

1 as follows:

2 455B.112 ACTIONS BY ATTORNEY GENERAL.

3 In addition to the duty to commence legal proceedings at
4 the request of the director or commission under this chapter;
5 ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or
6 chapter 459A the attorney general may institute civil or
7 criminal proceedings, including an action for injunction, to
8 enforce the provisions of this chapter; ~~or~~ chapter 459,
9 subchapters I, II, III, IV, and VI; or chapter 459A including
10 orders or permits issued or rules adopted under this chapter;
11 ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or chapter
12 459A.

13 Sec. 29. Section 455B.113, subsection 1, Code 2005, is
14 amended to read as follows:

15 1. The director shall certify laboratories which perform
16 laboratory analyses of samples required to be submitted by the
17 department by this chapter; ~~or~~ chapter 459, subchapters I, II,
18 III, IV, and VI; or chapter 459A, or by rules adopted in
19 accordance with this chapter; ~~or~~ chapter 459, subchapters I,
20 II, III, IV, and VI; or chapter 459A; or by permits or orders
21 issued under this chapter; ~~or~~ chapter 459, subchapters I, II,
22 III, IV, and VI; or chapter 459A.

23 Sec. 30. Section 455B.115, Code 2005, is amended to read
24 as follows:

25 455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

26 Laboratory analysis of samples as required by this chapter;
27 ~~or~~ chapter 459, subchapters I, II, III, IV, and VI; or
28 chapter 459A; or by rules adopted, or by permits or orders
29 issued pursuant to this chapter; ~~or~~ chapter 459, subchapters
30 I, II, III, IV, and VI; or chapter 459A shall be conducted by
31 a laboratory certified by the director as having the necessary
32 competence, equipment, and capabilities to perform the
33 analysis. Analytical results from laboratories not
34 certificated shall not be accepted by the director.

35 Sec. 31. Section 455B.179, Code 2005, is amended to read

1 as follows:

2 455B.179 TRADE SECRETS PROTECTED.

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

22 Sec. 32. Section 455B.182, Code 2005, is amended to read
23 as follows:

24 455B.182 FAILURE CONSTITUTES CONTEMPT.

25 Failure to obey any order issued by the department with
26 reference to a violation of this part of this division; ~~or~~
27 chapter 459, subchapter III; or chapter 459A; or any rule
28 promulgated or permit issued pursuant thereto shall constitute
29 prima facie evidence of contempt. In such event the department
30 may certify to the district court of the county in which such
31 alleged disobedience occurred the fact of such failure. The
32 district court after notice, as prescribed by the court, to
33 the parties in interest shall then proceed to hear the matter
34 and if it finds that the order was lawful and reasonable it
35 shall order the party to comply with the order. If the person

1 fails to comply with the court order, that person shall be
2 guilty of contempt and shall be fined not to exceed five
3 hundred dollars for each day that the person fails to comply
4 with the court order. The penalties provided in this section
5 shall be considered as additional to any penalty which may be
6 imposed under the law relative to nuisances or any other
7 statute relating to the pollution of any waters of the state
8 or related to public water supply systems and a conviction
9 under this section shall not be a bar to prosecution under any
10 other penal statute.

11 Sec. 33. Section 455B.185, Code 2005, is amended to read
12 as follows:

13 455B.185 DATA FROM DEPARTMENTS.

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

26 Sec. 34. Section 459.102, subsection 2, paragraph a, Code
27 2005, is amended to read as follows:

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

31 Sec. 35. Section 459.102, subsections 37, 45, and 46, Code
32 2005, are amended by striking the subsections.

33 Sec. 36. Section 459.401, subsection 2, paragraph a,
34 subparagraph (5), Code 2005, is amended to read as follows:

35 (5) The collection of civil penalties assessed by the

1 department and interest on civil penalties, arising out of
2 violations involving animal feeding operations as provided in
3 sections 459.602, and 459.603, and 459A.502.

4 Sec. 37. Section 459.309, Code 2005, is repealed.

5

EXPLANATION

6 This bill relates to animal feeding operations. The bill
7 creates a new Code chapter 459A which regulates open feedlot
8 operations. The new Code chapter supplements provisions in
9 Code chapter 459, the "Animal Agriculture Compliance Act",
10 which regulates all animal feeding operations but in
11 particular confinement feeding operations.

12 DIVISION I -- OPEN FEEDLOT OPERATIONS. This division
13 creates new Code chapter 459A which is designated the "Animal
14 Agriculture Compliance Act for Open Feedlot Operations".

15 The division provides a number of definitions, many of
16 which mirror or closely resemble definitions, in Code chapter
17 459. An "open feedlot operation" (operation) is a type of
18 animal feeding operation. (See definition in Code section
19 459.102.) Specifically, it is an unroofed or partially roofed
20 area where there is no crop, vegetation, or forage growth, if
21 animals are maintained there for 45 days or more in any 12-
22 month period.

23 The bill regulates manure and precipitation-induced runoff
24 originating from the operation which is referred to as open
25 feedlot effluent (effluent) and which includes liquids and
26 solids. Compare this with the bill's regulation of settled
27 open feedlot effluent (settled effluent) which refers to
28 effluent after its settleable solids have been removed.

29 The bill regulates three types of structures associated
30 with the removal and collection of effluent: (1) a settled
31 open feedlot effluent basin (basin) used to impound the liquid
32 effluent after its settleable solids have been removed, (2) an
33 alternative technology system (alternative system) which
34 provides for another method to impound and specifically to
35 move the liquid effluent directly to land, and (3) a solids

1 settling facility (facility) which is a structure or other
2 method which removes solids from the effluent and stores the
3 solids.

4 Often operations are required to be issued a construction
5 permit and an operating permit by the department of natural
6 resources. (See 567 IAC 65.) An operation may be issued a
7 national pollutant discharge elimination system (NPDES) permit
8 by the department under a program overseen by the United
9 States environmental protection agency. This division
10 principally provides for the construction of settled open
11 feedlot effluent basins and alternative technology systems.

12 The division provides for special terms, including
13 provisions to determine when a construction permit is
14 required. The division specifies when two or more operations
15 are under common ownership or common management and are
16 therefore regulated as a single entity. This is important
17 when determining whether a person must obtain a construction
18 permit. A construction permit is required if the operation
19 will have a capacity of 1,000 animal units or more. The
20 division also provides a method to calculate animal unit
21 capacity. (See also Code section 459.301.)

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

29 The division provides an exception to regulation for
30 research activities and experiments performed under the
31 authority and regulations of a research college. (See also
32 Code section 459.318.)

33 The division requires the department to adopt and
34 promulgate forms and to provide for procedures for the
35 receipt, filing, processing, and return of documents in an

1 electronic format. It also requires the department to approve
2 or disapprove an application for a construction permit within
3 60 days after receiving the permit application. There are
4 provisions which allow an applicant or the department to
5 provide for a limited continuance. (See also Code section
6 459.304.)

7 The division requires the department to approve or
8 disapprove construction permits for basins and alternative
9 systems prior to construction. It also requires that a new
10 permit is required if the open feedlot capacity is expanded to
11 exceed the animal unit capacity or the storage capacity under
12 the old permit. (See also Code section 459.303.)

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

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

33 The division provides for design standards for a basin
34 which is required to be issued a construction permit. It
35 requires that the applicant submit a soils and hydrogeologic

1 report including soil corings. It requires that the basin be
2 constructed with a minimum separation between the top of the
3 liner of the basin and the seasonal high-water table. It also
4 provides that drainage tile may be installed to artificially
5 lower the seasonal high-water table. In that case, monitoring
6 equipment must be installed. The division requires that the
7 basin be constructed with a minimum separation distance
8 between the bottom of the basin and a bedrock formation. It
9 allows the basin to be constructed within a floodplain. The
10 owner must submit to the department a certification by a
11 licensed professional engineer certifying that the basin was
12 constructed in accordance with design plans. (See also Code
13 section 459.308.)

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

26 The division also requires the department to adopt rules
27 which allow for alternative technology systems as long as they
28 provide an equivalent level of open feedlot effluent control
29 that would be achieved by using a conventional open feedlot
30 control method. The department must also adopt rules which
31 allow for the use of other open feedlot effluent control
32 practices which provides an equivalent level of control.

33 The division provides that settled open feedlot effluent
34 must be applied in a manner which does not cause surface water
35 or groundwater pollution. (See also Code section 459.311.)

1 The division provides that the owner of an open feedlot
2 operation who discontinues the use of the operation must
3 remove all open feedlot effluent from related open feedlot
4 operation structures used to store open feedlot effluent
5 within six months. (See also Code section 459.311.)

6 The division provides for enforcement. The department and
7 the attorney general are responsible for enforcement. (See
8 also Code section 459.103.)

9 The division provides that a person who violates its
10 provisions is subject to a civil penalty of up to \$5,000 for
11 each offense. (See also Code section 459.603.) The moneys
12 collected in civil penalties are to be deposited in the
13 general account of the animal agriculture compliance fund
14 created in Code section 459.401 which is under the control of
15 the department for the administration and enforcement of
16 regulations involving animal feeding operations.

17 DIVISION II -- CONFORMING AMENDMENTS. This division amends
18 provisions in a number of Code sections which refer to Code
19 chapter 459. The provisions were added after provisions in
20 Code chapter 455B and other Code chapters relating to animal
21 feeding operations were transferred and consolidated pursuant
22 to 2002 Acts, ch 1137, and 2002 Acts, 2nd Ex, ch 1003. Other
23 provisions make changes which refer to the deposit of civil
24 penalties into the animal agriculture compliance fund.

25
26
27
28
29
30
31
32
33
34
35

H-1319

1 Amend House File 805 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "DIVISION I

5 OPEN FEEDLOT OPERATIONS

6 SUBCHAPTER I

7 GENERAL PROVISIONS

8 Section 1. NEW SECTION. 459A.101 TITLE.

9 This chapter shall be known and may be cited as the
10 "Animal Agriculture Compliance Act for Open Feedlot
11 Operations".

12 Sec. 2. NEW SECTION. 459A.102 DEFINITIONS.

13 1. "Alternative technology system" or "alternative
14 system" means a system for open feedlot effluent
15 control as provided in section 459A.303.

16 2. "Animal" means the same as defined in section
17 459.102.

18 3. "Animal feeding operation" means the same as
19 defined in section 459.102.

20 4. "Animal unit" means the same as defined in
21 section 459.102.

22 5. "Animal unit capacity" means a measurement used
23 to determine the maximum number of animal units that
24 may be maintained as part of an open feedlot
25 operation.

26 6. "A.S.T.M. international" means the American
27 society for testing and materials international.

28 7. "Commission" means the environmental protection
29 commission created pursuant to section 455A.6.

30 8. "Department" means the department of natural
31 resources.

32 9. "Document" means any form required to be
33 processed by the department under this chapter,
34 including but not limited to applications for permits
35 or related materials as provided in section 459A.205,
36 soils and hydrogeologic reports as provided in section
37 459A.206, construction certifications as provided in
38 section 459A.207, nutrient management plans as
39 provided in section 459A.208, and notices required
40 under this chapter.

41 10. "Nutrient management plan" or "plan" means a
42 plan which provides for the management of open feedlot
43 effluent, including the application of effluent as
44 provided in section 459A.208.

45 11. "Open feedlot" means a lot, yard, corral,
46 building, or other area used to house animals in
47 conjunction with an open feedlot operation.

48 12. "Open feedlot effluent" or "effluent" means a
49 combination of manure, precipitation-induced runoff,
50 or other runoff from an open feedlot before its

H-1319

1 settleable solids have been removed.

2 13. "Open feedlot operation" or "operation" means
3 an unroofed or partially roofed animal feeding
4 operation if crop, vegetation, or forage growth or
5 residue cover is not maintained as part of the animal
6 feeding operation during the period that animals are
7 confined in the animal feeding operation.

8 14. "Open feedlot operation structure" means an
9 open feedlot, settled open feedlot effluent basin, a
10 solids settling facility, or an alternative technology
11 system. "Open feedlot operation structure" does not
12 include a manure storage structure as defined in
13 section 459.102.

14 15. "Operating permit" means a permit which
15 regulates the operation of an open feedlot operation
16 as issued by the department or the United States
17 environmental protection agency, including as provided
18 in state law or pursuant to the federal Water
19 Pollution Control Act, Title 33, U.S.C., ch. 126, as
20 amended, and 40 C.F.R., pt. 124.

21 16. "Research college" means an accredited public
22 or private college or university, including but not
23 limited to a university under the control of the state
24 board of regents as provided in chapter 262, or a
25 community college under the jurisdiction of a board of
26 directors for a merged area as provided in chapter
27 260C, if the college or university performs research
28 or experimental activities regarding animal
29 agriculture or agronomy.

30 17. "Settled open feedlot effluent" or "settled
31 effluent" means a combination of manure,
32 precipitation-induced runoff, or other runoff
33 originating from an open feedlot after its settleable
34 solids have been removed.

35 18. "Settleable solids" or "solids" means that
36 portion of open feedlot effluent that meets all of the
37 following requirements:

38 a. The solids do not flow perceptibly under
39 pressure.

40 b. The solids are not capable of being transported
41 through a mechanical pumping device designed to move a
42 liquid.

43 c. The constituent molecules of the solids do not
44 flow freely among themselves but do show the tendency
45 to separate under stress.

46 19. "Settled open feedlot effluent basin" or
47 "basin" means an impoundment which is part of an open
48 feedlot operation, if the primary function of the
49 impoundment is to collect and store settled open
50 feedlot effluent.

1 20. "Solids settling facility" means a basin,
2 terrace, diversion, or other structure or solids
3 removal method which is part of an open feedlot
4 operation and which is designed and operated to remove
5 settleable solids from open feedlot effluent. A
6 "solids settling facility" does not include a basin,
7 terrace, diversion, or other structure or solids
8 removal method which retains the liquid portion of
9 open feedlot effluent for more than seven consecutive
10 days following a precipitation event.

11 21. "Water of the state" means the same as defined
12 in section 455B.171.

13 22. "Waters of the United States" means the same
14 as defined in 40 C.F.R., pt. 122, § 2, as that section
15 exists on the effective date of this Act.

16 Sec. 3. NEW SECTION. 459A.103 SPECIAL TERMS.

17 For purposes of this chapter, all of the following
18 shall apply:

19 1. a. Two or more open feedlot operations under
20 common ownership or common management are deemed to be
21 a single open feedlot operation if they are adjacent
22 or utilize a common area or system for open feedlot
23 effluent disposal.

24 b. For purposes of determining whether two or more
25 open feedlot operations are adjacent, all of the
26 following shall apply:

27 (1) At least one open feedlot operation structure
28 must be constructed on or after July 17, 2002.

29 (2) An open feedlot operation structure which is
30 part of one open feedlot operation is separated by
31 less than one thousand two hundred fifty feet from an
32 open feedlot operation structure which is part of the
33 other open feedlot operation.

34 c. For purposes of determining whether two or more
35 open feedlot operations are under common ownership, a
36 person must hold an interest in each of the open
37 feedlot operations as any of the following:

38 (1) A sole proprietor.

39 (2) A joint tenant or tenant in common.

40 (3) A holder of a majority equity interest in a
41 business association as defined in section 202B.102,
42 including but not limited to as a shareholder,
43 partner, member, or beneficiary.

44 An interest in the open feedlot operation under
45 subparagraph (2) or (3) which is held directly or
46 indirectly by the person's spouse or dependent child
47 shall be attributed to the person.

48 d. For purposes of determining whether two or more
49 open feedlot operations are under common management, a
50 person must have significant control of the management

- 1 of the day-to-day operations of each of the open
2 feedlot operations. Common management does not
3 include control over a contract livestock facility by
4 a contractor, as defined in section 202.1.
- 5 2. An open feedlot operation structure is
6 "constructed" when any of the following occurs:
- 7 a. Excavation commences for a proposed open
8 feedlot operation structure or proposed expansion of
9 an existing open feedlot operation structure.
- 10 b. Forms for concrete are installed for a proposed
11 open feedlot operation structure or the proposed
12 expansion of an existing open feedlot operation
13 structure.
- 14 c. Piping for the movement of open feedlot
15 effluent is installed within or between open feedlot
16 operation structures as proposed or proposed to be
17 expanded.
- 18 3. In calculating the animal unit capacity of an
19 open feedlot operation, the animal unit capacity shall
20 include the animal unit capacity of all open feedlots
21 which are part of the open feedlot operation, unless
22 an open feedlot has been abandoned as provided in this
23 section. The animal unit capacity of an open feedlot
24 operation shall not include the animal unit capacity
25 of any confinement feeding operation building as
26 defined in section 459.102, which is part of the open
27 feedlot operation.
- 28 4. An open feedlot operation structure is
29 abandoned if the open feedlot operation structure has
30 been razed, removed from the site of an open feedlot
31 operation, filled in with earth, or converted to uses
32 other than an open feedlot operation structure so that
33 it cannot be used as an open feedlot operation
34 structure without significant reconstruction.
- 35 5. All distances between locations or objects
36 provided in this chapter shall be measured in feet
37 from their closest points.
- 38 6. The regulation of open feedlot effluent shall
39 be construed as also regulating settled open feedlot
40 effluent and solids.
- 41 7. "Seasonal high-water table" means the seasonal
42 high-water table as determined by a professional
43 engineer pursuant to the following requirements:
- 44 a. The seasonal high-water table shall be
45 determined by evaluating soil profile characteristics
46 such as color and mottling from soil corings, soil
47 test pits, or other soil profile evaluation methods,
48 water level data from soil corings or other sources,
49 and other pertinent information.
- 50 b. If a drainage tile line to artificially lower

1 the seasonal high-water table is installed as required
2 by this section, the level to which the seasonal high-
3 water table will be lowered will be the seasonal high-
4 water table.

5 Sec. 4. NEW SECTION. 459A.104 GENERAL AUTHORITY
6 -- COMMISSION AND DEPARTMENT -- PURPOSE -- COMPLIANCE.

7 1. The commission shall establish by rule adopted
8 pursuant to chapter 17A, requirements relating to the
9 construction, including expansion, or operation of
10 open feedlot operations, including related open
11 feedlot operation structures.

12 2. Any provision referring generally to compliance
13 with the requirements of this chapter as applied to
14 open feedlot operations also includes compliance with
15 requirements in rules adopted by the commission
16 pursuant to this section, orders issued by the
17 department as authorized under this chapter, and the
18 terms and conditions applicable to licenses,
19 certifications, permits, or nutrient management plans
20 required under this chapter.

21 3. The purpose of this chapter is to provide
22 requirements relating to the construction, including
23 the expansion, and operation of open feedlot
24 operations, and the control of open feedlot effluent,
25 which shall be construed to supplement applicable
26 provisions of chapter 459. If there is a conflict
27 between the provisions of this chapter and chapter
28 459, the provisions of this chapter shall prevail.

29 Sec. 5. NEW SECTION. 459A.105 EXCEPTION TO
30 REGULATION.

31 1. Except as provided in subsection 2, the
32 requirements of this chapter which regulate open
33 feedlot operations, including rules adopted by the
34 department pursuant to section 459A.104, shall not
35 apply to research activities and experiments performed
36 under the authority and regulations of a research
37 college, if the research activities and experiments
38 relate to an open feedlot operation structure or the
39 disposal or treatment of effluent originating from an
40 open feedlot operation.

41 2. The requirements of section 459A.410, including
42 rules adopted by the department under that section,
43 apply to research activities and experiments performed
44 under the authority and regulations of a research
45 college.

