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(SUCCESSOR TO SSB 1246)
(COMPANION TO 2404HV BY
COMMITTEE ON AGRICULTURE)

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

A BILL FOR

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

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

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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.

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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.

34 DIVISION II
35 CONFORMING AMENDMENTS

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

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

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

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

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

35 Sec. 22. Section 455B.103A, subsection 5, Code 2005, is

1 amended to read as follows:

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

8 Sec. 23. Section 455B.105, subsections 3, 6, and 8, Code
9 2005, are amended to read as follows:

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

34 6. Approve all contracts and agreements under this
35 chapter, and chapter 459, and chapter 459A between the

1 department and other public or private persons or agencies.

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

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

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

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

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

27 b. The following provisions shall apply to animal feeding
28 operations:

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

34 (2) Civil penalties assessed by the department and
35 interest on the penalties arising out of violations committed

1 by animal feeding operations under chapter 459, subchapter
2 III, which may be assessed pursuant to section 455B.191 or
3 459.604, shall also be deposited in the animal agriculture
4 compliance fund.

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

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

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

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

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

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

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

35 455B.112 ACTIONS BY ATTORNEY GENERAL.

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

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

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

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

23 455B.115 ANALYSIS BY CERTIFIED LABORATORY REQUIRED.

24 Laboratory analysis of samples as required by this chapter;
25 ~~or~~ chapter 459, subchapters I, II, III, IV, and VI~~7~~; or
26 chapter 459A; or by rules adopted, or by permits or orders
27 issued pursuant to this chapter; ~~or~~ chapter 459, subchapters
28 I, II, III, IV, and VI~~7~~; or chapter 459A shall be conducted by
29 a laboratory certified by the director as having the necessary
30 competence, equipment, and capabilities to perform the
31 analysis. Analytical results from laboratories not
32 certificated shall not be accepted by the director.

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

35 455B.179 TRADE SECRETS PROTECTED.

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

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

22 455B.182 FAILURE CONSTITUTES CONTEMPT.

23 Failure to obey any order issued by the department with
24 reference to a violation of this part of this division; or
25 chapter 459, subchapter III; or chapter 459A; or any rule
26 promulgated or permit issued pursuant thereto shall constitute
27 prima facie evidence of contempt. In such event the department
28 may certify to the district court of the county in which such
29 alleged disobedience occurred the fact of such failure. The
30 district court after notice, as prescribed by the court, to
31 the parties in interest shall then proceed to hear the matter
32 and if it finds that the order was lawful and reasonable it
33 shall order the party to comply with the order. If the person
34 fails to comply with the court order, that person shall be
35 guilty of contempt and shall be fined not to exceed five

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

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

11 455B.185 DATA FROM DEPARTMENTS.

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

24 Sec. 34. Section 459.102, subsection 2, paragraph a, Code
25 2005, is amended to read as follows:

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

29 Sec. 35. Section 459.102, subsections 37, 45, and 46, Code
30 2005, are amended by striking the subsections.

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

33 (5) The collection of civil penalties assessed by the
34 department and interest on civil penalties, arising out of
35 violations involving animal feeding operations as provided in

1 sections 459.602, and 459.603, and 459A.502.

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

3 EXPLANATION

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

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

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

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

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

1 solids.

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

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

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

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

31 The division requires the department to adopt and
32 promulgate forms and to provide for procedures for the
33 receipt, filing, processing, and return of documents in an
34 electronic format. It also requires the department to approve
35 or disapprove an application for a construction permit within

1 60 days after receiving the permit application. There are
2 provisions which allow an applicant or the department to
3 provide for a limited continuance. (See also Code section
4 459.304.)

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

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

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

31 The division provides for design standards for a basin
32 which is required to be issued a construction permit. It
33 requires that the applicant submit a soils and hydrogeologic
34 report including soil corings. It requires that the basin be
35 constructed with a minimum separation between the top of the

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

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

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

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

34 The division provides that the owner of an open feedlot
35 operation who discontinues the use of the operation must

1 remove all open feedlot effluent from related open feedlot
2 operation structures used to store open feedlot effluent
3 within six months. (See also Code section 459.311.)