46 SUBCHAPTER II
47 DOCUMENTATION

48 Sec. 6. NEW SECTION. 459A.201 DOCUMENT
49 PROCESSING REQUIREMENTS.

50 1. The department shall adopt and promulgate forms

1 required to be completed in order to comply with this
2 chapter, including forms for documents that the
3 department shall make available on the internet in the
4 same manner as provided in section 459.302.

5 2. a. The department shall provide for procedures
6 for the receipt, filing, processing, and return of
7 documents in an electronic format in the same manner
8 as provided in section 459.302. The department shall
9 provide for authentication of the documents that may
10 include electronic signatures as provided in chapter
11 554D.

12 b. The department shall to every extent feasible
13 provide for the processing of documents required under
14 this subchapter using electronic systems in the same
15 manner as required in section 459.302.

16 3. a. The department shall approve or disapprove
17 an application for a construction permit as provided
18 in section 459A.205 within sixty days after receiving
19 the permit application. However, the applicant may
20 deliver a notice requesting a continuance. Upon
21 receipt of a notice, the time required for the
22 department to act upon the application shall be
23 suspended for the period provided in the notice, but
24 for not more than thirty days after the department's
25 receipt of the notice. The applicant may submit more
26 than one notice. However, the department may provide
27 that an application is terminated if no action is
28 required by the department for one year following
29 delivery of the application to the department. The
30 department may also provide for a continuance when it
31 considers the application. The department shall
32 provide notice to the applicant of the continuance.
33 The time required for the department to act upon the
34 application shall be suspended for the period provided
35 in the notice, but for not more than thirty days.
36 However, the department shall not provide for more
37 than one continuance.

38 b. A nutrient management plan as provided in
39 section 459A.208 shall be approved or disapproved as
40 part of a construction permit application pursuant to
41 section 459A.205. If the nutrient management plan is
42 not part of an application for a construction permit,
43 the nutrient management plan shall be approved or
44 disapproved within sixty days from the date that the
45 department receives the nutrient management plan.

46 Sec. 7. NEW SECTION. 459A.205 PERMIT
47 REQUIREMENTS -- SETTLED OPEN FEEDLOT EFFLUENT BASINS
48 AND ALTERNATIVE TECHNOLOGY SYSTEMS.

49 1. The department shall approve or disapprove
50 applications for permits for the construction,

1 including the expansion, of settled open feedlot
2 effluent basins and alternative technology systems, as
3 provided in this chapter. The department's decision
4 to approve or disapprove a permit for the construction
5 of a basin or alternative system shall be based on
6 whether the application is submitted according to
7 procedures and standards required by this chapter. A
8 person shall not begin construction of a basin or
9 alternative system requiring a permit under this
10 section, unless the department first approves the
11 person's application and issues to the person a
12 construction permit.

13 2. The department shall issue a construction
14 permit upon approval of an application. The
15 department shall approve the application regardless of
16 whether the applicant is required to be issued a
17 construction permit.

18 3. The department shall not approve an application
19 for a construction permit unless the applicant submits
20 all of the following:

21 a. A nutrient management plan as provided in
22 section 459A.208.

23 b. An engineering report, construction plans, or
24 specifications prepared by a licensed professional
25 engineer or the natural resources conservation service
26 of the United States department of agriculture
27 certifying that the construction of the settled open
28 feedlot effluent basin or alternative technology
29 system complies with the construction design standards
30 required in this chapter.

31 4. An open feedlot operation must be issued a
32 construction permit prior to any of the following:

33 a. The construction, including expansion, of a
34 settled open feedlot effluent basin or alternative
35 technology system if the open feedlot operation is
36 required to be issued an operating permit.

37 b. The department has previously issued the open
38 feedlot operation a construction permit and any of the
39 following applies:

40 (1) The animal unit capacity of the open feedlot
41 operation will be increased to more than the animal
42 unit capacity approved by the department in the
43 previous construction permit.

44 (2) The volume of open feedlot effluent stored at
45 the open feedlot operation would be more than the
46 volume approved by the department in the previous
47 construction permit.

48 (3) The open feedlot operation was discontinued
49 for twenty-four months or more and the animal unit
50 capacity would be one thousand animal units or more.

- 1 5. Prior to submitting an application for a
2 construction permit the applicant may submit a
3 conceptual design and site investigation report to the
4 department for review and comment.
- 5 6. The application for the construction permit
6 shall include all of the following:
- 7 a. The name of the owner of the open feedlot
8 operation and the name of the open feedlot operation,
9 including a mailing address and telephone number for
10 the owner and the operation.
- 11 b. The name of the contact person for the open
12 feedlot operation, including the person's mailing
13 address and telephone number.
- 14 c. The location of the open feedlot operation.
- 15 d. A statement providing that the application is
16 for any of the following:
- 17 (1) The construction or expansion of a settled
18 open feedlot effluent basin or alternative technology
19 system for an existing open feedlot operation which is
20 not expanding.
- 21 (2) The construction or expansion of a settled
22 open feedlot effluent basin or alternative technology
23 system for an existing open feedlot operation which is
24 expanding.
- 25 (3) The construction of a settled open feedlot
26 effluent basin or alternative technology system for a
27 proposed new open feedlot operation.
- 28 e. The animal unit capacity for each animal
29 species in the open feedlot operation before and after
30 the proposed construction.
- 31 f. An engineering report, construction plans, and
32 specifications prepared by a licensed professional
33 engineer or by the United States natural resource
34 conservation service, for the settled open feedlot
35 operation effluent basin or alternative technology
36 system.
- 37 g. A soils and hydrogeologic report of the site,
38 as required in section 459A.206.
- 39 h. Information, including but not limited to maps,
40 drawings, and aerial photos that clearly show the
41 location of all of the following:
- 42 (1) The open feedlot operation and all existing
43 and proposed settled open feedlot effluent basins or
44 alternative technology systems, clean water
45 diversions, and other pertinent features or
46 structures.
- 47 (2) Any other open feedlot operation under common
48 ownership or common management and located within one
49 thousand two hundred fifty feet of the open feedlot
50 operation.

1 (3) A public water supply system as defined in
2 section 455B.171 or a drinking water well which is
3 located within a distance from the operation as
4 prescribed by rules adopted by the department.

5 i. For an open feedlot operation implementing an
6 alternative technology system as provided in section
7 459A.303, the applicant shall submit all of the
8 following:

9 (1) Information showing that the proposed open
10 feedlot operation meets criteria for siting as
11 established by rules adopted by the department.
12 However, if the site does not meet the criteria, the
13 information shall show substantially equivalent
14 alternatives to meeting such criteria.

15 (2) The results of predictive computer modeling
16 for the proposed alternative technology system to
17 determine suitability of the proposed site for the
18 system and to predict performance of the alternative
19 technology system as compared to the use of a settled
20 open feedlot effluent basin.

21 (3) A conceptual design of the proposed
22 alternative technology system, as developed by a
23 licensed engineer.

24 7. a. Except as provided in paragraph "b", a
25 construction permit for an open feedlot operation
26 expires as follows:

27 (1) If construction does not begin within one year
28 after the date the construction permit is issued.

29 (2) If construction is not completed within three
30 years after the date the construction permit is
31 issued.

32 b. If requested, the department may grant an
33 extension of time to begin or complete construction
34 upon a showing of just cause by the construction
35 permit applicant.

36 8. The department may suspend or revoke a
37 construction permit, modify the terms or conditions of
38 a construction permit, or disapprove a request to
39 extend the time to begin or complete construction as
40 provided in this section, if it determines that the
41 operation of the open feedlot operation constitutes a
42 clear, present, and impending danger to public health
43 or the environment.

44 9. This section does not require a person to
45 obtain a permit to construct a settled open feedlot
46 effluent basin or alternative technology system if the
47 basin or system is part of an open feedlot operation
48 which is owned by a research college conducting
49 research activities as provided in section 459A.105.

50 Sec. 8. NEW SECTION. 459A.206 SETTLED OPEN

1 FEEDLOT EFFLUENT BASINS -- SOILS AND HYDROGEOLOGIC
2 REPORT.

3 A settled open feedlot effluent basin required to
4 be constructed pursuant to a construction permit
5 issued pursuant to section 459A.205 shall meet design
6 standards as required by a soils and hydrogeologic
7 report.

8 The report shall be submitted with the construction
9 permit application as provided in section 459A.205.

10 The report shall include all of the following:

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

17 2. The subsurface soil classification of the site.
18 A subsurface soil classification shall be based on
19 A.S.T.M international designation D-2487-92 or D-
20 2488-90.

21 3. The results of at least three soil corings
22 reflecting the continuous soil profile taken for each
23 basin. The soil corings shall be taken and used in
24 determining subsurface soil characteristics and
25 groundwater elevation and direction of flow of the
26 proposed site for construction. The soil corings
27 shall be taken as follows:

28 a. By a qualified person ordinarily engaged in the
29 practice of taking soil cores and in performing soil
30 testing.

31 b. At locations that reflect the continuous soil
32 profile conditions existing within the area of the
33 proposed basin, including conditions found near the
34 corners and the deepest point of the proposed basin.
35 The soil corings shall be taken to a minimum depth of
36 ten feet below the bottom elevation of the basin.

37 c. By a method such as hollow stem auger or other
38 method that identifies the continuous soil profile and
39 does not result in the mixing of soil layers.

40 Sec. 9. NEW SECTION. 459A.207 CONSTRUCTION
41 CERTIFICATION.

42 1. The owner of an open feedlot operation who is
43 issued a construction permit for a settled open
44 feedlot effluent basin as provided in section 459A.205
45 after the effective date of this Act shall submit to
46 the department a construction certification from a
47 licensed professional engineer certifying all of the
48 following:

49 a. The basin was constructed in accordance with
50 the design plans submitted to the department as part

1 of an application for a construction permit pursuant
2 to section 459A.205. If the actual construction
3 deviates from the approved design plans, the
4 construction certification shall identify all changes
5 and certify that the changes were consistent with all
6 applicable standards of this section.

7 b. The basin was inspected by the licensed
8 professional engineer after completion of construction
9 and before commencement of operation.

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

14 Sec. 10. NEW SECTION. 459A.208 NUTRIENT
15 MANAGEMENT PLAN -- REQUIREMENTS.

16 1. The owner of an open feedlot operation which
17 has an animal unit capacity of one thousand animal
18 units or more or which is required to be issued an
19 operating permit shall develop and maintain a nutrient
20 management plan meeting the requirements of this
21 section by December 31, 2006.

22 2. Not more than one open feedlot operation shall
23 be covered by a single nutrient management plan.

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

36 4. The department shall not approve an application
37 for a permit to construct a settled open feedlot
38 effluent basin unless the owner of the open feedlot
39 operation applying for approval submits a nutrient
40 management plan together with the application for the
41 construction permit as provided in section 459A.205.
42 The owner shall also submit proof that the owner has
43 published a notice for public comment as provided in
44 this section. The department shall approve or
45 disapprove the nutrient management plan as provided in
46 section 459A.201. A nutrient management plan using an
47 alternative technology system shall not include
48 requirements for settled effluent that enters the
49 alternative technology system.

50 5. Prior to approving or disapproving a nutrient

1 management plan as required in this section, the
2 department may receive comments exclusively to
3 determine whether the nutrient management plan is
4 submitted according to procedures required by the
5 department and that the nutrient management plan
6 complies with the provisions of this chapter.

7 a. The owner of the open feedlot operation shall
8 publish a notice for public comment in a newspaper
9 having a general circulation in the county where the
10 open feedlot operation is or is proposed to be located
11 and in the county where open feedlot effluent, which
12 originates from the open feedlot operation, may be
13 applied under the terms and conditions of the nutrient
14 management plan.

15 b. The notice for public comment shall include all
16 of the following:

17 (1) The name of the owner of the open feedlot
18 operation submitting the nutrient management plan.

19 (2) The name of the township where the open
20 feedlot operation is or is proposed to be located and
21 the name of the township where open feedlot effluent
22 originating from the open feedlot operation may be
23 applied.

24 (3) The animal unit capacity of the open feedlot
25 operation.

26 (4) The time when and the place where the nutrient
27 management plan may be examined as provided in section
28 22.2.

29 (5) Procedures for providing public comment to the
30 department. The notice shall also include procedures
31 for requesting a public hearing conducted by the
32 department. The department is not required to conduct
33 a public hearing if it does not receive a request for
34 the public hearing within ten days after the first
35 publication of the notice for public comment as
36 provided in this subsection. If such a request is
37 received, the public hearing must be conducted within
38 thirty days after the first date that the notice for
39 public comment was published.

40 (6) A statement that a person may acquire
41 information relevant to making comments under this
42 subsection by accessing the department's internet
43 website. The notice for public comment shall include
44 the address of the department's internet website as
45 required by the department.

46 c. The department shall maintain an internet
47 website where persons may access information relevant
48 to making comments under this subsection. The
49 department may include an electronic version of the
50 nutrient management plan as provided in section

1 459A.201. The department shall include information
2 regarding the time when, the place where, and the
3 manner in which persons may participate in a public
4 hearing as provided in this subsection.

5 6. A nutrient management plan must be
6 authenticated by the owner of the animal feeding
7 operation as required by the department in accordance
8 with section 459A.201.

9 7. A nutrient management plan shall include all of
10 the following:

11 a. Restrictions on the application of open feedlot
12 effluent based on all of the following:

13 (1) Calculations necessary to determine the land
14 area required for the application of open feedlot
15 effluent from an open feedlot operation based on
16 nitrogen use levels in order to obtain optimum crop
17 yields according to a crop schedule specified in the
18 nutrient management plan, and according to
19 requirements adopted by the department.

20 (2) A phosphorus index established pursuant to
21 section 459.312.

22 b. Information relating to the application of the
23 open feedlot effluent, including all of the following:

24 (1) Nutrient levels of the open feedlot effluent.

25 (2) Application methods, the timing of the
26 application, and the location of the land where the
27 application occurs.

28 c. If the application is on land other than land
29 owned or rented for crop production by the owner of
30 the open feedlot operation, the plan shall include a
31 copy of each written agreement executed by the owner
32 of the open feedlot operation and the landowner or the
33 person renting the land for crop production where the
34 open feedlot effluent may be applied.

35 d. An estimate of the open feedlot effluent volume
36 or weight produced by the open feedlot operation.

37 e. Information which shows all of the following:

38 (1) There is adequate storage for open feedlot
39 effluent, including procedures to ensure proper
40 operation and maintenance of the storage structures.

41 (2) The proper management of animal mortalities to
42 ensure that animals are not disposed of in an open
43 feedlot operation structure or a treatment system that
44 is not specifically designed to treat animal
45 mortalities.

46 (3) Surface drainage prior to contact with an open
47 feedlot structure is diverted, as appropriate, from
48 the open feedlot operation.

49 (4) Animals kept in the open feedlot operation do
50 not have direct contact with any waters of the United

1 States.

2 (5) Chemicals or other contaminants handled on-
3 site are not disposed of in an open feedlot operation
4 structure or a treatment system that is not
5 specifically designed to treat such chemicals or
6 contaminants.

7 8. If an open feedlot operation uses an
8 alternative technology system as provided in section
9 459A.303, the nutrient management plan is not required
10 to provide for settled effluent that enters the
11 alternative technology system.

12 9. The owner of an open feedlot operation who is
13 required to develop and maintain a nutrient management
14 plan shall maintain a current nutrient management plan
15 and maintain records sufficient to demonstrate
16 compliance with the nutrient management plan. Chapter
17 22 shall not apply to the records which shall be kept
18 confidential by the department and its agents and
19 employees. The contents of the records are not
20 subject to disclosure except as follows:

21 a. Upon waiver by the owner of the open feedlot
22 operation.

23 b. In a contested case proceeding commenced under
24 chapter 17A. Notwithstanding section 17A.19, the
25 proceeding shall be closed.

26 c. When required by subpoena or court order.

27 10. The owner of an open feedlot operation who is
28 found in violation of the terms and conditions of the
29 nutrient management plan shall not be subject to an
30 enforcement action other than the assessment of a
31 civil penalty pursuant to section 459A.502.

32 SUBCHAPTER III

33 DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

34 Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN
35 FEEDLOT EFFLUENT BASINS -- CONSTRUCTION DESIGN
36 STANDARDS -- RULES.

37 If the department requires that a settled open
38 feedlot effluent basin be constructed according to
39 construction design standards, regardless of whether
40 the department requires the owner to be issued a
41 construction permit under section 459A.205, any
42 construction design standards for the basin shall be
43 established by rules as provided in chapter 17A that
44 exclusively account for special design characteristics
45 of open feedlot operations and related basins,
46 including but not limited to the dilute composition of
47 settled open feedlot effluent as collected and stored
48 in the basins.

49 Sec. 12. NEW SECTION. 459A.302 SETTLED OPEN
50 FEEDLOT EFFLUENT BASINS -- CONSTRUCTION REQUIREMENTS.

1 A settled open feedlot effluent basin required to
2 be constructed pursuant to a construction permit
3 issued pursuant to section 459A.205 shall meet all of
4 the following requirements:

5 1. a. Prior to constructing a settled open
6 feedlot effluent basin, the site for the basin shall
7 be investigated for a drainage tile line by the owner
8 of the open feedlot operation. The investigation
9 shall be made by digging a core trench to a depth of
10 at least six feet deep from ground level at the
11 projected center of the berm of the basin. If a
12 drainage tile line is discovered, one of the following
13 solutions shall be implemented:

14 (1) The drainage tile line shall be rerouted
15 around the perimeter of the basin at a distance of
16 least twenty-five feet horizontally separated from the
17 basin.

18 (2) The drainage tile line shall be replaced with
19 a nonperforated tile line under the basin floor. The
20 nonperforated tile line shall not be a drainage tile
21 line. There must be a minimum of three feet between
22 the tile line and the basin floor.

23 b. A written record of the investigation shall be
24 submitted as part of the construction certification
25 required under section 459A.207.

26 2. a. The settled open feedlot effluent basin
27 shall be constructed with a minimum separation of two
28 feet between the top of the liner of the basin and the
29 seasonal high-water table.

30 b. If a drainage tile line around the perimeter of
31 the basin is installed a minimum of two feet below the
32 top of the basin liner to artificially lower the
33 seasonal high-water table, the top of the basin's
34 liner may be a maximum of four feet below the seasonal
35 high-water table. The seasonal high-water table may
36 be artificially lowered by gravity flow tile lines, a
37 nongravity mechanical system that uses pumping
38 equipment, or other similar system.

39 3. Drainage tile may be installed to artificially
40 lower the seasonal high-water table at a settled open
41 feedlot effluent basin, if all of the following
42 conditions are satisfied:

43 a. A device to allow monitoring of the water in
44 the drainage tile lines and a device to allow shutoff
45 of the flow in the drainage tile lines are installed,
46 if the drainage tile lines do not have a surface
47 outlet accessible on the property where the settled
48 open feedlot effluent basin is located.

49 b. Drainage tile lines are installed horizontally
50 at least twenty-five feet away from the settled open

1 feedlot effluent basin. Drainage tile lines shall be
2 placed in a vertical trench and encased in granular
3 material which extends upward to the level of the
4 seasonal high-water table.

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

8 5. A settled open feedlot effluent basin
9 constructed on a floodplain or within a floodway of a
10 river or stream shall comply with rules of the
11 department.

12 6. The liner of a settled open feedlot effluent
13 basin shall comply with all of the following:

14 a. The liner shall comply with any of the
15 following permeability standards:

16 (1) The liner shall be constructed to have a
17 percolation rate that shall not exceed one-sixteenth
18 inch per day at the design depth of the basin as
19 determined by percolation tests conducted by the
20 professional engineer. If a clay soil liner is used,
21 the liner shall be constructed with a minimum
22 thickness of twelve inches or the minimum thickness
23 necessary to comply with the percolation rate in this
24 section, whichever is greater.