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

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

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

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S-3172

1 Amend Senate File 372 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. "ASTM international" means the American society
27 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

S-3172

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 not include the animal unit capacity of any
21 confinement feeding operation building as defined in
22 section 459.102, which is part of the open feedlot
23 operation.

24 4. An open feedlot operation structure is
25 abandoned if the open feedlot operation structure has
26 been razed, removed from the site of an open feedlot
27 operation, filled in with earth, or converted to uses
28 other than an open feedlot operation structure so that
29 it cannot be used as an open feedlot operation
30 structure without significant reconstruction.

31 5. All distances between locations or objects
32 provided in this chapter shall be measured in feet
33 from their closest points.

34 6. The regulation of open feedlot effluent shall
35 be construed as also regulating settled open feedlot
36 effluent and solids.

37 7. "Seasonal high-water table" means the seasonal
38 high-water table as determined by a professional
39 engineer pursuant to the following requirements:

40 a. The seasonal high-water table shall be
41 determined by evaluating soil profile characteristics
42 such as color and mottling from soil corings, soil
43 test pits, or other soil profile evaluation methods,
44 water level data from soil corings or other sources,
45 and other pertinent information.

46 b. If a drainage tile line to artificially lower
47 the seasonal high-water table is installed as required
48 by this section, the level to which the seasonal high-
49 water table will be lowered will be the seasonal high-
50 water table.

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

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

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

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

25 Sec. 5. NEW SECTION. 459A.105 EXCEPTION TO
26 REGULATION.

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

37 2. The requirements of section 459A.410, including
38 rules adopted by the department under that section,
39 apply to research activities and experiments performed
40 under the authority and regulations of a research
41 college.

42 SUBCHAPTER II
43 DOCUMENTATION

44 Sec. 6. NEW SECTION. 459A.201 DOCUMENT
45 PROCESSING REQUIREMENTS.

46 1. The department shall adopt and promulgate forms
47 required to be completed in order to comply with this
48 chapter, including forms for documents that the
49 department shall make available on the internet in the
50 same manner as provided in section 459.302.

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

8 b. The department shall to every extent feasible
9 provide for the processing of documents required under
10 this subchapter using electronic systems in the same
11 manner as required in section 459.302.

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

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

42 Sec. 7. NEW SECTION. 459A.205 PERMIT
43 REQUIREMENTS -- SETTLED OPEN FEEDLOT EFFLUENT BASINS
44 AND ALTERNATIVE TECHNOLOGY SYSTEMS.

45 1. The department shall approve or disapprove
46 applications for permits for the construction,
47 including the expansion, of settled open feedlot
48 effluent basins and alternative technology systems, as
49 provided in this chapter. The department's decision
50 to approve or disapprove a permit for the construction

1 of a basin or alternative system shall be based on
2 whether the application is submitted according to
3 procedures and standards required by this chapter. A
4 person shall not begin construction of a basin or
5 alternative system requiring a permit under this
6 section, unless the department first approves the
7 person's application and issues to the person a
8 construction permit.

9 2. The department shall issue a construction
10 permit upon approval of an application. The
11 department shall approve the application regardless of
12 whether the applicant is required to be issued a
13 construction permit.

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

17 a. A nutrient management plan as provided in
18 section 459A.208.

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

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

29 a. The construction, including expansion, of a
30 settled open feedlot effluent basin or alternative
31 technology system if the open feedlot operation is
32 required to be issued an operating permit.

33 b. The department has previously issued the open
34 feedlot operation a construction permit and any of the
35 following applies:

36 (1) The animal unit capacity of the open feedlot
37 operation will be increased to more than the animal
38 unit capacity approved by the department in the
39 previous construction permit.

40 (2) The volume of open feedlot effluent stored at
41 the open feedlot operation would be more than the
42 volume approved by the department in the previous
43 construction permit.

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

47 5. Prior to submitting an application for a
48 construction permit the applicant may submit a
49 conceptual design and site investigation report to the
50 department for review and comment.

- 1 6. The application for the construction permit
- 2 shall include all of the following:
- 3 a. The name of the owner of the open feedlot
- 4 operation and the name of the open feedlot operation,
- 5 including a mailing address and telephone number for
- 6 the owner and the operation.
- 7 b. The name of the contact person for the open
- 8 feedlot operation, including the person's mailing
- 9 address and telephone number.
- 10 c. The location of the open feedlot operation.
- 11 d. A statement providing that the application is
- 12 for any of the following:
- 13 (1) The construction or expansion of a settled
- 14 open feedlot effluent basin or alternative technology
- 15 system for an existing open feedlot operation which is
- 16 not expanding.
- 17 (2) 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 expanding.
- 21 (3) The construction of a settled open feedlot
- 22 effluent basin or alternative technology system for a
- 23 proposed new open feedlot operation.
- 24 e. The animal unit capacity for each animal
- 25 species in the open feedlot operation before and after
- 26 the proposed construction.
- 27 f. An engineering report, construction plans, and
- 28 specifications prepared by a licensed professional
- 29 engineer or by the United States natural resource
- 30 conservation service, for the settled open feedlot
- 31 operation effluent basin or alternative technology
- 32 system.
- 33 g. A soils and hydrogeologic report of the site,
- 34 as required in section 459A.206.
- 35 h. Information, including but not limited to maps,
- 36 drawings, and aerial photos that clearly show the
- 37 location of all of the following:
- 38 (1) The open feedlot operation and all existing
- 39 and proposed settled open feedlot effluent basins or
- 40 alternative technology systems, clean water
- 41 diversions, and other pertinent features or
- 42 structures.
- 43 (2) Any other open feedlot operation under common
- 44 ownership or common management and located within one
- 45 thousand two hundred fifty feet of the open feedlot
- 46 operation.
- 47 (3) A public water supply system as defined in
- 48 section 455B.171 or a drinking water well which is
- 49 located within a distance from the operation as
- 50 prescribed by rules adopted by the department.

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

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

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

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

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

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

25 (2) If construction is not completed within three
26 years after the date the construction permit is
27 issued.

28 b. If requested, the department may grant an
29 extension of time to begin or complete construction
30 upon a showing of just cause by the construction
31 permit applicant.

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

40 9. This section does not require a person to be
41 issued a permit to construct a settled open feedlot
42 effluent basin or alternative technology system if the
43 basin or system is part of an open feedlot operation
44 which is owned by a research college conducting
45 research activities as provided in section 459A.105.

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

49 A settled open feedlot effluent basin required to
50 be constructed pursuant to a construction permit

1 issued pursuant to section 459A.205 shall meet design
2 standards as required by a soils and hydrogeologic
3 report.

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

6 The report shall include all of the following:

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

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

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

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

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

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

35 Sec. 9. NEW SECTION. 459A.207 CONSTRUCTION
36 CERTIFICATION.

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

44 a. The basin was constructed in accordance with
45 the design plans submitted to the department as part
46 of an application for a construction permit pursuant
47 to section 459A.205. If the actual construction
48 deviates from the approved design plans, the
49 construction certification shall identify all changes
50 and certify that the changes were consistent with all

1 applicable standards of this section.

2 b. The basin was inspected by the licensed
3 professional engineer after completion of construction
4 and before commencement of operation.

5 2. A written record of an investigation for
6 drainage tile lines, including the findings of the
7 investigation and actions taken to comply with
8 subchapter III, shall be submitted as part of the
9 construction certification.

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

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

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

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

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

46 5. Prior to approving or disapproving a nutrient
47 management plan as required in this section, the
48 department may receive comments exclusively to
49 determine whether the nutrient management plan is
50 submitted according to procedures required by the

1 department and that the nutrient management plan
2 complies with the provisions of this chapter.

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

11 b. The notice for public comment shall include all
12 of the following:

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

15 (2) The name of the township where the open
16 feedlot operation is or is proposed to be located and
17 the name of the township where open feedlot effluent
18 originating from the open feedlot operation may be
19 applied.

20 (3) The animal unit capacity of the open feedlot
21 operation.

22 (4) The time when and the place where the nutrient
23 management plan may be examined as provided in section
24 22.2.