25 (2) The liner shall be constructed at optimum
26 moisture content not less than ninety-five percent of
27 the maximum density as determined by a standard five-
28 point proctor test performed at the site of the open
29 feedlot operation by a professional engineer. If a
30 clay soil liner is used, the liner shall be
31 constructed with a minimum thickness of twelve inches.

32 b. If a synthetic liner is used, the liner shall
33 be installed to comply with the percolation rate
34 required in this section.

35 7. The owner of an open feedlot operation using a
36 settled open feedlot effluent basin shall inspect the
37 berms of the basin at least semiannually for evidence
38 of erosion. If the inspection reveals erosion which
39 may impact the basin's structural stability or the
40 integrity of the basin's liner, the owner shall repair
41 the berms.

42 Sec. 13. NEW SECTION. 459A.303 ALTERNATIVE
43 TECHNOLOGY SYSTEMS.

44 In lieu of using a settled open feedlot effluent
45 basin as provided in section 459A.302 to meet the open
46 feedlot effluent control requirements of section
47 459A.401, an open feedlot operation may use an
48 alternative technology system for open feedlot
49 effluent control that provides an equivalent level of
50 open feedlot effluent control that would be achieved

1 by using a settled open feedlot effluent basin. The
2 department shall adopt rules establishing requirements
3 for the construction and operation of alternative
4 technology systems. The owner of the open feedlot
5 operation shall only use an alternative technology
6 system which includes the installation of a water
7 pollution monitoring system. The owner shall operate
8 the water pollution monitoring system for two years
9 after its installation. After that date, if the
10 monitoring demonstrates compliance with the
11 requirement of this section, the owner may discontinue
12 monitoring. If the monitoring does not demonstrate
13 compliance with the requirement of this section, the
14 department may require an additional monitoring
15 period.

16 SUBCHAPTER IV

17 OPEN FEEDLOT EFFLUENT CONTROL

18 Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT
19 EFFLUENT CONTROL METHODS.

20 An open feedlot operation shall provide for the
21 management of open feedlot effluent by using an open
22 feedlot effluent control method as follows:

23 1. All settleable solids from open feedlot
24 effluent shall be removed prior to discharge into the
25 waters of the state.

26 a. The settleable solids shall be removed by use
27 of a solids settling facility. The construction of a
28 solids settling facility is not required where
29 existing site conditions provide for removal of
30 settleable solids prior to discharge into the waters
31 of the state.

32 b. The removal of settleable solids shall be
33 deemed to have occurred when the velocity of flow of
34 the open feedlot effluent has been reduced to less
35 than point five feet per second for a minimum of five
36 minutes. A solids settling facility shall have
37 sufficient capacity to store settled solids between
38 periods of land application and to provide required
39 flow-velocity reduction for open feedlot effluent flow
40 volumes resulting from a precipitation event of less
41 intensity than a ten-year, one-hour frequency event.
42 A solids settling facility which receives open feedlot
43 effluent shall provide a minimum of one square foot of
44 surface area for each eight cubic feet of open feedlot
45 effluent per hour resulting from a ten-year, one-hour
46 frequency precipitation event.

47 2. The following shall apply to an open feedlot
48 operation which has an animal unit capacity of one
49 thousand animal units or more:

50 a. Except as provided in this paragraph, the open

1 feedlot operation shall not discharge open feedlot
2 effluent from an open feedlot operation structure into
3 any waters of the United States. An open feedlot
4 operation may discharge open feedlot effluent into any
5 waters of the United States due to a precipitation
6 event, if any of the following apply:

7 (1) For an open feedlot operation that houses
8 cattle, other than veal cattle, the operation is
9 designed, constructed, operated, and maintained to not
10 discharge open feedlot effluent resulting from a
11 twenty-five-year, twenty-four-hour precipitation event
12 into any waters of the United States.

13 (2) For an open feedlot operation that houses veal
14 calves, swine, chickens, or turkeys, the operation is
15 designed, constructed, operated, and maintained to not
16 discharge open feedlot effluent resulting from a one-
17 hundred-year, twenty-four-hour precipitation event
18 into any waters of the United States.

19 b. If the open feedlot operation is designed,
20 constructed, and operated in accordance with the
21 requirements of an open feedlot effluent control
22 system as provided in rules adopted by the department,
23 the operation shall be deemed to be in compliance with
24 this section, unless a discharge from the operation
25 causes a violation of state water quality standards as
26 provided in chapter 455B, division III.

27 c. The open feedlot operation shall not be
28 required to be issued an operating permit if the
29 operation does not discharge open feedlot effluent
30 into any waters of the United States.

31 d. The control of open feedlot effluent
32 originating from the open feedlot operation may be
33 accomplished by the use of a solids settling facility,
34 settled open feedlot effluent basin, alternative
35 technology system, or any other open feedlot effluent
36 control structure or practice approved by the
37 department. The department may require the diversion
38 of surface drainage prior to contact with an open
39 feedlot operation structure. Solids shall be settled
40 from open feedlot effluent before the effluent enters
41 a settled open feedlot effluent basin or alternative
42 technology system.

43 Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT
44 EFFLUENT CONTROL -- ALTERNATIVE CONTROL PRACTICES.

45 If because of topography or other factors related
46 to the site of an open feedlot operation it is
47 economically or physically impractical to comply with
48 open feedlot effluent control requirements using an
49 open feedlot control method in section 459A.401, the
50 department shall allow the use of other open feedlot

1 effluent control practices if those practices will
2 provide an equivalent level of open feedlot effluent
3 control that would be achieved by using an open
4 feedlot effluent control method pursuant to section
5 459A.401.

6 Sec. 16. NEW SECTION. 459A.410 EFFLUENT
7 APPLICATION REQUIREMENTS.

8 Open feedlot effluent shall be applied in a manner
9 which does not cause surface water or groundwater
10 pollution. Application in accordance with the
11 provisions of state law, including this chapter, rules
12 adopted pursuant to the provisions of state law,
13 including this chapter, and guidelines adopted
14 pursuant to this chapter, shall be deemed as
15 compliance with this section.

16 Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF
17 OPERATIONS.

18 The owner of an open feedlot operation who
19 discontinues the use of the operation shall remove all
20 open feedlot effluent from related open feedlot
21 operation structures used to store open feedlot
22 effluent, as soon as practical but not later than six
23 months following the date the open feedlot operation
24 is discontinued.

25 SUBCHAPTER V
26 ENFORCEMENT

27 Sec. 18. NEW SECTION. 459A.501 GENERAL.

28 The department and the attorney general shall
29 enforce the provisions of this chapter in the same
30 manner as provided in chapter 455B, division I, unless
31 otherwise provided in this chapter.

32 Sec. 19. NEW SECTION. 459A.502 VIOLATIONS --
33 CIVIL PENALTY.

34 A person who violates this chapter shall be subject
35 to a civil penalty which shall be established,
36 assessed, and collected in the same manner as provided
37 in section 455B.191. Any civil penalty collected and
38 interest on a civil penalty shall be deposited in the
39 animal agriculture compliance fund created in section
40 459.401. A person shall not be subject to a penalty
41 under this section and a penalty under section 459.603
42 for the same violation.

43 DIVISION II
44 CONFORMING AMENDMENTS

45 Sec. 20. Section 455B.103, subsections 3 and 4,
46 Code 2005, are amended to read as follows:

47 3. Contract, with the approval of the commission,
48 with public agencies of this state to provide all
49 laboratory, scientific field measurement and
50 environmental quality evaluation services necessary to

1 implement the provisions of this chapter, ~~and~~ chapter
2 459, ~~subchapters II and III~~ and chapter 459A. If the
3 director finds that public agencies of this state
4 cannot provide the laboratory, scientific field
5 measurement and environmental evaluation services
6 required by the department, the director may contract,
7 with the approval of the commission, with any other
8 public or private persons or agencies for such
9 services or for scientific or technical services
10 required to carry out the programs and services
11 assigned to the department.

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

24 Sec. 21. Section 455B.103A, subsection 1,
25 unnumbered paragraph 1, Code 2005, is amended to read
26 as follows:

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

35 Sec. 22. Section 455B.103A, subsection 5, Code
36 2005, is amended to read as follows:

37 5. The enforcement provisions of division II of
38 this chapter and chapter 459, subchapter II, apply to
39 general permits for air contaminant sources. The
40 enforcement provisions of division III, part 1, of
41 this chapter, ~~and~~ chapter 459, subchapter III, and
42 chapter 459A apply to general permits for stormwater
43 discharge.

44 Sec. 23. Section 455B.105, subsections 3, 6, and
45 8, Code 2005, are amended to read as follows:

46 3. Adopt, modify, or repeal rules necessary to
47 implement this chapter, ~~and~~ chapter 459, and chapter
48 459A, and the rules deemed necessary for the effective
49 administration of the department. When the commission
50 proposes or adopts rules to implement a specific

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

24 6. Approve all contracts and agreements under this
25 chapter, and chapter 459, and chapter 459A between the
26 department and other public or private persons or
27 agencies.

28 8. Hold public hearings, except when the evidence
29 to be received is confidential pursuant to this
30 chapter, chapter 22, ~~or~~ chapter 459, or chapter 459A,
31 necessary to carry out its powers and duties. The
32 commission may issue subpoenas requiring the
33 attendance of witnesses and the production of evidence
34 pertinent to the hearings. A subpoena shall be issued
35 and enforced in the same manner as provided in civil
36 actions.

37 Sec. 24. Section 455B.105, subsection 11,
38 paragraph a, unnumbered paragraph 1, Code 2005, is
39 amended to read as follows:

40 Adopt, by rule, procedures and forms necessary to
41 implement the provisions of this chapter, and chapter
42 459, and chapter 459A relating to permits, conditional
43 permits, and general permits. The commission may also
44 adopt, by rule, a schedule of fees for permit and
45 conditional permit applications and a schedule of fees
46 which may be periodically assessed for administration
47 of permits and conditional permits. In determining
48 the fee schedules, the commission shall consider:

49 Sec. 25. Section 455B.109, subsection 4, Code
50 2005, is amended to read as follows:

1 4. a. All Except as provided in paragraph "b",
2 civil penalties assessed by the department and
3 interest on the penalties shall be deposited in the
4 general fund of the state. ~~However, civil~~

5 b. The following provisions shall apply to animal
6 feeding operations:

7 (1) Civil penalties assessed by the department and
8 interest on the civil penalties, arising out of
9 violations involving animal feeding operations under
10 chapter 459, subchapter II, shall be deposited in the
11 animal agriculture compliance fund as created in
12 section 459.401.

13 (2) Civil penalties assessed by the department and
14 interest on the penalties arising out of violations
15 committed by animal feeding operations under chapter
16 459, subchapter III, which may be assessed pursuant to
17 section 455B.191 or 459.604, shall also be deposited
18 in the animal agriculture compliance fund.

19 (3) Civil penalties assessed by the department and
20 interest on the civil penalties, arising out of
21 violations involving open feedlot operations under
22 chapter 459A, shall be deposited in the animal
23 agriculture compliance fund as created in section
24 459.401.

25 Sec. 26. Section 455B.111, subsection 1,
26 paragraphs a and b, Code 2005, are amended to read as
27 follows:

28 a. A person, including the state of Iowa, for
29 violating any provision of this chapter; ~~or~~ chapter
30 459, subchapters I, II, III, IV, and VI; ~~chapter~~
31 459A; or a rule adopted pursuant to this chapter; ~~or~~
32 chapter 459, subchapters I, II, III, IV, and VI; or
33 chapter 459A.

34 b. The director, the commission, or any official
35 or employee of the department where there is an
36 alleged failure to perform any act or duty under this
37 chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
38 and VI; ~~chapter~~ 459A; or a rule adopted pursuant to
39 this chapter; ~~or~~ chapter 459, subchapters I, II, III,
40 IV, and VI; or chapter 459A, which is not a
41 discretionary act or duty.

42 Sec. 27. Section 455B.111, subsection 5, Code
43 2005, is amended to read as follows:

44 5. This section does not restrict any right under
45 statutory or common law of a person or class of person
46 to seek enforcement of provisions of this chapter, ~~or~~
47 chapter 459, subchapters I, II, III, IV, and VI; ~~or~~
48 chapter 459A; or a rule adopted pursuant to this
49 chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
50 and VI; or chapter 459A, or seek other relief

1 permitted under the law.

2 Sec. 28. Section 455B.112, Code 2005, is amended
3 to read as follows:

4 455B.112 ACTIONS BY ATTORNEY GENERAL.

5 In addition to the duty to commence legal
6 proceedings at the request of the director or
7 commission under this chapter; ~~or~~ chapter 459,
8 subchapters I, II, III, IV, and VI~~7~~; or chapter 459A
9 the attorney general may institute civil or criminal
10 proceedings, including an action for injunction, to
11 enforce the provisions of this chapter; ~~or~~ chapter
12 459, subchapters I, II, III, IV, and VI~~7~~; or chapter
13 459A including orders or permits issued or rules
14 adopted under this chapter; ~~or~~ chapter 459,
15 subchapters I, II, III, IV, and VI; or chapter 459A.

16 Sec. 29. Section 455B.113, subsection 1, Code
17 2005, is amended to read as follows:

18 1. The director shall certify laboratories which
19 perform laboratory analyses of samples required to be
20 submitted by the department by this chapter; ~~or~~
21 chapter 459, subchapters I, II, III, IV, and VI~~7~~; or
22 chapter 459A, or by rules adopted in accordance with
23 this chapter; ~~or~~ chapter 459, subchapters I, II, III,
24 IV, and VI~~7~~; or chapter 459A; or by permits or orders
25 issued under this chapter; ~~or~~ chapter 459, subchapters
26 I, II, III, IV, and VI; or chapter 459A.

27 Sec. 30. Section 455B.115, Code 2005, is amended
28 to read as follows:

29 455B.115 ANALYSIS BY CERTIFIED LABORATORY
30 REQUIRED.

31 Laboratory analysis of samples as required by this
32 chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
33 and VI~~7~~; or chapter 459A; or by rules adopted, or by
34 permits or orders issued pursuant to this chapter; ~~or~~
35 chapter 459, subchapters I, II, III, IV, and VI~~7~~; or
36 chapter 459A shall be conducted by a laboratory
37 certified by the director as having the necessary
38 competence, equipment, and capabilities to perform the
39 analysis. Analytical results from laboratories not
40 certificated shall not be accepted by the director.

41 Sec. 31. Section 455B.179, Code 2005, is amended
42 to read as follows:

43 455B.179 TRADE SECRETS PROTECTED.

44 Upon a satisfactory showing by any person to the
45 director that public disclosure of any record, report,
46 permit, permit application, or other document or
47 information or part thereof would divulge methods or
48 processes entitled to protection as a trade secret,
49 any such record, report, permit, permit application,
50 or other document or part thereof other than effluent

1 data and analytical results of monitoring of public
2 water supply systems, shall be accorded confidential
3 treatment. Notwithstanding the provisions of chapter
4 22, a person in connection with duties or employment
5 by the department shall not make public any
6 information accorded confidential status; however, any
7 such record or other information accorded confidential
8 status may be disclosed or transmitted to other
9 officers, employees, or authorized representatives of
10 this state or the United States concerned with
11 carrying out this part of this division; ~~or~~ chapter
12 459, subchapter III, or chapter 459A; or when relevant
13 in any proceeding under this part of this division; ~~or~~
14 chapter 459, subchapter III; or chapter 459A.

15 Sec. 32. Section 455B.182, Code 2005, is amended
16 to read as follows:

17 455B.182 FAILURE CONSTITUTES CONTEMPT.

18 Failure to obey any order issued by the department
19 with reference to a violation of this part of this
20 division; ~~or~~ chapter 459, subchapter III, or chapter
21 459A; or any rule promulgated or permit issued
22 pursuant thereto shall constitute prima facie evidence
23 of contempt. In such event the department may certify
24 to the district court of the county in which such
25 alleged disobedience occurred the fact of such
26 failure. The district court after notice, as
27 prescribed by the court, to the parties in interest
28 shall then proceed to hear the matter and if it finds
29 that the order was lawful and reasonable it shall
30 order the party to comply with the order. If the
31 person fails to comply with the court order, that
32 person shall be guilty of contempt and shall be fined
33 not to exceed five hundred dollars for each day that
34 the person fails to comply with the court order. The
35 penalties provided in this section shall be considered
36 as additional to any penalty which may be imposed
37 under the law relative to nuisances or any other
38 statute relating to the pollution of any waters of the
39 state or related to public water supply systems and a
40 conviction under this section shall not be a bar to
41 prosecution under any other penal statute.

42 Sec. 33. Section 455B.185, Code 2005, is amended
43 to read as follows:

44 455B.185 DATA FROM DEPARTMENTS.

45 The commission and the director may request and
46 receive from any department, division, board, bureau,
47 commission, public body, or agency of the state, or of
48 any political subdivision thereof, or from any
49 organization, incorporated or unincorporated, which
50 has for its object the control or use of any of the

1 water resources of the state, such assistance and data
2 as will enable the commission or the director to
3 properly carry out their activities and effectuate the
4 purposes of this part 1 of division III; ~~and chapter~~
5 ~~459, subchapter III; or chapter 459A.~~ The department
6 shall reimburse such agencies for special expense
7 resulting from expenditures not normally a part of the
8 operating expenses of any such agency.

9 Sec. 34. Section 459.102, subsection 2, paragraph
10 a, Code 2005, is amended to read as follows:

11 a. A settled open feedlot effluent basin that
12 ~~collects and stores only precipitation induced runoff~~
13 ~~from an open feedlot as defined in section 459A.102.~~

14 Sec. 35. Section 459.102, subsections 37, 45, and
15 46, Code 2005, are amended by striking the
16 subsections.

17 Sec. 36. Section 459.401, subsection 2, paragraph
18 a, subparagraph (5), Code 2005, is amended to read as
19 follows:

20 (5) The collection of civil penalties assessed by
21 the department and interest on civil penalties,
22 arising out of violations involving animal feeding
23 operations as provided in sections 459.602, and
24 459.603, and 459A.502.

25 Sec. 37. Section 459.309, Code 2005, is repealed."
By STRUYK of Pottawattamie

HOUSE FILE 805

H-1381

1 Amend the amendment, H-1319, to House File 805, as
2 follows:
3 1. Page 25, by inserting after line 25, the
4 following:

5 "DIVISION III

6 AGRICULTURAL PRODUCTION LIENS

7 Sec. _____. Section 579A.2, subsection 3, paragraph
8 b, Code 2005, is amended to read as follows:

9 b. The lien terminates one year after the cattle
10 have left the custom cattle feedlot. ~~Section 554.9515~~
11 ~~shall not apply to a financing statement perfecting~~
12 ~~the lien.~~ The lien may be terminated by the custom
13 cattle feedlot operator who files a termination
14 statement as provided in chapter 554, article 9.