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

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

42 c. The department shall maintain an internet
43 website where persons may access information relevant
44 to making comments under this subsection. The
45 department may include an electronic version of the
46 nutrient management plan as provided in section
47 459A.201. The department shall include information
48 regarding the time when, the place where, and the
49 manner in which persons may participate in a public
50 hearing as provided in this subsection.

1 6. A nutrient management plan must be
2 authenticated by the owner of the animal feeding
3 operation as required by the department in accordance
4 with section 459A.201.

5 7. A nutrient management plan shall include all of
6 the following:

7 a. Restrictions on the application of open feedlot
8 effluent based on all of the following:

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

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

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

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

21 (2) Application methods, the timing of the
22 application, and the location of the land where the
23 application occurs.

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

31 d. An estimate of the open feedlot effluent volume
32 or weight produced by the open feedlot operation.

33 e. Information which shows all of the following:

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

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

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

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

48 (5) Chemicals or other contaminants handled on-
49 site are not disposed of in an open feedlot operation
50 structure or a treatment system that is not

1 specifically designed to treat such chemicals or
2 contaminants.

3 8. If an open feedlot operation uses an
4 alternative technology system as provided in section
5 459A.303, the nutrient management plan is not required
6 to provide for settled effluent that enters the
7 alternative technology system.

8 9. The owner of an open feedlot operation who is
9 required to develop and implement a nutrient
10 management plan shall maintain a current nutrient
11 management plan and maintain records sufficient to
12 demonstrate compliance with the nutrient management
13 plan.

14 SUBCHAPTER III

15 DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

16 Sec. 11. NEW SECTION. 459A.301 SETTLED OPEN
17 FEEDLOT EFFLUENT BASINS -- CONSTRUCTION DESIGN
18 STANDARDS -- RULES.

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

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

33 A settled open feedlot effluent basin required to
34 be constructed pursuant to a construction permit
35 issued pursuant to section 459A.205 shall meet all of
36 the following requirements:

37 1. a. Prior to constructing a settled open
38 feedlot effluent basin, the site for the basin shall
39 be investigated for a drainage tile line by the owner
40 of the open feedlot operation. The investigation
41 shall be made by digging a core trench to a depth of
42 at least six feet deep from ground level at the
43 projected center of the berm of the basin. If a
44 drainage tile line is discovered, one of the following
45 solutions shall be implemented:

46 (1) The drainage tile line shall be rerouted
47 around the perimeter of the basin at a distance of
48 least twenty-five feet horizontally separated from the
49 basin.

50 (2) The drainage tile line shall be replaced with

1 a nonperforated tile line under the basin floor. The
2 nonperforated tile line shall not be a drainage tile
3 line. There must be a minimum of three feet between
4 the nonperforated tile line and the basin floor.

5 b. A written record of the investigation shall be
6 submitted as part of the construction certification
7 required under section 459A.207.

8 2. a. The settled open feedlot effluent basin
9 shall be constructed with a minimum separation of two
10 feet between the top of the liner of the basin and the
11 seasonal high-water table.

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

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

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

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

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

40 5. A settled open feedlot effluent basin
41 constructed on a floodplain or within a floodway of a
42 river or stream shall comply with rules of the
43 department.

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

46 a. The liner shall comply with any of the
47 following permeability standards:

48 (1) The liner shall be constructed to have a
49 percolation rate that shall not exceed one-sixteenth
50 inch per day at the design depth of the basin as

1 determined by percolation tests conducted by the
2 professional engineer. If a clay soil liner is used,
3 the liner shall be constructed with a minimum
4 thickness of twelve inches or the minimum thickness
5 necessary to comply with the percolation rate in this
6 section, whichever is greater.

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

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

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

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

26 In lieu of using a settled open feedlot effluent
27 basin as provided in section 459A.302 to meet the open
28 feedlot effluent control requirements of section
29 459A.401, an open feedlot operation may use an
30 alternative technology system for open feedlot
31 effluent control.

32 1. The alternative technology system must provide
33 an equivalent level of open feedlot effluent control
34 as would be achieved by using a settled open feedlot
35 effluent basin.

36 2. The department shall adopt rules establishing
37 requirements for the construction and operation of
38 alternative technology systems.

39 3. The owner of the open feedlot operation shall
40 only use an alternative technology system which
41 includes the installation of a water pollution
42 monitoring system. The owner shall operate the water
43 pollution monitoring system for two years after its
44 installation. If the department requires the owner of
45 the open feedlot operation to be issued an operating
46 permit, the owner shall continue to record amounts of
47 settled open feedlot effluent exiting the alternative
48 technology system after the expiration of the two-year
49 period pursuant to the terms and conditions of the
50 operating permit. If the monitoring does not

1 demonstrate compliance with the requirement of this
2 section, the department may require an additional
3 monitoring period.

4 SUBCHAPTER IV

5 OPEN FEEDLOT EFFLUENT CONTROL

6 Sec. 14. NEW SECTION. 459A.401 OPEN FEEDLOT
7 EFFLUENT CONTROL METHODS.

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

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

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

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

35 2. This subsection shall apply to an open feedlot
36 operation which is required to be issued an operating
37 permit.

38 a. An open feedlot operation may discharge open
39 feedlot effluent into any waters of the United States
40 due to a precipitation event, if any of the following
41 apply:

42 (1) For an open feedlot operation that houses
43 cattle, other than veal cattle, the operation is
44 designed, constructed, operated, and maintained to not
45 discharge open feedlot effluent resulting from a
46 twenty-five-year, twenty-four-hour precipitation event
47 into any waters of the United States.

48 (2) For an open feedlot operation that houses veal
49 calves, swine, chickens, or turkeys, the operation is
50 designed, constructed, operated, and maintained to not

1 discharge open feedlot effluent resulting from a one-
2 hundred-year, twenty-four-hour precipitation event
3 into any waters of the United States.

4 b. If the open feedlot operation is designed,
5 constructed, and operated in accordance with the
6 requirements of an open feedlot effluent control
7 system as provided in rules adopted by the department,
8 the operation shall be deemed to be in compliance with
9 this section, unless a discharge from the operation
10 causes a violation of state water quality standards as
11 provided in chapter 455B, division III.

12 3. The following shall apply to an open feedlot
13 operation which has an animal unit capacity of one
14 thousand animal units or more:

15 a. (1) The open feedlot operation shall not
16 discharge open feedlot effluent from an open feedlot
17 operation structure into any waters of the United
18 States, unless the discharge is pursuant to an
19 operating permit.

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

24 b. The control of open feedlot effluent
25 originating from the open feedlot operation may be
26 accomplished by the use of a solids settling facility,
27 settled open feedlot effluent basin, alternative
28 technology system, or any other open feedlot effluent
29 control structure or practice approved by the
30 department. The department may require the diversion
31 of surface drainage prior to contact with an open
32 feedlot operation structure. Solids shall be settled
33 from open feedlot effluent before the effluent enters
34 a settled open feedlot effluent basin or alternative
35 technology system.

36 Sec. 15. NEW SECTION. 459A.402 OPEN FEEDLOT
37 EFFLUENT CONTROL -- ALTERNATIVE CONTROL PRACTICES.

38 If because of topography or other factors related
39 to the site of an open feedlot operation it is
40 economically or physically impractical to comply with
41 open feedlot effluent control requirements using an
42 open feedlot control method in section 459A.401, the
43 department shall allow the use of other open feedlot
44 effluent control practices if those practices will
45 provide an equivalent level of open feedlot effluent
46 control that would be achieved by using an open
47 feedlot effluent control method pursuant to section
48 459A.401.

49 Sec. 16. NEW SECTION. 459A.410 EFFLUENT
50 APPLICATION REQUIREMENTS.

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

9 Sec. 17. NEW SECTION. 459A.411 DISCONTINUANCE OF
10 OPERATIONS.

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

18 SUBCHAPTER V
19 ENFORCEMENT

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

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

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

27 A person who violates this chapter shall be subject
28 to a civil penalty which shall be established,
29 assessed, and collected in the same manner as provided
30 in section 455B.191. Any civil penalty collected and
31 interest on a civil penalty shall be deposited in the
32 animal agriculture compliance fund created in section
33 459.401. A person shall not be subject to a penalty
34 under this section and a penalty under section 459.603
35 for the same violation.