15 Sec. _____. Section 579B.4, subsection 1, paragraph
16 b, Code 2005, is amended to read as follows:

17 b. For a lien arising out of producing a crop, the
18 lien becomes effective the day that the crop is first
19 planted. In order to perfect the lien, the contract
20 producer must file a financing statement in the office
21 of the secretary of state as provided in section
22 554.9308. The contract producer must file a financing
23 statement for the crop within forty-five days after
24 the crop is first planted. The lien terminates one
25 year after the crop is no longer under the authority
26 of the contract producer. For purposes of this
27 section, a crop is no longer under the authority of
28 the contract producer when the crop or a warehouse
29 receipt issued by a warehouse operator licensed under
30 chapter 203C for grain from the crop is no longer
31 under the custody or control of the contract producer.
32 ~~Section 554.9515 shall not apply to a financing~~
33 ~~statement perfecting the lien.~~ The lien may be
34 terminated by the contract producer who files a
35 termination statement as provided in chapter 554,
36 article 9."

37 2. Title page, line 1, by inserting after the
38 words "relating to" the following: "agricultural
39 production including".

40 3. Title page, line 2, by inserting after the
41 word "operations," the following: "and agricultural
42 production liens, "."

43 4. By renumbering as necessary.

By STRUYK of Pottawattamie

H-1381 FILED APRIL 14, 2005

HOUSE FILE 805

H-1363

- 1 Amend the amendment, H-1319, to House File 805, as
2 follows:
- 3 1. Page 1, line 26, by striking the word
4 "A.S.T.M." and inserting the following: "ASTM".
5 2. Page 4, by striking lines 20 through 24, and
6 inserting the following: "not include the animal unit
7 capacity".
8 3. Page 7, line 23, by striking the words "plans,
9 or" and inserting the following: "plans, and".
10 4. Page 9, line 45, by striking the word "obtain"
11 and inserting the following: "be issued".
12 5. Page 10, line 19, by striking the word
13 "A.S.T.M." and inserting the following: "ASTM".
14 6. Page 11, line 10, by inserting before the word
15 "tile" the following: "drainage".
16 7. Page 11, line 19, by striking the word
17 "maintain" and inserting the following: "implement".
18 8. Page 14, line 13, by striking the word
19 "maintain" and inserting the following: "implement".
20 9. Page 14, by striking lines 16 through 31, and
21 inserting the following: "compliance with the
22 nutrient management plan."
23 10. Page 15, line 22, by inserting before the
24 word "tile" the following: "nonperforated".
25 11. Page 15, line 39, by inserting after the word
26 "tile" the following: "lines".
27 12. By striking page 16, line 49, through page
28 17, line 1, and inserting the following: "effluent
29 control."
30 1. The alternative technology system must provide
31 an equivalent level of open feedlot effluent control
32 as would be achieved by using a settled open feedlot
33 effluent basin.
34 2. The".
35 13. Page 17, by striking line 4, and inserting
36 the following: "technology systems."
37 3. The owner of the open feedlot".
38 14. Page 17, by striking lines 9 through 12, and
39 inserting the following: "after its installation. If
40 the department requires the owner of the open feedlot
41 operation to be issued an operating permit, the owner
42 shall continue to record amounts of settled open
43 feedlot effluent exiting the alternative technology
44 system after the expiration of the two-year period
45 pursuant to the terms and conditions of the operating
46 permit. If the monitoring does not demonstrate".
47 15. By striking page 17, line 47, through page 18
48 line 3, and inserting the following:
49 "2. This subsection shall apply to an open feedlot
50 operation which is required to be issued an operating

H-1363

H-1363

Page 2

1 permit.

2 a. An open feedlot".

3 16. Page 18, by inserting after line 26, the
4 following:

5 "3. The following shall apply to an open feedlot
6 operation which has an animal unit capacity of one
7 thousand animal units or more:

8 a. (1) The open feedlot operation shall not
9 discharge open feedlot effluent from an open feedlot
10 operation structure into any waters of the United
11 States, unless the discharge is pursuant to an
12 operating permit."

13 17. Page 18, line 27, by striking the word "c."
14 and inserting the following: "(2)".

15 18. Page 18, line 31, by striking the word "d."
16 and inserting the following: "b."

17 19. By renumbering as necessary.

By STRUYK of Pottawattamie

H-1363 FILED APRIL 13, 2005

HOUSE FILE 805
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 235)

(As Amended and Passed by the House April 19, 2005)

Re-Passed House, Date 4-29-05 Passed Senate, Date 4-26-05
Vote: Ayes 97 Nays 1 Vote: Ayes 48 Nays 2
Approved _____

A BILL FOR

1 An Act relating to agricultural production including animal
2 feeding operations, by providing for the regulation of open
3 feedlot operations, and agricultural production liens, and
4 providing for penalties.

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

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

All New Language

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

DIVISION I
OPEN FEEDLOT OPERATIONS
SUBCHAPTER I
GENERAL PROVISIONS

Section 1. NEW SECTION. 459A.101 TITLE.

This chapter shall be known and may be cited as the "Animal Agriculture Compliance Act for Open Feedlot Operations".

Sec. 2. NEW SECTION. 459A.102 DEFINITIONS.

1. "Alternative technology system" or "alternative system" means a system for open feedlot effluent control as provided in section 459A.303.

2. "Animal" means the same as defined in section 459.102.

3. "Animal feeding operation" means the same as defined in section 459.102.

4. "Animal unit" means the same as defined in section 459.102.

5. "Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation.

6. "ASTM international" means the American society for testing and materials international.

7. "Commission" means the environmental protection commission created pursuant to section 455A.6.

8. "Department" means the department of natural resources.

9. "Document" means any form required to be processed by the department under this chapter, including but not limited to applications for permits or related materials as provided in section 459A.205, soils and hydrogeologic reports as provided in section 459A.206, construction certifications as provided in section 459A.207, nutrient management plans as provided in section 459A.208, and notices required under this chapter.

10. "Nutrient management plan" or "plan" means a plan which provides for the management of open feedlot effluent, including the application of effluent as provided in section

1 459A.208.

2 11. "Open feedlot" means a lot, yard, corral, building, or
3 other area used to house animals in conjunction with an open
4 feedlot operation.

5 12. "Open feedlot effluent" or "effluent" means a
6 combination of manure, precipitation-induced runoff, or other
7 runoff from an open feedlot before its settleable solids have
8 been removed.

9 13. "Open feedlot operation" or "operation" means an
10 unroofed or partially roofed animal feeding operation if crop,
11 vegetation, or forage growth or residue cover is not
12 maintained as part of the animal feeding operation during the
13 period that animals are confined in the animal feeding
14 operation.

15 14. "Open feedlot operation structure" means an open
16 feedlot, settled open feedlot effluent basin, a solids
17 settling facility, or an alternative technology system. "Open
18 feedlot operation structure" does not include a manure storage
19 structure as defined in section 459.102.

20 15. "Operating permit" means a permit which regulates the
21 operation of an open feedlot operation as issued by the
22 department or the United States environmental protection
23 agency, including as provided in state law or pursuant to the
24 federal Water Pollution Control Act, Title 33, U.S.C., ch.
25 126, as amended, and 40 C.F.R., pt. 124.

26 16. "Research college" means an accredited public or
27 private college or university, including but not limited to a
28 university under the control of the state board of regents as
29 provided in chapter 262, or a community college under the
30 jurisdiction of a board of directors for a merged area as
31 provided in chapter 260C, if the college or university
32 performs research or experimental activities regarding animal
33 agriculture or agronomy.

34 17. "Settled open feedlot effluent" or "settled effluent"
35 means a combination of manure, precipitation-induced runoff,

1 or other runoff originating from an open feedlot after its
2 settleable solids have been removed.

3 18. "Settleable solids" or "solids" means that portion of
4 open feedlot effluent that meets all of the following
5 requirements:

6 a. The solids do not flow perceptibly under pressure.

7 b. The solids are not capable of being transported through
8 a mechanical pumping device designed to move a liquid.

9 c. The constituent molecules of the solids do not flow
10 freely among themselves but do show the tendency to separate
11 under stress.

12 19. "Settled open feedlot effluent basin" or "basin" means
13 an impoundment which is part of an open feedlot operation, if
14 the primary function of the impoundment is to collect and
15 store settled open feedlot effluent.

16 20. "Solids settling facility" means a basin, terrace,
17 diversion, or other structure or solids removal method which
18 is part of an open feedlot operation and which is designed and
19 operated to remove settleable solids from open feedlot
20 effluent. A "solids settling facility" does not include a
21 basin, terrace, diversion, or other structure or solids
22 removal method which retains the liquid portion of open
23 feedlot effluent for more than seven consecutive days
24 following a precipitation event.

25 21. "Water of the state" means the same as defined in
26 section 455B.171.

27 22. "Waters of the United States" means the same as
28 defined in 40 C.F.R., pt. 122, § 2, as that section exists on
29 the effective date of this Act.

30 Sec. 3. NEW SECTION. 459A.103 SPECIAL TERMS.

31 For purposes of this chapter, all of the following shall
32 apply:

33 1. a. Two or more open feedlot operations under common
34 ownership or common management are deemed to be a single open
35 feedlot operation if they are adjacent or utilize a common

1 area or system for open feedlot effluent disposal.

2 b. For purposes of determining whether two or more open
3 feedlot operations are adjacent, all of the following shall
4 apply:

5 (1) At least one open feedlot operation structure must be
6 constructed on or after July 17, 2002.

7 (2) An open feedlot operation structure which is part of
8 one open feedlot operation is separated by less than one
9 thousand two hundred fifty feet from an open feedlot operation
10 structure which is part of the other open feedlot operation.

11 c. For purposes of determining whether two or more open
12 feedlot operations are under common ownership, a person must
13 hold an interest in each of the open feedlot operations as any
14 of the following:

15 (1) A sole proprietor.

16 (2) A joint tenant or tenant in common.

17 (3) A holder of a majority equity interest in a business
18 association as defined in section 202B.102, including but not
19 limited to as a shareholder, partner, member, or beneficiary.

20 An interest in the open feedlot operation under
21 subparagraph (2) or (3) which is held directly or indirectly
22 by the person's spouse or dependent child shall be attributed
23 to the person.

24 d. For purposes of determining whether two or more open
25 feedlot operations are under common management, a person must
26 have significant control of the management of the day-to-day
27 operations of each of the open feedlot operations. Common
28 management does not include control over a contract livestock
29 facility by a contractor, as defined in section 202.1.

30 2. An open feedlot operation structure is "constructed"
31 when any of the following occurs:

32 a. Excavation commences for a proposed open feedlot
33 operation structure or proposed expansion of an existing open
34 feedlot operation structure.

35 b. Forms for concrete are installed for a proposed open

1 feedlot operation structure or the proposed expansion of an
2 existing open feedlot operation structure.

3 c. Piping for the movement of open feedlot effluent is
4 installed within or between open feedlot operation structures
5 as proposed or proposed to be expanded.

6 3. In calculating the animal unit capacity of an open
7 feedlot operation, the animal unit capacity shall not include
8 the animal unit capacity of any confinement feeding operation
9 building as defined in section 459.102, which is part of the
10 open feedlot operation.

11 4. An open feedlot operation structure is abandoned if the
12 open feedlot operation structure has been razed, removed from
13 the site of an open feedlot operation, filled in with earth,
14 or converted to uses other than an open feedlot operation
15 structure so that it cannot be used as an open feedlot
16 operation structure without significant reconstruction.

17 5. All distances between locations or objects provided in
18 this chapter shall be measured in feet from their closest
19 points.

20 6. The regulation of open feedlot effluent shall be
21 construed as also regulating settled open feedlot effluent and
22 solids.

23 7. "Seasonal high-water table" means the seasonal high-
24 water table as determined by a professional engineer pursuant
25 to the following requirements:

26 a. The seasonal high-water table shall be determined by
27 evaluating soil profile characteristics such as color and
28 mottling from soil corings, soil test pits, or other soil
29 profile evaluation methods, water level data from soil corings
30 or other sources, and other pertinent information.

31 b. If a drainage tile line to artificially lower the
32 seasonal high-water table is installed as required by this
33 section, the level to which the seasonal high-water table will
34 be lowered will be the seasonal high-water table.

35 Sec. 4. NEW SECTION. 459A.104 GENERAL AUTHORITY --

1 COMMISSION AND DEPARTMENT -- PURPOSE -- COMPLIANCE.

2 1. The commission shall establish by rule adopted pursuant
3 to chapter 17A, requirements relating to the construction,
4 including expansion, or operation of open feedlot operations,
5 including related open feedlot operation structures.

6 2. Any provision referring generally to compliance with
7 the requirements of this chapter as applied to open feedlot
8 operations also includes compliance with requirements in rules
9 adopted by the commission pursuant to this section, orders
10 issued by the department as authorized under this chapter, and
11 the terms and conditions applicable to licenses,
12 certifications, permits, or nutrient management plans required
13 under this chapter.

14 3. The purpose of this chapter is to provide requirements
15 relating to the construction, including the expansion, and
16 operation of open feedlot operations, and the control of open
17 feedlot effluent, which shall be construed to supplement
18 applicable provisions of chapter 459. If there is a conflict
19 between the provisions of this chapter and chapter 459, the
20 provisions of this chapter shall prevail.

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

22 1. Except as provided in subsection 2, the requirements of
23 this chapter which regulate open feedlot operations, including
24 rules adopted by the department pursuant to section 459A.104,
25 shall not apply to research activities and experiments
26 performed under the authority and regulations of a research
27 college, if the research activities and experiments relate to
28 an open feedlot operation structure or the disposal or
29 treatment of effluent originating from an open feedlot
30 operation.

31 2. The requirements of section 459A.410, including rules
32 adopted by the department under that section, apply to
33 research activities and experiments performed under the
34 authority and regulations of a research college.

35

SUBCHAPTER II

1 DOCUMENTATION

2 Sec. 6. NEW SECTION. 459A.201 DOCUMENT PROCESSING
3 REQUIREMENTS.

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

9 2. a. The department shall provide for procedures for the
10 receipt, filing, processing, and return of documents in an
11 electronic format in the same manner as provided in section
12 459.302. The department shall provide for authentication of
13 the documents that may include electronic signatures as
14 provided in chapter 554D.

15 b. The department shall to every extent feasible provide
16 for the processing of documents required under this subchapter
17 using electronic systems in the same manner as required in
18 section 459.302.

19 3. a. The department shall approve or disapprove an
20 application for a construction permit as provided in section
21 459A.205 within sixty days after receiving the permit
22 application. However, the applicant may deliver a notice
23 requesting a continuance. Upon receipt of a notice, the time
24 required for the department to act upon the application shall
25 be suspended for the period provided in the notice, but for
26 not more than thirty days after the department's receipt of
27 the notice. The applicant may submit more than one notice.
28 However, the department may provide that an application is
29 terminated if no action is required by the department for one
30 year following delivery of the application to the department.
31 The department may also provide for a continuance when it
32 considers the application. The department shall provide
33 notice to the applicant of the continuance. The time required
34 for the department to act upon the application shall be
35 suspended for the period provided in the notice, but for not

1 more than thirty days. However, the department shall not
2 provide for more than one continuance.

3 b. A nutrient management plan as provided in section
4 459A.208 shall be approved or disapproved as part of a
5 construction permit application pursuant to section 459A.205.
6 If the nutrient management plan is not part of an application
7 for a construction permit, the nutrient management plan shall
8 be approved or disapproved within sixty days from the date
9 that the department receives the nutrient management plan.

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

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

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

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

32 a. A nutrient management plan as provided in section
33 459A.208.

34 b. An engineering report, construction plans, and
35 specifications prepared by a licensed professional engineer or

1 the natural resources conservation service of the United
2 States department of agriculture certifying that the
3 construction of the settled open feedlot effluent basin or
4 alternative technology system complies with the construction
5 design standards required in this chapter.

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

8 a. The construction, including expansion, of a settled
9 open feedlot effluent basin or alternative technology system
10 if the open feedlot operation is required to be issued an
11 operating permit.

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

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

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

22 (3) The open feedlot operation was discontinued for
23 twenty-four months or more and the animal unit capacity would
24 be one thousand animal units or more.

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

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

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

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

1 c. The location of the open feedlot operation.

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

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

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

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

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

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

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

23 h. Information, including but not limited to maps,
24 drawings, and aerial photos that clearly show the location of
25 all of the following:

26 (1) The open feedlot operation and all existing and
27 proposed settled open feedlot effluent basins or alternative
28 technology systems, clean water diversions, and other
29 pertinent features or structures.

30 (2) Any other open feedlot operation under common
31 ownership or common management and located within one thousand
32 two hundred fifty feet of the open feedlot operation.

33 (3) A public water supply system as defined in section
34 455B.171 or a drinking water well which is located within a
35 distance from the operation as prescribed by rules adopted by

1 the department.

2 i. For an open feedlot operation implementing an
3 alternative technology system as provided in section 459A.303,
4 the applicant shall submit all of the following:

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

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

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

17 7. a. Except as provided in paragraph "b", a construction
18 permit for an open feedlot operation expires as follows:

19 (1) If construction does not begin within one year after
20 the date the construction permit is issued.

21 (2) If construction is not completed within three years
22 after the date the construction permit is issued.

23 b. If requested, the department may grant an extension of
24 time to begin or complete construction upon a showing of just
25 cause by the construction permit applicant.

26 8. The department may suspend or revoke a construction
27 permit, modify the terms or conditions of a construction
28 permit, or disapprove a request to extend the time to begin or
29 complete construction as provided in this section, if it
30 determines that the operation of the open feedlot operation
31 constitutes a clear, present, and impending danger to public
32 health or the environment.

33 9. This section does not require a person to be issued a
34 permit to construct a settled open feedlot effluent basin or
35 alternative technology system if the basin or system is part

1 of an open feedlot operation which is owned by a research
2 college conducting research activities as provided in section
3 459A.105.

4 Sec. 8. NEW SECTION. 459A.206 SETTLED OPEN FEEDLOT
5 EFFLUENT BASINS -- SOILS AND HYDROGEOLOGIC REPORT.

6 A settled open feedlot effluent basin required to be
7 constructed pursuant to a construction permit issued pursuant
8 to section 459A.205 shall meet design standards as required by
9 a soils and hydrogeologic report.

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

13 1. A description of the steps to determine the soils and
14 hydrogeologic conditions at the proposed construction site, a
15 description of the geologic units encountered, and a
16 description of the effects of the soil and groundwater
17 elevation and direction of flow on the construction and
18 operation of the basin.

19 2. The subsurface soil classification of the site. A
20 subsurface soil classification shall be based on ASTM
21 international designation D-2487-92 or D-2488-90.

22 3. The results of at least three soil corings reflecting
23 the continuous soil profile taken for each basin. The soil
24 corings shall be taken and used in determining subsurface soil
25 characteristics and groundwater elevation and direction of
26 flow of the proposed site for construction. The soil corings
27 shall be taken as follows:

28 a. By a qualified person ordinarily engaged in the
29 practice of taking soil cores and in performing soil testing.

30 b. At locations that reflect the continuous soil profile
31 conditions existing within the area of the proposed basin,
32 including conditions found near the corners and the deepest
33 point of the proposed basin. The soil corings shall be taken
34 to a minimum depth of ten feet below the bottom elevation of
35 the basin.

1 c. By a method such as hollow stem auger or other method
2 that identifies the continuous soil profile and does not
3 result in the mixing of soil layers.

4 Sec. 9. NEW SECTION. 459A.207 CONSTRUCTION
5 CERTIFICATION.

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

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

19 b. The basin was inspected by the licensed professional
20 engineer after completion of construction and before
21 commencement of operation.

22 2. A written record of an investigation for drainage tile
23 lines, including the findings of the investigation and actions
24 taken to comply with subchapter III, shall be submitted as
25 part of the construction certification.