36 DIVISION II
37 CONFORMING AMENDMENTS

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

40 3. Contract, with the approval of the commission,
41 with public agencies of this state to provide all
42 laboratory, scientific field measurement and
43 environmental quality evaluation services necessary to
44 implement the provisions of this chapter, ~~and~~ chapter
45 459, ~~subchapters II and III~~ and chapter 459A. If the
46 director finds that public agencies of this state
47 cannot provide the laboratory, scientific field
48 measurement and environmental evaluation services
49 required by the department, the director may contract,
50 with the approval of the commission, with any other

1 public or private persons or agencies for such
2 services or for scientific or technical services
3 required to carry out the programs and services
4 assigned to the department.

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

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

20 If a permit is required pursuant to this chapter,
21 ~~or~~ chapter 459, or chapter 459A for stormwater
22 discharge or an air contaminant source and a facility
23 to be permitted is representative of a class of
24 facilities which could be described and conditioned by
25 a single permit, the director may issue, modify, deny,
26 or revoke a general permit for all of the following
27 conditions:

28 Sec. 22. Section 455B.103A, subsection 5, Code
29 2005, is amended to read as follows:

30 5. The enforcement provisions of division II of
31 this chapter and chapter 459, subchapter II, apply to
32 general permits for air contaminant sources. The
33 enforcement provisions of division III, part 1, of
34 this chapter, ~~and~~ chapter 459, subchapter III, and
35 chapter 459A apply to general permits for stormwater
36 discharge.

37 Sec. 23. Section 455B.105, subsections 3, 6, and
38 8, Code 2005, are amended to read as follows:

39 3. Adopt, modify, or repeal rules necessary to
40 implement this chapter, ~~and~~ chapter 459, and chapter
41 459A, and the rules deemed necessary for the effective
42 administration of the department. When the commission
43 proposes or adopts rules to implement a specific
44 federal environmental program and the rules impose
45 requirements more restrictive than the federal program
46 being implemented requires, the commission shall
47 identify in its notice of intended action or adopted
48 rule preamble each rule that is more restrictive than
49 the federal program requires and shall state the
50 reasons for proposing or adopting the more restrictive

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

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

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

30 Sec. 24. Section 455B.105, subsection 11,
31 paragraph a, unnumbered paragraph 1, Code 2005, is
32 amended to read as follows:

33 Adopt, by rule, procedures and forms necessary to
34 implement the provisions of this chapter, and chapter
35 459, and chapter 459A relating to permits, conditional
36 permits, and general permits. The commission may also
37 adopt, by rule, a schedule of fees for permit and
38 conditional permit applications and a schedule of fees
39 which may be periodically assessed for administration
40 of permits and conditional permits. In determining
41 the fee schedules, the commission shall consider:

42 Sec. 25. Section 455B.109, subsection 4, Code
43 2005, is amended to read as follows:

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

48 b. The following provisions shall apply to animal
49 feeding operations:

50 (1) Civil penalties assessed by the department and

1 interest on the civil penalties, arising out of
2 violations involving animal feeding operations under
3 chapter 459, subchapter II, shall be deposited in the
4 animal agriculture compliance fund as created in
5 section 459.401.

6 (2) Civil penalties assessed by the department and
7 interest on the penalties arising out of violations
8 committed by animal feeding operations under chapter
9 459, subchapter III, which may be assessed pursuant to
10 section 455B.191 or 459.604, shall also be deposited
11 in the animal agriculture compliance fund.

12 (3) Civil penalties assessed by the department and
13 interest on the civil penalties, arising out of
14 violations involving open feedlot operations under
15 chapter 459A, shall be deposited in the animal
16 agriculture compliance fund as created in section
17 459.401.

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

21 a. A person, including the state of Iowa, for
22 violating any provision of this chapter; ~~or~~ chapter
23 459, subchapters I, II, III, IV, and VI; ~~chapter~~
24 459A; or a rule adopted pursuant to this chapter; ~~or~~
25 chapter 459, subchapters I, II, III, IV, and VI; or
26 chapter 459A.