26 Sec. 10. NEW SECTION. 459A.208 NUTRIENT MANAGEMENT PLAN
27 -- REQUIREMENTS.

28 1. The owner of an open feedlot operation which has an
29 animal unit capacity of one thousand animal units or more or
30 which is required to be issued an operating permit shall
31 develop and implement a nutrient management plan meeting the
32 requirements of this section by December 31, 2006.

33 2. Not more than one open feedlot operation shall be
34 covered by a single nutrient management plan.

35 3. A person shall not remove open feedlot effluent from an

1 open feedlot operation structure which is part of an open
2 feedlot operation for which a nutrient management plan is
3 required under this section, unless the department approves a
4 nutrient management plan as required in this section. The
5 department may adopt rules allowing a person to remove open
6 feedlot effluent from an open feedlot operation structure
7 until the nutrient management plan is approved or disapproved
8 by the department according to terms and conditions required
9 by rules adopted by the department.

10 4. The department shall not approve an application for a
11 permit to construct a settled open feedlot effluent basin
12 unless the owner of the open feedlot operation applying for
13 approval submits a nutrient management plan together with the
14 application for the construction permit as provided in section
15 459A.205. The owner shall also submit proof that the owner
16 has published a notice for public comment as provided in this
17 section. The department shall approve or disapprove the
18 nutrient management plan as provided in section 459A.201. A
19 nutrient management plan using an alternative technology
20 system shall not include requirements for settled effluent
21 that enters the alternative technology system.

22 5. Prior to approving or disapproving a nutrient
23 management plan as required in this section, the department
24 may receive comments exclusively to determine whether the
25 nutrient management plan is submitted according to procedures
26 required by the department and that the nutrient management
27 plan complies with the provisions of this chapter.

28 a. The owner of the open feedlot operation shall publish a
29 notice for public comment in a newspaper having a general
30 circulation in the county where the open feedlot operation is
31 or is proposed to be located and in the county where open
32 feedlot effluent, which originates from the open feedlot
33 operation, may be applied under the terms and conditions of
34 the nutrient management plan.

35 b. The notice for public comment shall include all of the

1 following:

2 (1) The name of the owner of the open feedlot operation
3 submitting the nutrient management plan.

4 (2) The name of the township where the open feedlot
5 operation is or is proposed to be located and the name of the
6 township where open feedlot effluent originating from the open
7 feedlot operation may be applied.

8 (3) The animal unit capacity of the open feedlot
9 operation.

10 (4) The time when and the place where the nutrient
11 management plan may be examined as provided in section 22.2.

12 (5) Procedures for providing public comment to the
13 department. The notice shall also include procedures for
14 requesting a public hearing conducted by the department. The
15 department is not required to conduct a public hearing if it
16 does not receive a request for the public hearing within ten
17 days after the first publication of the notice for public
18 comment as provided in this subsection. If such a request is
19 received, the public hearing must be conducted within thirty
20 days after the first date that the notice for public comment
21 was published.

22 (6) A statement that a person may acquire information
23 relevant to making comments under this subsection by accessing
24 the department's internet website. The notice for public
25 comment shall include the address of the department's internet
26 website as required by the department.

27 c. The department shall maintain an internet website where
28 persons may access information relevant to making comments
29 under this subsection. The department may include an
30 electronic version of the nutrient management plan as provided
31 in section 459A.201. The department shall include information
32 regarding the time when, the place where, and the manner in
33 which persons may participate in a public hearing as provided
34 in this subsection.

35 6. A nutrient management plan must be authenticated by the

1 owner of the animal feeding operation as required by the
2 department in accordance with section 459A.201.

3 7. A nutrient management plan shall include all of the
4 following:

5 a. Restrictions on the application of open feedlot
6 effluent based on all of the following:

7 (1) Calculations necessary to determine the land area
8 required for the application of open feedlot effluent from an
9 open feedlot operation based on nitrogen use levels in order
10 to obtain optimum crop yields according to a crop schedule
11 specified in the nutrient management plan, and according to
12 requirements adopted by the department.

13 (2) A phosphorus index established pursuant to section
14 459.312.

15 b. Information relating to the application of the open
16 feedlot effluent, including all of the following:

17 (1) Nutrient levels of the open feedlot effluent.

18 (2) Application methods, the timing of the application,
19 and the location of the land where the application occurs.

20 c. If the application is on land other than land owned or
21 rented for crop production by the owner of the open feedlot
22 operation, the plan shall include a copy of each written
23 agreement executed by the owner of the open feedlot operation
24 and the landowner or the person renting the land for crop
25 production where the open feedlot effluent may be applied.

26 d. An estimate of the open feedlot effluent volume or
27 weight produced by the open feedlot operation.

28 e. Information which shows all of the following:

29 (1) There is adequate storage for open feedlot effluent,
30 including procedures to ensure proper operation and
31 maintenance of the storage structures.

32 (2) The proper management of animal mortalities to ensure
33 that animals are not disposed of in an open feedlot operation
34 structure or a treatment system that is not specifically
35 designed to treat animal mortalities.

1 (3) Surface drainage prior to contact with an open feedlot
2 structure is diverted, as appropriate, from the open feedlot
3 operation.

4 (4) Animals kept in the open feedlot operation do not have
5 direct contact with any waters of the United States.

6 (5) Chemicals or other contaminants handled on-site are
7 not disposed of in an open feedlot operation structure or a
8 treatment system that is not specifically designed to treat
9 such chemicals or contaminants.

10 8. If an open feedlot operation uses an alternative
11 technology system as provided in section 459A.303, the
12 nutrient management plan is not required to provide for
13 settled effluent that enters the alternative technology
14 system.

15 9. The owner of an open feedlot operation who is required
16 to develop and implement a nutrient management plan shall
17 maintain a current nutrient management plan and maintain
18 records sufficient to demonstrate compliance with the nutrient
19 management plan.

20 SUBCHAPTER III

21 DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

22 Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN FEEDLOT
23 EFFLUENT BASINS -- CONSTRUCTION DESIGN STANDARDS -- RULES.

24 If the department requires that a settled open feedlot
25 effluent basin be constructed according to construction design
26 standards, regardless of whether the department requires the
27 owner to be issued a construction permit under section
28 459A.205, any construction design standards for the basin
29 shall be established by rules as provided in chapter 17A that
30 exclusively account for special design characteristics of open
31 feedlot operations and related basins, including but not
32 limited to the dilute composition of settled open feedlot
33 effluent as collected and stored in the basins.

34 Sec. 12. NEW SECTION. 459A.302 SETTLED OPEN FEEDLOT
35 EFFLUENT BASINS -- CONSTRUCTION REQUIREMENTS.

1 A settled open feedlot effluent basin required to be
2 constructed pursuant to a construction permit issued pursuant
3 to section 459A.205 shall meet all of the following
4 requirements:

5 1. a. Prior to constructing a settled open feedlot
6 effluent basin, the site for the basin shall be investigated
7 for a drainage tile line by the owner of the open feedlot
8 operation. The investigation shall be made by digging a core
9 trench to a depth of at least six feet deep from ground level
10 at the projected center of the berm of the basin. If a
11 drainage tile line is discovered, one of the following
12 solutions shall be implemented:

13 (1) The drainage tile line shall be rerouted around the
14 perimeter of the basin at a distance of least twenty-five feet
15 horizontally separated from the basin.

16 (2) The drainage tile line shall be replaced with a
17 nonperforated tile line under the basin floor. The
18 nonperforated tile line shall not be a drainage tile line.
19 There must be a minimum of three feet between the
20 nonperforated tile line and the basin floor.

21 b. A written record of the investigation shall be
22 submitted as part of the construction certification required
23 under section 459A.207.

24 2. a. The settled open feedlot effluent basin shall be
25 constructed with a minimum separation of two feet between the
26 top of the liner of the basin and the seasonal high-water
27 table.

28 b. If a drainage tile line around the perimeter of the
29 basin is installed a minimum of two feet below the top of the
30 basin liner to artificially lower the seasonal high-water
31 table, the top of the basin's liner may be a maximum of four
32 feet below the seasonal high-water table. The seasonal high-
33 water table may be artificially lowered by gravity flow tile
34 lines, a nongravity mechanical system that uses pumping
35 equipment, or other similar system.

1 3. Drainage tile lines may be installed to artificially
2 lower the seasonal high-water table at a settled open feedlot
3 effluent basin, if all of the following conditions are
4 satisfied:

5 a. A device to allow monitoring of the water in the
6 drainage tile lines and a device to allow shutoff of the flow
7 in the drainage tile lines are installed, if the drainage tile
8 lines do not have a surface outlet accessible on the property
9 where the settled open feedlot effluent basin is located.

10 b. Drainage tile lines are installed horizontally at least
11 twenty-five feet away from the settled open feedlot effluent
12 basin. Drainage tile lines shall be placed in a vertical
13 trench and encased in granular material which extends upward
14 to the level of the seasonal high-water table.

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

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

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

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

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

33 (2) The liner shall be constructed at optimum moisture
34 content not less than ninety-five percent of the maximum
35 density as determined by a standard five-point proctor test

1 performed at the site of the open feedlot operation by a
2 professional engineer. If a clay soil liner is used, the
3 liner shall be constructed with a minimum thickness of twelve
4 inches.

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

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

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

16 In lieu of using a settled open feedlot effluent basin as
17 provided in section 459A.302 to meet the open feedlot effluent
18 control requirements of section 459A.401, an open feedlot
19 operation may use an alternative technology system for open
20 feedlot effluent control.

21 1. The alternative technology system must provide an
22 equivalent level of open feedlot effluent control as would be
23 achieved by using a settled open feedlot effluent basin.

24 2. The department shall adopt rules establishing
25 requirements for the construction and operation of alternative
26 technology systems.

27 3. The owner of the open feedlot operation shall only use
28 an alternative technology system which includes the
29 installation of a water pollution monitoring system. The
30 owner shall operate the water pollution monitoring system for
31 two years after its installation. If the department requires
32 the owner of the open feedlot operation to be issued an
33 operating permit, the owner shall continue to record amounts
34 of settled open feedlot effluent exiting the alternative
35 technology system after the expiration of the two-year period

1 pursuant to the terms and conditions of the operating permit.
2 If the monitoring does not demonstrate compliance with the
3 requirement of this section, the department may require an
4 additional monitoring period.

5

SUBCHAPTER IV

6

OPEN FEEDLOT EFFLUENT CONTROL

7

Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT EFFLUENT

8

CONTROL METHODS.

9 An open feedlot operation shall provide for the management
10 of open feedlot effluent by using an open feedlot effluent
11 control method as follows:

12 1. All settleable solids from open feedlot effluent shall
13 be removed prior to discharge into the waters of the state.

14 a. The settleable solids shall be removed by use of a
15 solids settling facility. The construction of a solids
16 settling facility is not required where existing site
17 conditions provide for removal of settleable solids prior to
18 discharge into the waters of the state.

19 b. The removal of settleable solids shall be deemed to
20 have occurred when the velocity of flow of the open feedlot
21 effluent has been reduced to less than point five feet per
22 second for a minimum of five minutes. A solids settling
23 facility shall have sufficient capacity to store settled
24 solids between periods of land application and to provide
25 required flow-velocity reduction for open feedlot effluent
26 flow volumes resulting from a precipitation event of less
27 intensity than a ten-year, one-hour frequency event. A solids
28 settling facility which receives open feedlot effluent shall
29 provide a minimum of one square foot of surface area for each
30 eight cubic feet of open feedlot effluent per hour resulting
31 from a ten-year, one-hour frequency precipitation event.

32 2. This subsection shall apply to an open feedlot
33 operation which is required to be issued an operating permit.

34 a. An open feedlot operation may discharge open feedlot
35 effluent into any waters of the United States due to a

1 precipitation event, if any of the following apply:

2 (1) For an open feedlot operation that houses cattle,
3 other than veal cattle, the operation is designed,
4 constructed, operated, and maintained to not discharge open
5 feedlot effluent resulting from a twenty-five-year, twenty-
6 four-hour precipitation event into any waters of the United
7 States.

8 (2) For an open feedlot operation that houses veal calves,
9 swine, chickens, or turkeys, the operation is designed,
10 constructed, operated, and maintained to not discharge open
11 feedlot effluent resulting from a one-hundred-year, twenty-
12 four-hour precipitation event into any waters of the United
13 States.

14 b. If the open feedlot operation is designed, constructed,
15 and operated in accordance with the requirements of an open
16 feedlot effluent control system as provided in rules adopted
17 by the department, the operation shall be deemed to be in
18 compliance with this section, unless a discharge from the
19 operation causes a violation of state water quality standards
20 as provided in chapter 455B, division III.

21 3. The following shall apply to an open feedlot operation
22 which has an animal unit capacity of one thousand animal units
23 or more:

24 a. (1) The open feedlot operation shall not discharge
25 open feedlot effluent from an open feedlot operation structure
26 into any waters of the United States, unless the discharge is
27 pursuant to an operating permit.

28 (2) The open feedlot operation shall not be required to be
29 issued an operating permit if the operation does not discharge
30 open feedlot effluent into any waters of the United States.

31 b. The control of open feedlot effluent originating from
32 the open feedlot operation may be accomplished by the use of a
33 solids settling facility, settled open feedlot effluent basin,
34 alternative technology system, or any other open feedlot
35 effluent control structure or practice approved by the

1 department. The department may require the diversion of
2 surface drainage prior to contact with an open feedlot
3 operation structure. Solids shall be settled from open
4 feedlot effluent before the effluent enters a settled open
5 feedlot effluent basin or alternative technology system.

6 Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT EFFLUENT
7 CONTROL -- ALTERNATIVE CONTROL PRACTICES.

8 If because of topography or other factors related to the
9 site of an open feedlot operation it is economically or
10 physically impractical to comply with open feedlot effluent
11 control requirements using an open feedlot control method in
12 section 459A.401, the department shall allow the use of other
13 open feedlot effluent control practices if those practices
14 will provide an equivalent level of open feedlot effluent
15 control that would be achieved by using an open feedlot
16 effluent control method pursuant to section 459A.401.

17 Sec. 16. NEW SECTION. 459A.410 EFFLUENT APPLICATION
18 REQUIREMENTS.

19 Open feedlot effluent shall be applied in a manner which
20 does not cause surface water or groundwater pollution.
21 Application in accordance with the provisions of state law,
22 including this chapter, rules adopted pursuant to the
23 provisions of state law, including this chapter, and
24 guidelines adopted pursuant to this chapter, shall be deemed
25 as compliance with this section.

26 Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF
27 OPERATIONS.

28 The owner of an open feedlot operation who discontinues the
29 use of the operation shall remove all open feedlot effluent
30 from related open feedlot operation structures used to store
31 open feedlot effluent, as soon as practical but not later than
32 six months following the date the open feedlot operation is
33 discontinued.

34
35

SUBCHAPTER V
ENFORCEMENT

1 Sec. 18. NEW SECTION. 459A.501 GENERAL.

2 The department and the attorney general shall enforce the
3 provisions of this chapter in the same manner as provided in
4 chapter 455B, division I, unless otherwise provided in this
5 chapter.

6 Sec. 19. NEW SECTION. 459A.502 VIOLATIONS -- CIVIL
7 PENALTY.

8 A person who violates this chapter shall be subject to a
9 civil penalty which shall be established, assessed, and
10 collected in the same manner as provided in section 455B.191.
11 Any civil penalty collected and interest on a civil penalty
12 shall be deposited in the animal agriculture compliance fund
13 created in section 459.401. A person shall not be subject to
14 a penalty under this section and a penalty under section
15 459.603 for the same violation.

16 DIVISION II

17 CONFORMING AMENDMENTS

18 Sec. 20. Section 455B.103, subsections 3 and 4, Code 2005,
19 are amended to read as follows:

20 3. Contract, with the approval of the commission, with
21 public agencies of this state to provide all laboratory,
22 scientific field measurement and environmental quality
23 evaluation services necessary to implement the provisions of
24 this chapter, and chapter 459, ~~subchapters-II-and-III~~ and
25 chapter 459A. If the director finds that public agencies of
26 this state cannot provide the laboratory, scientific field
27 measurement and environmental evaluation services required by
28 the department, the director may contract, with the approval
29 of the commission, with any other public or private persons or
30 agencies for such services or for scientific or technical
31 services required to carry out the programs and services
32 assigned to the department.

33 4. Conduct investigations of complaints received directly
34 or referred by the commission created in section 455A.6 or
35 other investigations deemed necessary. While conducting an

1 investigation, the director may enter at any reasonable time
2 in and upon any private or public property to investigate any
3 actual or possible violation of this chapter, ~~or~~ chapter 459,
4 ~~subchapters II and III,~~ chapter 459A, or the rules or
5 standards adopted under this chapter, ~~or~~ chapter 459,
6 ~~subchapters II and III~~ or chapter 459A. However, the owner or
7 person in charge shall be notified.

8 Sec. 21. Section 455B.103A, subsection 1, unnumbered
9 paragraph 1, Code 2005, is amended to read as follows:

10 If a permit is required pursuant to this chapter, ~~or~~
11 chapter 459, or chapter 459A for stormwater discharge or an
12 air contaminant source and a facility to be permitted is
13 representative of a class of facilities which could be
14 described and conditioned by a single permit, the director may
15 issue, modify, deny, or revoke a general permit for all of the
16 following conditions:

17 Sec. 22. Section 455B.103A, subsection 5, Code 2005, is
18 amended to read as follows:

19 5. The enforcement provisions of division II of this
20 chapter and chapter 459, subchapter II, apply to general
21 permits for air contaminant sources. The enforcement
22 provisions of division III, part 1, of this chapter, ~~and~~
23 chapter 459, subchapter III, and chapter 459A apply to general
24 permits for stormwater discharge.

25 Sec. 23. Section 455B.105, subsections 3, 6, and 8, Code
26 2005, are amended to read as follows:

27 3. Adopt, modify, or repeal rules necessary to implement
28 this chapter, ~~and~~ chapter 459, and chapter 459A, and the rules
29 deemed necessary for the effective administration of the
30 department. When the commission proposes or adopts rules to
31 implement a specific federal environmental program and the
32 rules impose requirements more restrictive than the federal
33 program being implemented requires, the commission shall
34 identify in its notice of intended action or adopted rule
35 preamble each rule that is more restrictive than the federal

1 program requires and shall state the reasons for proposing or
2 adopting the more restrictive requirement. In addition, the
3 commission shall include with its reasoning a financial impact
4 statement detailing the general impact upon the affected
5 parties. It is the intent of the general assembly that the
6 commission exercise strict oversight of the operations of the
7 department. The rules shall include departmental policy
8 relating to the disclosure of information on a violation or
9 alleged violation of the rules, standards, permits or orders
10 issued by the department and keeping of confidential
11 information obtained by the department in the administration
12 and enforcement of this chapter, and chapter 459, and chapter
13 459A. Rules adopted by the executive committee before January
14 1, 1981, shall remain effective until modified or rescinded by
15 action of the commission.

16 6. Approve all contracts and agreements under this
17 chapter, and chapter 459, and chapter 459A between the
18 department and other public or private persons or agencies.

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

27 Sec. 24. Section 455B.105, subsection 11, paragraph a,
28 unnumbered paragraph 1, Code 2005, is amended to read as
29 follows:

30 Adopt, by rule, procedures and forms necessary to implement
31 the provisions of this chapter, and chapter 459, and chapter
32 459A relating to permits, conditional permits, and general
33 permits. The commission may also adopt, by rule, a schedule
34 of fees for permit and conditional permit applications and a
35 schedule of fees which may be periodically assessed for

1 administration of permits and conditional permits. In
2 determining the fee schedules, the commission shall consider:

3 Sec. 25. Section 455B.109, subsection 4, Code 2005, is
4 amended to read as follows:

5 4. a. ~~All~~ Except as provided in paragraph "b", civil
6 penalties assessed by the department and interest on the
7 penalties shall be deposited in the general fund of the state.
8 ~~However, civil~~

9 b. The following provisions shall apply to animal feeding
10 operations:

11 (1) Civil penalties assessed by the department and
12 interest on the civil penalties, arising out of violations
13 involving animal feeding operations under chapter 459,
14 subchapter II, shall be deposited in the animal agriculture
15 compliance fund as created in section 459.401.

16 (2) Civil penalties assessed by the department and
17 interest on the penalties arising out of violations committed
18 by animal feeding operations under chapter 459, subchapter
19 III, which may be assessed pursuant to section 455B.191 or
20 459.604, shall also be deposited in the animal agriculture
21 compliance fund.

22 (3) Civil penalties assessed by the department and
23 interest on the civil penalties, arising out of violations
24 involving open feedlot operations under chapter 459A, shall be
25 deposited in the animal agriculture compliance fund as created
26 in section 459.401.

27 Sec. 26. Section 455B.111, subsection 1, paragraphs a and
28 b, Code 2005, are amended to read as follows:

29 a. A person, including the state of Iowa, for violating
30 any provision of this chapter; ~~or~~ chapter 459, subchapters I,
31 II, III, IV, and VI; ~~or~~ chapter 459A; or a rule adopted pursuant
32 to this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
33 and VI; ~~or~~ chapter 459A.

34 b. The director, the commission, or any official or
35 employee of the department where there is an alleged failure

1 to perform any act or duty under this chapter; or chapter 459,
2 subchapters I, II, III, IV, and VI; chapter 459A; or a rule
3 adopted pursuant to this chapter; or chapter 459, subchapters
4 I, II, III, IV, and VI; or chapter 459A, which is not a
5 discretionary act or duty.

6 Sec. 27. Section 455B.111, subsection 5, Code 2005, is
7 amended to read as follows:

8 5. This section does not restrict any right under
9 statutory or common law of a person or class of person to seek
10 enforcement of provisions of this chapter, or chapter 459,
11 subchapters I, II, III, IV, and VI; chapter 459A; or a rule
12 adopted pursuant to this chapter; or chapter 459, subchapters
13 I, II, III, IV, and VI; or chapter 459A, or seek other relief
14 permitted under the law.

15 Sec. 28. Section 455B.112, Code 2005, is amended to read
16 as follows:

17 455B.112 ACTIONS BY ATTORNEY GENERAL.

18 In addition to the duty to commence legal proceedings at
19 the request of the director or commission under this chapter;
20 or chapter 459, subchapters I, II, III, IV, and VI; or
21 chapter 459A the attorney general may institute civil or
22 criminal proceedings, including an action for injunction, to
23 enforce the provisions of this chapter; or chapter 459,
24 subchapters I, II, III, IV, and VI; or chapter 459A including
25 orders or permits issued or rules adopted under this chapter;
26 or chapter 459, subchapters I, II, III, IV, and VI; or chapter
27 459A.

28 Sec. 29. Section 455B.113, subsection 1, Code 2005, is
29 amended to read as follows:

30 1. The director shall certify laboratories which perform
31 laboratory analyses of samples required to be submitted by the
32 department by this chapter; or chapter 459, subchapters I, II,
33 III, IV, and VI; or chapter 459A, or by rules adopted in
34 accordance with this chapter; or chapter 459, subchapters I,
35 II, III, IV, and VI; or chapter 459A; or by permits or orders

1 issued under this chapter; or chapter 459, subchapters I, II,
2 III, IV, and VI; or chapter 459A.

3 Sec. 30. Section 455B.115, Code 2005, is amended to read
4 as follows:

5 455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

6 Laboratory analysis of samples as required by this chapter;
7 or chapter 459, subchapters I, II, III, IV, and VI; or
8 chapter 459A; or by rules adopted, or by permits or orders
9 issued pursuant to this chapter; or chapter 459, subchapters
10 I, II, III, IV, and VI; or chapter 459A shall be conducted by
11 a laboratory certified by the director as having the necessary
12 competence, equipment, and capabilities to perform the
13 analysis. Analytical results from laboratories not
14 certificated shall not be accepted by the director.

15 Sec. 31. Section 455B.179, Code 2005, is amended to read
16 as follows:

17 455B.179 TRADE SECRETS PROTECTED.

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

1 subchapter III; or chapter 459A.

2 Sec. 32. Section 455B.182, Code 2005, is amended to read
3 as follows:

4 455B.182 FAILURE CONSTITUTES CONTEMPT.

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

26 Sec. 33. Section 455B.185, Code 2005, is amended to read
27 as follows:

28 455B.185 DATA FROM DEPARTMENTS.

29 The commission and the director may request and receive
30 from any department, division, board, bureau, commission,
31 public body, or agency of the state, or of any political
32 subdivision thereof, or from any organization, incorporated or
33 unincorporated, which has for its object the control or use of
34 any of the water resources of the state, such assistance and
35 data as will enable the commission or the director to properly

1 carry out their activities and effectuate the purposes of this
2 part 1 of division III; and chapter 459, subchapter III; or
3 chapter 459A. The department shall reimburse such agencies
4 for special expense resulting from expenditures not normally a
5 part of the operating expenses of any such agency.

6 Sec. 34. Section 459.102, subsection 2, paragraph a, Code
7 2005, is amended to read as follows:

8 a. A settled open feedlot effluent basin ~~that collects and~~
9 ~~stores only precipitation-induced runoff from an open feedlot~~
10 as defined in section 459A.102.

11 Sec. 35. Section 459.102, subsections 37, 45, and 46, Code
12 2005, are amended by striking the subsections.

13 Sec. 36. Section 459.401, subsection 2, paragraph a,
14 subparagraph (5), Code 2005, is amended to read as follows:

15 (5) The collection of civil penalties assessed by the
16 department and interest on civil penalties, arising out of
17 violations involving animal feeding operations as provided in
18 sections 459.602, and 459.603, and 459A.502.

19 Sec. 37. Section 459.309, Code 2005, is repealed.

20 DIVISION III

21 AGRICULTURAL PRODUCTION LIENS

22 Sec. 38. Section 579A.2, subsection 3, paragraph b, Code
23 2005, is amended to read as follows:

24 b. The lien terminates one year after the cattle have left
25 the custom cattle feedlot. ~~Section 554.9515 shall not apply~~
26 ~~to a financing statement perfecting the lien.~~ The lien may be
27 terminated by the custom cattle feedlot operator who files a
28 termination statement as provided in chapter 554, article 9.

29 Sec. 39. Section 579B.4, subsection 1, paragraph b, Code
30 2005, is amended to read as follows:

31 b. For a lien arising out of producing a crop, the lien
32 becomes effective the day that the crop is first planted. In
33 order to perfect the lien, the contract producer must file a
34 financing statement in the office of the secretary of state as
35 provided in section 554.9308. The contract producer must file

1 a financing statement for the crop within forty-five days
2 after the crop is first planted. The lien terminates one year
3 after the crop is no longer under the authority of the
4 contract producer. For purposes of this section, a crop is no
5 longer under the authority of the contract producer when the
6 crop or a warehouse receipt issued by a warehouse operator
7 licensed under chapter 203C for grain from the crop is no
8 longer under the custody or control of the contract producer.
9 ~~Section-554.9515-shall-not-apply-to-a-financing-statement~~
10 ~~perfecting-the-lien.~~ The lien may be terminated by the
11 contract producer who files a termination statement as
12 provided in chapter 554, article 9.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 805

S-3171

1 Amend House File 805, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 8, by striking line 32, and inserting the
4 following:

5 "a. For an open feedlot operation submitting an
6 application for a construction permit on or after
7 September 30, 2006, a nutrient management plan as
8 provided in section".

9 2. Page 18, by striking line 15, and inserting
10 the following: "horizontally separated from the
11 outside edge of the berm of the basin. For an area of
12 the basin where there is not a berm, the drainage tile
13 line shall be rerouted at least fifty feet
14 horizontally separated from the edge of the basin."

15 3. Page 18, by striking line 18, and inserting
16 the following: "nonperforated tile line shall be
17 continuous and without connecting joints."

18 4. Page 18, by striking lines 34 and 35, and
19 inserting the following: "lines or other similar
20 system. However the following shall apply:

21 (1) Except as provided in subparagraph (2), an
22 open feedlot operation shall not use a nongravity
23 mechanical system that uses pumping equipment.

24 (2) If the open feedlot operation was constructed
25 before the effective date of this Act, the operation
26 may continue to use its existing nongravity mechanical
27 system that uses pumping equipment or it may construct
28 a new nongravity mechanical system that uses pumping
29 equipment. However, an open feedlot operation that
30 expands the area of its open feedlot on or after April
31 1, 2011, shall not use a nongravity mechanical system
32 that uses pumping equipment."

33 5. By striking page 20, line 27 through page 21,
34 line 4.

35 6. By renumbering as necessary.

By EUGENE S. FRAISE
DAVID JOHNSON

JOHN P. KIBBIE
HUBERT M. HOUSER

S-3171 FILED APRIL 26, 2005
ADOPTED

**SENATE AMENDMENT TO
HOUSE FILE 805**

H-1535

1 Amend House File 805, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 8, by striking line 32, and inserting the
4 following:

5 "a. For an open feedlot operation submitting an
6 application for a construction permit on or after
7 September 30, 2006, a nutrient management plan as
8 provided in section".

9 2. Page 18, by striking line 15, and inserting
10 the following: "horizontally separated from the
11 outside edge of the berm of the basin. For an area of
12 the basin where there is not a berm, the drainage tile
13 line shall be rerouted at least fifty feet
14 horizontally separated from the edge of the basin."

15 3. Page 18, by striking line 18, and inserting
16 the following: "nonperforated tile line shall be
17 continuous and without connecting joints."

18 4. Page 18, by striking lines 34 and 35, and
19 inserting the following: "lines or other similar
20 system. However the following shall apply:

21 (1) Except as provided in subparagraph (2), an
22 open feedlot operation shall not use a nongravity
23 mechanical system that uses pumping equipment.

24 (2) If the open feedlot operation was constructed
25 before the effective date of this Act, the operation
26 may continue to use its existing nongravity mechanical
27 system that uses pumping equipment or it may construct
28 a new nongravity mechanical system that uses pumping
29 equipment. However, an open feedlot operation that
30 expands the area of its open feedlot on or after April
31 1, 2011, shall not use a nongravity mechanical system
32 that uses pumping equipment."

33 5. By striking page 20, line 27 through page 21,
34 line 4.

35 6. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-1535 FILED APRIL 26, 2005

Struyk, Chair *led B*
S. Olson SF **805**
Meitz

HSB 235
Agriculture

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

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

A BILL FOR

1 An Act relating to animal feeding operations, by providing for
2 the regulation of open feedlot operations, and providing for
3 penalties.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

DIVISION I
OPEN FEEDLOT OPERATIONS
SUBCHAPTER I
GENERAL PROVISIONS

Section 1. NEW SECTION. 459A.101 TITLE.

This chapter shall be known and may be cited as the "Animal Agriculture Compliance Act for Open Feedlots".

Sec. 2. NEW SECTION. 459A.102 DEFINITIONS.

1. "Alternative technology system" or "alternative system" means a system for open feedlot effluent control as provided in section 459A.303.

2. "Animal" means the same as defined in section 459.102.

3. "Animal feeding operation" means the same as defined in section 459.102.

4. "Animal unit" means the same as defined in section 459.102.

5. "Animal unit capacity" means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation.

6. "A.S.T.M. international" means the American society for testing and materials international.

7. "Commission" means the environmental protection commission created pursuant to section 455A.6.

8. "Department" means the department of natural resources.

9. "Document" means any form required to be processed by the department under this chapter, including but not limited to applications for permits or related materials as provided in section 459A.205, soil and hydrogeologic reports as provided in section 459A.206, construction certifications as provided in section 459.207, nutrient management plans as provided in section 459A.208, and notices required under this chapter.

10. "National pollutant discharge elimination system permit" means a permit issued by the United States environmental protection agency pursuant to the federal Water

1 Pollution Control Act, Title 33, U.S.C., ch. 126, as amended,
2 and 40 C.F.R., pt. 124.

3 11. "Nutrient management plan" or "plan" means a plan
4 which provides for the management of open feedlot effluent and
5 the application of effluent as provided in section 459A.208.

6 12. "Open feedlot" means a lot, yard, corral, building, or
7 other area used to house animals in conjunction with an open
8 feedlot operation.

9 13. "Open feedlot effluent" or "effluent" means a
10 combination of manure, precipitation-induced runoff, or other
11 runoff from an open feedlot before its settleable solids have
12 been removed.

13 14. "Open feedlot operation" or "operation" means an
14 unroofed or partially roofed animal feeding operation if crop,
15 vegetation, or forage growth or residue cover is not
16 maintained as part of the animal feeding operation during the
17 period that animals are confined in the animal feeding
18 operation.

19 15. "Open feedlot operation structure" means an open
20 feedlot, settled open feedlot effluent basin, a solids
21 settling facility, or an alternative technology system.

22 16. "Research college" means an accredited public or
23 private college or university, including but not limited to a
24 university under the control of the state board of regents as
25 provided in chapter 262, or a community college under the
26 jurisdiction of a board of directors for a merged area as
27 provided in chapter 260C, if the college or university
28 performs research or experimental activities regarding animal
29 agriculture or agronomy.

30 17. "Settleable solids" or "solids" means that portion of
31 open feedlot effluent that meets all of the following
32 requirements:

33 a. The solids do not flow perceptibly under pressure.

34 b. The solids are not capable of being transported through
35 a mechanical pumping device designed to move a liquid.

1 c. The constituent molecules of the solids do not flow
2 freely among themselves but do show the tendency to separate
3 under stress.

4 18. "Settled open feedlot effluent basin" or "basin" means
5 an impoundment which is part of an open feedlot operation, if
6 the primary function of the impoundment is to collect and
7 store settled open feedlot effluent.

8 19. "Solids settling facility" means a basin, terrace,
9 diversion, or other structure or solids removal method which
10 is part of an open feedlot operation and which is designed and
11 operated to remove settleable solids from open feedlot
12 effluent. A solids settling facility shall not retain the
13 liquid portion of open feedlot effluent for more than seven
14 consecutive days following a precipitation event.

15 20. "Waters of the United States" means the same as
16 defined in 40 C.F.R., pt. 122, § 2, as that section exists on
17 the effective date of this Act.

18 Sec. 3. NEW SECTION. 459A.103 SPECIAL TERMS.

19 For purposes of this chapter, all of the following shall
20 apply:

21 1. a. Two or more open feedlot operations under common
22 ownership or common management are deemed to be a single open
23 feedlot operation if they are adjacent or utilize a common
24 area or system for open feedlot effluent disposal.

25 b. For purposes of determining whether two or more open
26 feedlot operations are adjacent, all of the following shall
27 apply:

28 (1) At least one open feedlot operation structure must be
29 constructed on or after the effective date of this Act.

30 (2) An open feedlot operation structure which is part of
31 one open feedlot operation is separated by less than one
32 thousand two hundred fifty feet from an open feedlot operation
33 structure which is part of the other open feedlot operation.

34 c. For purposes of determining whether two or more open
35 feedlot operations are under common ownership, a person must

1 hold an interest in each of the open feedlot operations as any
2 of the following:

3 (1) A sole proprietor.

4 (2) A joint tenant or tenant in common.

5 (3) A holder of a majority equity interest in a business
6 association as defined in section 202B.102, including but not
7 limited to as a shareholder, partner, member, or beneficiary.

8 An interest in the open feedlot operation under
9 subparagraph (2) or (3) which is held directly or indirectly
10 by the person's spouse or dependent child shall be attributed
11 to the person.

12 d. For purposes of determining whether two or more open
13 feedlot operations are under common management, a person must
14 have significant control of the management of the day-to-day
15 operations of each of the open feedlot operations. Common
16 management does not include control over a contract livestock
17 facility by a contractor, as defined in section 202.1.

18 2. An open feedlot operation structure is "constructed"
19 when any of the following occurs:

20 a. Excavation commences for a proposed open feedlot
21 operation structure or proposed expansion of an existing open
22 feedlot operation structure.

23 b. Forms for concrete are installed for a proposed open
24 feedlot operation structure or the proposed expansion of an
25 existing open feedlot operation structure.

26 c. Piping for the movement of open feedlot effluent is
27 installed within or between open feedlot operation structures
28 as proposed or proposed to be expanded.

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

1 buildings as defined in section 459.102, which are part of the
2 open feedlot operation.

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

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

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

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

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

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

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

35 1. Except as provided in subsection 2, the requirements of

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

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

13 SUBCHAPTER II

14 DOCUMENTATION

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

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

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

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

32 3. The department shall approve or disapprove an
33 application for a construction permit as provided in section
34 459A.205 within sixty days after receiving the permit
35 application. However, the applicant may deliver a notice

1 requesting a continuance. Upon receipt of a notice, the time
2 required for the department to act upon the application shall
3 be suspended for the period provided in the notice, but for
4 not more than thirty days after the department's receipt of
5 the notice. The applicant may submit more than one notice.
6 However, the department may provide that an application is
7 terminated if no action is required by the department for one
8 year following delivery of the application to the department.

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

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

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

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

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

33 b. An engineering report, construction plans, or
34 specifications prepared by a licensed professional engineer or
35 the natural resources conservation service of the United

1 States department of agriculture certifying that the
2 construction of the settled open feedlot effluent basin or
3 alternative technology system complies with the construction
4 design standards required in this chapter.

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

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

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

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

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

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

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

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

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

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

- 1 c. The location of the open feedlot operation.
- 2 d. A statement providing that the application is for any
3 of the following:
- 4 (1) The construction or expansion of a settled open
5 feedlot effluent basin or alternative technology system for an
6 existing open feedlot operation which is not expanding.
- 7 (2) The construction or expansion of a settled open
8 feedlot effluent basin or alternative technology system for
9 the expansion of an existing open feedlot operation.
- 10 (3) The construction of a settled open feedlot effluent
11 basin or alternative technology system for a proposed new open
12 feedlot operation.
- 13 e. The animal unit capacity for each animal species in the
14 open feedlot operation before and after the proposed
15 construction.
- 16 f. An engineering report, construction plans, and
17 specifications prepared by a licensed professional engineer or
18 by the United States natural resource conservation service,
19 for the settled open feedlot operation effluent basin or
20 alternative technology system.
- 21 g. A soils and hydrogeologic report of the site, as
22 required in section 459A.206.
- 23 h. Information, including but not limited to maps,
24 drawings, and aerial photos that clearly show the location of
25 the open feedlot operation and all existing and proposed
26 settled open feedlot effluent basins or alternative technology
27 systems, clean water diversions, other pertinent features or
28 structures, the location of any other open feedlot operations
29 under common ownership or common management and located within
30 one thousand two hundred fifty feet of the open feedlot
31 operation, and the location of public water supply systems or
32 private wells which are within an area which is equal to a
33 multiple of two times the applicable separation distance.
- 34 i. For an open feedlot operation implementing an
35 alternative technology system as provided in section 459A.303,

1 the applicant shall submit all of the following:

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

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

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

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

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

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

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

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

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

35 A settled open feedlot effluent basin required to be

1 constructed pursuant to a construction permit issued pursuant
2 to section 459A.205 shall meet design standards as required by
3 a soils and hydrogeologic report.

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

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

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

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

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

24 b. At locations that reflect the continuous soil profile
25 conditions existing within the area of the proposed basin,
26 including conditions found near the corners and the deepest
27 point of the proposed basin. The soil corings shall be taken
28 to a minimum depth of ten feet below the bottom elevation of
29 the basin.

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

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

35 1. The owner of an open feedlot operation who is issued a

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

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

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

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

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

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

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

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

1 by the department according to terms and conditions required
2 by rules adopted by the department.

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

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

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

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

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

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

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

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

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

34 (3) If the location of the application is on land other
35 than land owned or rented for crop production by the person

1 applying for a construction or national pollutant discharge
2 elimination system permit, the plan shall include a copy of
3 each written agreement executed between the person and the
4 landowner or the person renting the land for crop production
5 where the open feedlot effluent will be applied.

6 c. An estimate of the open feedlot effluent volume or
7 weight produced by the open feedlot operation.

8 d. Information which shows all of the following:

9 (1) There is adequate storage of open feedlot effluent,
10 including procedures to ensure proper operation and
11 maintenance of the storage structures.

12 (2) The proper management of animal mortalities to ensure
13 that animals are not disposed of in an open feedlot operation
14 structure or a treatment system that is not specifically
15 designed to treat animal mortalities.

16 (3) Surface drainage prior to contact with an open feedlot
17 structure is diverted, as appropriate, from the open feedlot
18 operation.

19 (4) Animals kept in the open feedlot operation will not
20 have direct contact with waters of the United States.

21 (5) Chemicals or other contaminants handled on-site are
22 not disposed of in an open feedlot operation structure or a
23 treatment system that is not specifically designed to treat
24 such chemicals or contaminants.

25 7. If an open feedlot operation uses an alternative
26 technology system as provided in section 459A.303, the
27 nutrient management plan is not required to provide for
28 settled effluent that enters the alternative technology
29 system.

30 8. A person required to develop and maintain a nutrient
31 management plan shall maintain a current nutrient management
32 plan and maintain records sufficient to demonstrate compliance
33 with the nutrient management plan. Chapter 22 shall not apply
34 to the records which shall be kept confidential by the
35 department and its agents and employees. The contents of the

1 records are not subject to disclosure except as follows:

2 a. Upon waiver by the person receiving the permit.

3 b. In a contested case proceeding commenced under chapter
4 17A. Notwithstanding section 17A.19, the proceeding shall be
5 closed.

6 c. When required by subpoena or court order.

7 9. A person required to authenticate a nutrient management
8 plan who is found in violation of the terms and conditions of
9 the plan shall not be subject to an enforcement action other
10 than the assessment of a civil penalty pursuant to section
11 459A.502.

12

SUBCHAPTER III

13

DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

14 Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN FEEDLOT
15 EFFLUENT BASINS -- CONSTRUCTION DESIGN STANDARDS -- RULES.

16 If the department requires that a settled open feedlot
17 effluent basin be constructed according to construction design
18 standards, regardless of whether the department requires the
19 owner to be issued a construction permit under section
20 459A.205, any construction design standards for the basin
21 shall be established by rules as provided in chapter 17A that
22 exclusively account for special design characteristics of open
23 feedlot operations and related basins, including but not
24 limited to the dilute composition of settled open feedlot
25 effluent as collected and stored in the basins.

26 Sec. 12. NEW SECTION. 459A.302 SETTLED OPEN FEEDLOT
27 EFFLUENT BASINS -- CONSTRUCTION REQUIREMENTS.

28 A settled open feedlot effluent basin required to be
29 constructed pursuant to a construction permit issued pursuant
30 to section 459A.205 shall meet all of the following
31 requirements:

32 1. a. Prior to constructing a settled open feedlot
33 effluent basin, the site for the basin shall be investigated
34 for a drainage tile line. The investigation shall be made by
35 digging a core trench to a depth of at least six feet deep

1 from ground level at the projected center of the berm of the
2 basin. If a tile line is discovered, one of the following
3 solutions shall be implemented:

4 (1) The tile line shall be rerouted around the perimeter
5 of the basin.

6 (2) The tile line shall be replaced with a nonperforated
7 tile under the basin floor. There must be a minimum of three
8 feet between the tile and the basin floor.

9 b. A written record of the investigation shall be
10 submitted as part of the construction certification required
11 under section 459A.207.

12 2. a. The settled open feedlot effluent basin shall be
13 constructed with a minimum separation of two feet between the
14 top of the liner of the basin and the seasonal high-water
15 table.

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

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

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

33 b. Drainage tile lines are installed horizontally at least
34 twenty-five feet away from the settled open feedlot effluent
35 basin. Tile lines shall be placed in a vertical trench and

1 encased in granular material which extends upward to the level
2 of the seasonal high-water table.

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

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

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

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

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

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

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

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

33 (2) The liner shall be constructed at optimum moisture
34 content not less than ninety-five percent of the maximum
35 density as determined by a standard five-point proctor test

1 performed at the site of the open feedlot operation by the
2 professional engineer. If a clay soil liner is used, the
3 liner shall be constructed with a minimum thickness of twelve
4 inches.

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

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

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

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

24 SUBCHAPTER IV

25 OPEN FEEDLOT EFFLUENT CONTROL

26 Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT EFFLUENT
27 CONTROL METHODS.

28 Except as otherwise provided in section 459A.303, an open
29 feedlot operation shall provide for the management of
30 settleable solids and other effluent by using an open feedlot
31 effluent control method as follows:

32 1. All settleable solids from open feedlot effluent shall
33 be removed prior to discharge into a waters of the United
34 States.

35 a. The settleable solids shall be removed by use of a

1 solids settling facility. The construction of a solids
2 settling facility is not required where existing site
3 conditions provide for removal of settleable solids prior to
4 discharge to a waters of the United States.

5 b. The removal of settleable solids shall be deemed to
6 have occurred when the velocity of flow of the open feedlot
7 effluent has been reduced to less than point five feet per
8 second for a minimum of five minutes. A solids settling
9 facility shall have sufficient capacity to store settled
10 solids between periods of land application and to provide
11 required flow-velocity reduction for open feedlot effluent
12 flow volumes resulting from a precipitation event of less
13 intensity than a ten-year, one-hour frequency event. A solids
14 settling facility which receives open feedlot effluent shall
15 provide a minimum of one square foot of surface area for each
16 eight cubic feet of open feedlot effluent per hour resulting
17 from a ten-year, one-hour frequency precipitation event.

18 2. Except as provided in this subsection, an open feedlot
19 operation that operates pursuant to a national pollutant
20 discharge elimination system permit shall not discharge open
21 feedlot effluent from an open feedlot operation structure into
22 the waters of this United States. An open feedlot operation
23 may discharge open feedlot effluent into the waters of the
24 United States due to a precipitation event, if any of the
25 following apply:

26 a. For an open feedlot operation that houses cattle, other
27 than veal cattle, the operation is designed, constructed,
28 operated, and maintained to contain all open feedlot effluent
29 resulting from a twenty-five-year, twenty-four-hour
30 precipitation event.

31 b. For an open feedlot operation that houses veal calves,
32 swine, chickens, or turkeys, the operation is designed,
33 constructed, operated, and maintained to contain all open
34 feedlot effluent resulting from a one-hundred-year, twenty-
35 four-hour precipitation event.

1 3. An open feedlot operation designed, constructed, and
2 operated in accordance with the requirements of an open
3 feedlot effluent control alternative technology system as
4 provided in rules adopted by the department shall be deemed to
5 be in compliance with this section, unless a discharge from
6 the open feedlot operation causes a violation of state water
7 quality standards as provided in chapter 455B, division III.

8 4. The control of open feedlot effluent may be
9 accomplished by the use of a solids settling facility, settled
10 open feedlot effluent basin, or any other open feedlot
11 effluent control structure or practice approved by the
12 department. The department may require the diversion of
13 surface drainage prior to contact with an open feedlot
14 operation structure. Solids shall be settled from open
15 feedlot effluent before the effluent enters a settled open
16 feedlot basin.

17 Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT EFFLUENT
18 CONTROL -- ALTERNATIVE CONTROL PRACTICES.

19 If because of topography or other factors related to the
20 site of an open feedlot operation it is economically or
21 physically impractical to comply with open feedlot effluent
22 control requirements using the open feedlot effluent controls
23 in section 459A.401, the department shall allow the use of
24 other open feedlot effluent control practices if those
25 practices will provide an equivalent level of open feedlot
26 effluent control that would be achieved by using an open
27 feedlot effluent control method pursuant to section 459A.401.

28 Sec. 16. NEW SECTION. 459A.410 EFFLUENT APPLICATION
29 REQUIREMENTS.

30 Settled open feedlot effluent shall be applied in a manner
31 which does not cause surface water or groundwater pollution.
32 Application in accordance with the provisions of state law,
33 including this chapter, rules adopted pursuant to the
34 provisions of state law, including this chapter, and
35 guidelines adopted pursuant to this chapter, shall be deemed

1 as compliance with this section.

2 Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF
3 OPERATIONS.

4 The owner of an open feedlot operation who discontinues the
5 use of the operation shall remove all open feedlot effluent
6 from related open feedlot operation structures used to store
7 open feedlot effluent, as soon as practical but not later than
8 six months following the date the open feedlot operation is
9 discontinued.

10 SUBCHAPTER V

11 ENFORCEMENT

12 Sec. 18. NEW SECTION. 459A.501 GENERAL.

13 The department and the attorney general shall enforce the
14 provisions of this chapter in the same manner as provided in
15 chapter 455B, division I, unless otherwise provided in this
16 chapter.

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

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

26 DIVISION II

27 ANIMAL AGRICULTURE COMPLIANCE ACT CIVIL PENALTIES

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

30 4. All civil penalties assessed by the department and
31 interest on the penalties shall be deposited in the general
32 fund of the state. ~~However, civil penalties assessed by the~~
33 ~~department and interest on the civil penalties, arising out of~~
34 ~~violations involving animal feeding operations under chapter~~
35 ~~459, subchapter II, shall be deposited in the animal~~

~~1 agriculture-compliance-fund-as-created-in-section-459.401;
2 Civil-penalties-assessed-by-the-department-and-interest-on-the
3 penalties-arising-out-of-violations-committed-by-animal
4 feeding-operations-under-chapter-459, subchapter-III, which
5 may-be-assessed-pursuant-to-section-455B.191-or-459.604, shall
6 also-be-deposited-in-the-animal-agriculture-compliance-fund.~~

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

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

12 459.602 AIR QUALITY VIOLATIONS -- CIVIL PENALTY.

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

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

21 459.603 WATER QUALITY VIOLATIONS -- CIVIL PENALTY.

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

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

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

35

DIVISION III

1 CONFORMING AMENDMENTS

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

4 3. Contract, with the approval of the commission, with
5 public agencies of this state to provide all laboratory,
6 scientific field measurement and environmental quality
7 evaluation services necessary to implement the provisions of
8 this chapter, ~~and chapter 459, subchapters-II-and-III~~ and
9 chapter 459A. If the director finds that public agencies of
10 this state cannot provide the laboratory, scientific field
11 measurement and environmental evaluation services required by
12 the department, the director may contract, with the approval
13 of the commission, with any other public or private persons or
14 agencies for such services or for scientific or technical
15 services required to carry out the programs and services
16 assigned to the department.

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

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

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

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

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

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

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

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

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

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

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

22 a. A person, including the state of Iowa, for violating
23 any provision of this chapter; ~~or~~ chapter 459, subchapters I,
24 II, III, IV, and VI; chapter 459A; or a rule adopted pursuant
25 to this chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
26 and VI; or chapter 459A.

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

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

1 5. This section does not restrict any right under
2 statutory or common law of a person or class of person to seek
3 enforcement of provisions of this chapter, or chapter 459,
4 subchapters I, II, III, IV, and VI₇; chapter 459A; or a rule
5 adopted pursuant to this chapter; or chapter 459, subchapters
6 I, II, III, IV, and VI₇; or chapter 459A, or seek other relief
7 permitted under the law.

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

10 455B.112 ACTIONS BY ATTORNEY GENERAL.

11 In addition to the duty to commence legal proceedings at
12 the request of the director or commission under this chapter;
13 or chapter 459, subchapters I, II, III, IV, and VI₇; or
14 chapter 459A the attorney general may institute civil or
15 criminal proceedings, including an action for injunction, to
16 enforce the provisions of this chapter; or chapter 459,
17 subchapters I, II, III, IV, and VI₇; or chapter 459A including
18 orders or permits issued or rules adopted under this chapter;
19 or chapter 459, subchapters I, II, III, IV, and VI; or chapter
20 459A.

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

23 1. The director shall certify laboratories which perform
24 laboratory analyses of samples required to be submitted by the
25 department by this chapter; or chapter 459, subchapters I, II,
26 III, IV, and VI₇; or chapter 459A, or by rules adopted in
27 accordance with this chapter; or chapter 459, subchapters I,
28 II, III, IV, and VI₇; or chapter 459A; or by permits or orders
29 issued under this chapter; or chapter 459, subchapters I, II,
30 III, IV, and VI; or chapter 459A.

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

33 455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

34 Laboratory analysis of samples as required by this chapter;
35 or chapter 459, subchapters I, II, III, IV, and VI₇; or

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

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

10 455B.179 TRADE SECRETS PROTECTED.

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

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

32 455B.182 FAILURE CONSTITUTES CONTEMPT.

33 Failure to obey any order issued by the department with
34 reference to a violation of this part of this division; ~~or~~
35 chapter 459, subchapter III; or chapter 459A; or any rule

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

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

21 455B.185 DATA FROM DEPARTMENTS.

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

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

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

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

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

7 EXPLANATION

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

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

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

1 method which removes solids from the effluent and stores the
2 solids.

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

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

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

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

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

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

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

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

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

29 The division provides for design standards for basins
30 required to be issued a construction permit. It requires that
31 the applicant submit a soils and hydrogeologic report
32 including soil corings. It requires that the basin be
33 constructed with a minimum separation between the top of the
34 liner of the basin and the seasonal high-water table. It also
35 provides that drainage tile may be installed to artificially

1 lower the seasonal high-water table. In that case, monitoring
2 equipment must be installed. The division requires that the
3 basin be constructed with a minimum separation distance
4 between the bottom of the basin and a bedrock formation. It
5 allows the basin to be constructed within a floodplain. The
6 owner must submit to the department a certification by a
7 licensed professional engineer certifying that the basin was
8 constructed in accordance with design plans. (See Code
9 section 459.308.)

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

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

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

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

35 The division provides for enforcement. The department and

1 the attorney general are responsible for enforcement. (See
2 Code section 459.103.)

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

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

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

24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 805

AN ACT
RELATING TO AGRICULTURAL PRODUCTION INCLUDING ANIMAL
FEEDING OPERATIONS, BY PROVIDING FOR THE REGULATION OF
OPEN FEEDLOT OPERATIONS, AND AGRICULTURAL PRODUCTION
LIENS, AND PROVIDING FOR PENALTIES.

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

DIVISION I
OPEN FEEDLOT OPERATIONS
SUBCHAPTER I
GENERAL PROVISIONS

Section 1. NEW SECTION. 459A.101 TITLE.

This chapter shall be known and may be cited as the "Animal
Agriculture Compliance Act for Open Feedlot Operations".

Sec. 2. NEW SECTION. 459A.102 DEFINITIONS.

1. "Alternative technology system" or "alternative system"
means a system for open feedlot effluent control as provided
in section 459A.303.
2. "Animal" means the same as defined in section 459.102.
3. "Animal feeding operation" means the same as defined in
section 459.102.
4. "Animal unit" means the same as defined in section
459.102.
5. "Animal unit capacity" means a measurement used to
determine the maximum number of animal units that may be
maintained as part of an open feedlot operation.

6. "ASTM international" means the American society for
testing and materials international.

7. "Commission" means the environmental protection
commission created pursuant to section 455A.6.

8. "Department" means the department of natural resources.

9. "Document" means any form required to be processed by
the department under this chapter, including but not limited
to applications for permits or related materials as provided
in section 459A.205, soils and hydrogeologic reports as
provided in section 459A.206, construction certifications as
provided in section 459A.207, nutrient management plans as
provided in section 459A.208, and notices required under this
chapter.

10. "Nutrient management plan" or "plan" means a plan
which provides for the management of open feedlot effluent,
including the application of effluent as provided in section
459A.208.

11. "Open feedlot" means a lot, yard, corral, building, or
other area used to house animals in conjunction with an open
feedlot operation.

12. "Open feedlot effluent" or "effluent" means a
combination of manure, precipitation-induced runoff, or other
runoff from an open feedlot before its settleable solids have
been removed.

13. "Open feedlot operation" or "operation" means an
unroofed or partially roofed animal feeding operation if crop,
vegetation, or forage growth or residue cover is not
maintained as part of the animal feeding operation during the
period that animals are confined in the animal feeding
operation.

14. "Open feedlot operation structure" means an open
feedlot, settled open feedlot effluent basin, a solids
settling facility, or an alternative technology system. "Open
feedlot operation structure" does not include a manure storage
structure as defined in section 459.102.

15. "Operating permit" means a permit which regulates the operation of an open feedlot operation as issued by the department or the United States environmental protection agency, including as provided in state law or pursuant to the federal Water Pollution Control Act, Title 33, U.S.C., ch. 126, as amended, and 40 C.F.R., pt. 124.

16. "Research college" means an accredited public or private college or university, including but not limited to a university under the control of the state board of regents as provided in chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

17. "Settled open feedlot effluent" or "settled effluent" means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed.

18. "Settleable solids" or "solids" means that portion of open feedlot effluent that meets all of the following requirements:

- a. The solids do not flow perceptibly under pressure.
- b. The solids are not capable of being transported through a mechanical pumping device designed to move a liquid.
- c. The constituent molecules of the solids do not flow freely among themselves but do show the tendency to separate under stress.

19. "Settled open feedlot effluent basin" or "basin" means an impoundment which is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent.

20. "Solids settling facility" means a basin, terrace, diversion, or other structure or solids removal method which is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A "solids settling facility" does not include a

basin, terrace, diversion, or other structure or solids removal method which retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

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

22. "Waters of the United States" means the same as defined in 40 C.F.R., pt. 122, § 2, as that section exists on the effective date of this Act.

Sec. 3. NEW SECTION. 459A.103 SPECIAL TERMS.

For purposes of this chapter, all of the following shall apply:

1. a. Two or more open feedlot operations under common ownership or common management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal.

b. For purposes of determining whether two or more open feedlot operations are adjacent, all of the following shall apply:

(1) At least one open feedlot operation structure must be constructed on or after July 17, 2002.

(2) An open feedlot operation structure which is part of one open feedlot operation is separated by less than one thousand two hundred fifty feet from an open feedlot operation structure which is part of the other open feedlot operation.

c. For purposes of determining whether two or more open feedlot operations are under common ownership, a person must hold an interest in each of the open feedlot operations as any of the following:

(1) A sole proprietor.

(2) A joint tenant or tenant in common.

(3) A holder of a majority equity interest in a business association as defined in section 202B.102, including but not limited to as a shareholder, partner, member, or beneficiary.

An interest in the open feedlot operation under subparagraph (2) or (3) which is held directly or indirectly

by the person's spouse or dependent child shall be attributed to the person.

d. For purposes of determining whether two or more open feedlot operations are under common management, a person must have significant control of the management of the day-to-day operations of each of the open feedlot operations. Common management does not include control over a contract livestock facility by a contractor, as defined in section 202.1.

2. An open feedlot operation structure is "constructed" when any of the following occurs:

a. Excavation commences for a proposed open feedlot operation structure or proposed expansion of an existing open feedlot operation structure.

b. Forms for concrete are installed for a proposed open feedlot operation structure or the proposed expansion of an existing open feedlot operation structure.

c. Piping for the movement of open feedlot effluent is installed within or between open feedlot operation structures as proposed or proposed to be expanded.

3. In calculating the animal unit capacity of an open feedlot operation, the animal unit capacity shall not include the animal unit capacity of any confinement feeding operation building as defined in section 459.102, which is part of the open feedlot operation.

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

5. All distances between locations or objects provided in this chapter shall be measured in feet from their closest points.

6. The regulation of open feedlot effluent shall be construed as also regulating settled open feedlot effluent and solids.

7. "Seasonal high-water table" means the seasonal high-water table as determined by a professional engineer pursuant to the following requirements:

a. The seasonal high-water table shall be determined by evaluating soil profile characteristics such as color and mottling from soil corings, soil test pits, or other soil profile evaluation methods, water level data from soil corings or other sources, and other pertinent information.

b. If a drainage tile line to artificially lower the seasonal high-water table is installed as required by this section, the level to which the seasonal high-water table will be lowered will be the seasonal high-water table.

Sec. 4. NEW SECTION. 459A.104 GENERAL AUTHORITY -- COMMISSION AND DEPARTMENT -- PURPOSE -- COMPLIANCE.

1. The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of open feedlot operations, including related open feedlot operation structures.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to open feedlot 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 licenses, certifications, permits, or nutrient management plans required under this chapter.

3. The purpose of this chapter is to provide requirements relating to the construction, including the expansion, and operation of open feedlot operations, and the control of open feedlot effluent, which shall be construed to supplement applicable provisions of chapter 459. If there is a conflict between the provisions of this chapter and chapter 459, the provisions of this chapter shall prevail.

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

1. Except as provided in subsection 2, the requirements of this chapter which regulate open feedlot operations, including

rules adopted by the department pursuant to section 459A.104, shall not apply to research activities and experiments performed under the authority and regulations of a research college, if the research activities and experiments relate to an open feedlot operation structure or the disposal or treatment of effluent originating from an open feedlot operation.

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

SUBCHAPTER II
DOCUMENTATION

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

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

2. a. The department shall provide for procedures for the receipt, filing, processing, and return of documents in an electronic format in the same manner as provided in section 459.302. 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 documents required under this subchapter using electronic systems in the same manner as required in section 459.302.

3. a. The department shall approve or disapprove an application for a construction permit as provided in section 459A.205 within sixty days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, 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 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 department. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant 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.

b. A nutrient management plan as provided in section 459A.208 shall be approved or disapproved as part of a construction permit application pursuant to section 459A.205. If the nutrient management plan is not part of an application for a construction permit, the nutrient management plan shall be approved or disapproved within sixty days from the date that the department receives the nutrient management plan.

Sec. 7. NEW SECTION. 459A.205 PERMIT REQUIREMENTS -- SETTLED OPEN FEEDLOT EFFLUENT BASINS AND ALTERNATIVE TECHNOLOGY SYSTEMS.

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

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

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

a. For an open feedlot operation submitting an application for a construction permit on or after September 30, 2006, a nutrient management plan as provided in section 459A.208.

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

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

a. The construction, including expansion, of a settled open feedlot effluent basin or alternative technology system if the open feedlot operation is required to be issued an operating permit.

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

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

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

(3) The open feedlot operation was discontinued for twenty-four months or more and the animal unit capacity would be one thousand animal units or more.

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

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

a. The name of the owner of the open feedlot operation and the name of the open feedlot operation, including a mailing address and telephone number for the owner and the operation.

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

c. The location of the open feedlot operation.

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

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

(2) The construction or expansion of a settled open feedlot effluent basin or alternative technology system for an existing open feedlot operation which is expanding.

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

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

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

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

h. Information, including but not limited to maps, drawings, and aerial photos that clearly show the location of all of the following:

(1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or alternative technology systems, clean water diversions, and other pertinent features or structures.

(2) Any other open feedlot operation under common ownership or common management and located within one thousand two hundred fifty feet of the open feedlot operation.

(3) A public water supply system as defined in section 455B.171 or a drinking water well which is located within a distance from the operation as prescribed by rules adopted by the department.

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

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

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

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

7. a. Except as provided in paragraph "b", a construction permit for an open feedlot operation expires as follows:

(1) If construction does not begin within one year after the date the construction permit is issued.

(2) If construction is not completed within three years after the date the construction permit is issued.

b. If requested, the department may grant an extension of time to begin or complete construction upon a showing of just cause by the construction permit applicant.

8. The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or disapprove a request to extend the time to begin or complete construction as provided in this section, if it determines that the operation of the open feedlot operation constitutes a clear, present, and impending danger to public health or the environment.

9. This section does not require a person to be issued a permit to construct a settled open feedlot effluent basin or alternative technology system if the basin or system is part of an open feedlot operation which is owned by a research college conducting research activities as provided in section 459A.105.

Sec. 8. NEW SECTION. 459A.206 SETTLED OPEN FEEDLOT EFFLUENT BASINS -- SOILS AND HYDROGEOLOGIC REPORT.

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

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

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

2. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D-2487-92 or D-2488-90.

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

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

b. At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soil corings shall be taken to a minimum depth of ten feet below the bottom elevation of the basin.

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

Sec. 9. NEW SECTION. 459A.207 CONSTRUCTION CERTIFICATION.

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

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

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

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

Sec. 10. NEW SECTION. 459A.208 NUTRIENT MANAGEMENT PLAN -- REQUIREMENTS.

1. The owner of an open feedlot operation which has an animal unit capacity of one thousand animal units or more or which is required to be issued an operating permit shall develop and implement a nutrient management plan meeting the requirements of this section by December 31, 2006.

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

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

4. The department shall not approve an application for a permit to construct a settled open feedlot effluent basin unless the owner of the open feedlot operation applying for approval submits a nutrient management plan together with the application for the construction permit as provided in section 459A.205. The owner shall also submit proof that the owner has published a notice for public comment as provided in this section. The department shall approve or disapprove the nutrient management plan as provided in section 459A.201. A nutrient management plan using an alternative technology system shall not include requirements for settled effluent that enters the alternative technology system.

5. Prior to approving or disapproving a nutrient management plan as required in this section, the department may receive comments exclusively to determine whether the nutrient management plan is submitted according to procedures required by the department and that the nutrient management plan complies with the provisions of this chapter.

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where open feedlot effluent, which originates from the open feedlot operation, may be applied under the terms and conditions of the nutrient management plan.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the nutrient management plan.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the nutrient management plan may be examined as provided in section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subsection. If such a request is received, the public hearing must be conducted within thirty days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subsection by accessing the department's internet website. The notice for public comment shall include the address of the department's internet website as required by the department.

c. The department shall maintain an internet website where persons may access information relevant to making comments

under this subsection. The department may include an electronic version of the nutrient management plan as provided in section 459A.201. The department shall include information regarding the time when, the place where, and the manner in which persons may participate in a public hearing as provided in this subsection.

6. A nutrient management plan must be authenticated by the owner of the animal feeding operation as required by the department in accordance with section 459A.201.

7. A nutrient management plan shall include all of the following:

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

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

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

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

(1) Nutrient levels of the open feedlot effluent.

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

c. If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the open feedlot effluent may be applied.

d. An estimate of the open feedlot effluent volume or weight produced by the open feedlot operation.

e. Information which shows all of the following:

(1) There is adequate storage for open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) The proper management of animal mortalities to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on-site are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

8. If an open feedlot operation uses an alternative technology system as provided in section 459A.303, the nutrient management plan is not required to provide for settled effluent that enters the alternative technology system.

9. The owner of an open feedlot operation who is required to develop and implement a nutrient management plan shall maintain a current nutrient management plan and maintain records sufficient to demonstrate compliance with the nutrient management plan.

SUBCHAPTER III

DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN FEEDLOT EFFLUENT BASINS -- CONSTRUCTION DESIGN STANDARDS -- RULES.

If the department requires that a settled open feedlot effluent basin be constructed according to construction design standards, regardless of whether the department requires the owner to be issued a construction permit under section 459A.205, any construction design standards for the basin shall be established by rules as provided in chapter 17A that

exclusively account for special design characteristics of open feedlot operations and related basins, including but not limited to the dilute composition of settled open feedlot effluent as collected and stored in the basins.

Sec. 12. NEW SECTION. 459A.302 SETTLED OPEN FEEDLOT EFFLUENT BASINS -- CONSTRUCTION REQUIREMENTS.

A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to section 459A.205 shall meet all of the following requirements:

1. a. Prior to constructing a settled open feedlot effluent basin, the site for the basin shall be investigated for a drainage tile line by the owner of the open feedlot operation. The investigation shall be made by digging a core trench to a depth of at least six feet deep from ground level at the projected center of the berm of the basin. If a drainage tile line is discovered, one of the following solutions shall be implemented:

(1) The drainage tile line shall be rerouted around the perimeter of the basin at a distance of least twenty-five feet horizontally separated from the outside edge of the berm of the basin. For an area of the basin where there is not a berm, the drainage tile line shall be rerouted at least fifty feet horizontally separated from the edge of the basin.

(2) The drainage tile line shall be replaced with a nonperforated tile line under the basin floor. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet between the nonperforated tile line and the basin floor.

b. A written record of the investigation shall be submitted as part of the construction certification required under section 459A.207.

2. a. The settled open feedlot effluent basin shall be constructed with a minimum separation of two feet between the top of the liner of the basin and the seasonal high-water table.

b. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However the following shall apply:

(1) Except as provided in subparagraph (2), an open feedlot operation shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before the effective date of this Act, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

3. Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin, if all of the following conditions are satisfied:

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

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

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

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

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

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

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

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

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

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

Sec. 13. NEW SECTION. 459A.303 ALTERNATIVE TECHNOLOGY SYSTEMS.

In lieu of using a settled open feedlot effluent basin as provided in section 459A.302 to meet the open feedlot effluent control requirements of section 459A.401, an open feedlot

operation may use an alternative technology system for open feedlot effluent control.

1. The alternative technology system must provide an equivalent level of open feedlot effluent control as would be achieved by using a settled open feedlot effluent basin.

2. The department shall adopt rules establishing requirements for the construction and operation of alternative technology systems.

SUBCHAPTER IV

OPEN FEEDLOT EFFLUENT CONTROL

Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT EFFLUENT CONTROL METHODS.

An open feedlot operation shall provide for the management of open feedlot effluent by using an open feedlot effluent control method as follows:

1. All settleable solids from open feedlot effluent shall be removed prior to discharge into the waters of the state.

a. The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into the waters of the state.

b. The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than point five feet per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settled solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility which receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

2. This subsection shall apply to an open feedlot operation which is required to be issued an operating permit.

a. An open feedlot operation may discharge open feedlot effluent into any waters of the United States due to a precipitation event, if any of the following apply:

(1) For an open feedlot operation that houses cattle, other than veal cattle, the operation is designed, constructed, operated, and maintained to not discharge open feedlot effluent resulting from a twenty-five-year, twenty-four-hour precipitation event into any waters of the United States.

(2) For an open feedlot operation that houses veal calves, swine, chickens, or turkeys, the operation is designed, constructed, operated, and maintained to not discharge open feedlot effluent resulting from a one-hundred-year, twenty-four-hour precipitation event into any waters of the United States.

b. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of an open feedlot effluent control system as provided in rules adopted by the department, the operation shall be deemed to be in compliance with this section, unless a discharge from the operation causes a violation of state water quality standards as provided in chapter 455B, division III.

3. The following shall apply to an open feedlot operation which has an animal unit capacity of one thousand animal units or more:

a. (1) The open feedlot operation shall not discharge open feedlot effluent from an open feedlot operation structure into any waters of the United States, unless the discharge is pursuant to an operating permit.

(2) The open feedlot operation shall not be required to be issued an operating permit if the operation does not discharge open feedlot effluent into any waters of the United States.

b. The control of open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a

solids settling facility, settled open feedlot effluent basin, alternative technology system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or alternative technology system.

Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT EFFLUENT CONTROL -- ALTERNATIVE CONTROL PRACTICES.

If because of topography or other factors related to the site of an open feedlot operation it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in section 459A.401, the department shall allow the use of other open feedlot effluent control practices if those practices will provide an equivalent level of open feedlot effluent control that would be achieved by using an open feedlot effluent control method pursuant to section 459A.401.

Sec. 16. NEW SECTION. 459A.410 EFFLUENT APPLICATION REQUIREMENTS.

Open feedlot effluent shall be applied in a manner which does not cause surface water or groundwater pollution. Application in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, and guidelines adopted pursuant to this chapter, shall be deemed as compliance with this section.

Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF OPERATIONS.

The owner of an open feedlot operation who discontinues the use of the operation shall remove all open feedlot effluent from related open feedlot operation structures used to store open feedlot effluent, as soon as practical but not later than six months following the date the open feedlot operation is discontinued.

SUBCHAPTER V
ENFORCEMENT

Sec. 18. NEW SECTION. 459A.501 GENERAL.

The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I, unless otherwise provided in this chapter.

Sec. 19. NEW SECTION. 459A.502 VIOLATIONS -- CIVIL PENALTY.

A person who violates this chapter 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 and interest on a civil penalty shall be deposited in the animal agriculture compliance fund created in section 459.401. A person shall not be subject to a penalty under this section and a penalty under section 459.603 for the same violation.

DIVISION II
CONFORMING AMENDMENTS

Sec. 20. Section 455B.103, subsections 3 and 4, Code 2005, are amended to read as follows:

3. Contract, with the approval of the commission, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter, and chapter 459, ~~subchapters-II-and-III~~ and chapter 459A. If the director finds that public agencies of this state cannot provide the laboratory, scientific field measurement and environmental evaluation services required by the department, the director may contract, with the approval of the commission, with any other public or private persons or agencies for such services or for scientific or technical services required to carry out the programs and services assigned to the department.

4. Conduct investigations of complaints received directly or referred by the commission created in section 455A.6 or

other investigations deemed necessary. While conducting an investigation, the director may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter, or chapter 459, ~~subchapters II and III~~, chapter 459A, or the rules or standards adopted under this chapter, or chapter 459, ~~subchapters II and III~~ or chapter 459A. However, the owner or person in charge shall be notified.

Sec. 21. Section 455B.103A, subsection 1, unnumbered paragraph 1, Code 2005, is amended to read as follows:

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

Sec. 22. Section 455B.103A, subsection 5, Code 2005, is amended to read as follows:

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

Sec. 23. Section 455B.105, subsections 3, 6, and 8, Code 2005, are amended to read as follows:

3. Adopt, modify, or repeal rules necessary to implement this chapter, and chapter 459, and chapter 459A, and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal

program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter, and chapter 459, and chapter 459A. Rules adopted by the executive committee before January 1, 1981, shall remain effective until modified or rescinded by action of the commission.

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

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

Sec. 24. Section 455B.105, subsection 11, paragraph a, unnumbered paragraph 1, Code 2005, is amended to read as follows:

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

Sec. 25. Section 455B.109, subsection 4, Code 2005, is amended to read as follows:

4. a. Except as provided in paragraph "b", civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state. ~~However, civil~~

b. The following provisions shall apply to animal feeding operations:

(1) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving animal feeding operations under chapter 459, subchapter II, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

(2) Civil penalties assessed by the department and interest on the penalties arising out of violations committed by animal feeding operations under chapter 459, subchapter III, which may be assessed pursuant to section 455B.191 or 459.604, shall also be deposited in the animal agriculture compliance fund.

(3) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving open feedlot operations under chapter 459A, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

Sec. 26. Section 455B.111, subsection 1, paragraphs a and b, Code 2005, are amended to read as follows:

a. A person, including the state of Iowa, for violating any provision of this chapter; or chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or a rule adopted pursuant to this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A.

b. The director, the commission, or any official or employee of the department where there is an alleged failure to perform any act or duty under this chapter; or chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or a rule adopted pursuant to this chapter; or chapter 459, subchapters

I, II, III, IV, and VI; or chapter 459A, which is not a discretionary act or duty.

Sec. 27. Section 455B.111, subsection 5, Code 2005, is amended to read as follows:

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

Sec. 28. Section 455B.112, Code 2005, is amended to read as follows:

455B.112 ACTIONS BY ATTORNEY GENERAL.

In addition to the duty to commence legal proceedings at the request of the director or commission under this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A the attorney general may institute civil or criminal proceedings, including an action for injunction, to enforce the provisions of this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A including orders or permits issued or rules adopted under this chapter; or chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A.

Sec. 29. Section 455B.113, subsection 1, Code 2005, is amended to read as follows:

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

Sec. 30. Section 455B.115, Code 2005, is amended to read as follows:

455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

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

Sec. 31. Section 455B.179, Code 2005, is amended to read as follows:

455B.179 TRADE SECRETS PROTECTED.

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

Sec. 32. Section 455B.182, Code 2005, is amended to read as follows:

455B.182 FAILURE CONSTITUTES CONTEMPT.

Failure to obey any order issued by the department with reference to a violation of this part of this division; or chapter 459, subchapter III; or chapter 459A; or any rule promulgated or permit issued pursuant thereto shall constitute prima facie evidence of contempt. In such event the department may certify to the district court of the county in which such alleged disobedience occurred the fact of such failure. The district court after notice, as prescribed by the court, to the parties in interest shall then proceed to hear the matter and if it finds that the order was lawful and reasonable it shall order the party to comply with the order. If the person fails to comply with the court order, that person shall be guilty of contempt and shall be fined not to exceed five hundred dollars for each day that the person fails to comply with the court order. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of any waters of the state or related to public water supply systems and a conviction under this section shall not be a bar to prosecution under any other penal statute.

Sec. 33. Section 455B.185, Code 2005, is amended to read as follows:

455B.185 DATA FROM DEPARTMENTS.

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

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

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

Sec. 35. Section 459.102, subsections 37, 45, and 46, Code 2005, are amended by striking the subsections.

Sec. 36. Section 459.401, subsection 2, paragraph a, subparagraph (5), Code 2005, is amended to read as follows:

(5) 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 459.602, and 459.603, and 459A.502.

Sec. 37. Section 459.309, Code 2005, is repealed.

DIVISION III

AGRICULTURAL PRODUCTION LIENS

Sec. 38. Section 579A.2, subsection 3, paragraph b, Code 2005, is amended to read as follows:

b. The lien terminates one year after the cattle have left the custom cattle feedlot. ~~Section 554.9515 shall not apply to a financing statement perfecting the lien.~~ The lien may be terminated by the custom cattle feedlot operator who files a termination statement as provided in chapter 554, article 9.

Sec. 39. Section 579B.4, subsection 1, paragraph b, Code 2005, is amended to read as follows:

b. For a lien arising out of producing a crop, the lien becomes effective the day that the crop is first planted. In order to perfect the lien, the contract producer must file a financing statement in the office of the secretary of state as provided in section 554.9308. The contract producer must file a financing statement for the crop within forty-five days after the crop is first planted. The lien terminates one year after the crop is no longer under the authority of the contract producer. For purposes of this section, a crop is no longer under the authority of the contract producer when the crop or a warehouse receipt issued by a warehouse operator

licensed under chapter 203C for grain from the crop is no longer under the custody or control of the contract producer. ~~Section 554.9515 shall not apply to a financing statement perfecting the lien.~~ The lien may be terminated by the contract producer who files a termination statement as provided in chapter 554, article 9.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 805, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 5/23, 2005

THOMAS J. VILSACK
Governor