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

35 Sec. 27. Section 455B.111, subsection 5, Code
36 2005, is amended to read as follows:

37 5. This section does not restrict any right under
38 statutory or common law of a person or class of person
39 to seek enforcement of provisions of this chapter, ~~or~~
40 chapter 459, subchapters I, II, III, IV, and VI; ~~or~~
41 chapter 459A; or a rule adopted pursuant to this
42 chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
43 and VI; or chapter 459A, or seek other relief
44 permitted under the law.

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

47 455B.112 ACTIONS BY ATTORNEY GENERAL.

48 In addition to the duty to commence legal
49 proceedings at the request of the director or
50 commission under this chapter; ~~or~~ chapter 459,

1 subchapters I, II, III, IV, and VI~~7~~; or chapter 459A
2 the attorney general may institute civil or criminal
3 proceedings, including an action for injunction, to
4 enforce the provisions of this chapter; ~~or~~ chapter
5 459, subchapters I, II, III, IV, and VI~~7~~; or chapter
6 459A including orders or permits issued or rules
7 adopted under this chapter; ~~or~~ chapter 459,
8 subchapters I, II, III, IV, and VI; or chapter 459A.

9 Sec. 29. Section 455B.113, subsection 1, Code
10 2005, is amended to read as follows:

11 1. The director shall certify laboratories which
12 perform laboratory analyses of samples required to be
13 submitted by the department by this chapter; ~~or~~
14 chapter 459, subchapters I, II, III, IV, and VI~~7~~; or
15 chapter 459A, or by rules adopted in accordance with
16 this chapter; ~~or~~ chapter 459, subchapters I, II, III,
17 IV, and VI~~7~~; or chapter 459A; or by permits or orders
18 issued under this chapter; ~~or~~ chapter 459, subchapters
19 I, II, III, IV, and VI; or chapter 459A.

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

22 455B.115 ANALYSIS BY CERTIFIED LABORATORY
23 REQUIRED.

24 Laboratory analysis of samples as required by this
25 chapter; ~~or~~ chapter 459, subchapters I, II, III, IV,
26 and VI~~7~~; or chapter 459A; or by rules adopted, or by
27 permits or orders issued pursuant to this chapter; ~~or~~
28 chapter 459, subchapters I, II, III, IV, and VI~~7~~; or
29 chapter 459A shall be conducted by a laboratory
30 certified by the director as having the necessary
31 competence, equipment, and capabilities to perform the
32 analysis. Analytical results from laboratories not
33 certificated shall not be accepted by the director.

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

36 455B.179 TRADE SECRETS PROTECTED.

37 Upon a satisfactory showing by any person to the
38 director that public disclosure of any record, report,
39 permit, permit application, or other document or
40 information or part thereof would divulge methods or
41 processes entitled to protection as a trade secret,
42 any such record, report, permit, permit application,
43 or other document or part thereof other than effluent
44 data and analytical results of monitoring of public
45 water supply systems, shall be accorded confidential
46 treatment. Notwithstanding the provisions of chapter
47 22, a person in connection with duties or employment
48 by the department shall not make public any
49 information accorded confidential status; however, any
50 such record or other information accorded confidential

1 status may be disclosed or transmitted to other
2 officers, employees, or authorized representatives of
3 this state or the United States concerned with
4 carrying out this part of this division; ~~or~~ chapter
5 459, subchapter III, or chapter 459A; or when relevant
6 in any proceeding under this part of this division; ~~or~~
7 chapter 459, subchapter III; or chapter 459A.

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

10 455B.182 FAILURE CONSTITUTES CONTEMPT.

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

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

37 455B.185 DATA FROM DEPARTMENTS.

38 The commission and the director may request and
39 receive from any department, division, board, bureau,
40 commission, public body, or agency of the state, or of
41 any political subdivision thereof, or from any
42 organization, incorporated or unincorporated, which
43 has for its object the control or use of any of the
44 water resources of the state, such assistance and data
45 as will enable the commission or the director to
46 properly carry out their activities and effectuate the
47 purposes of this part 1 of division III; ~~and~~ chapter
48 459, subchapter III; or chapter 459A. The department
49 shall reimburse such agencies for special expense
50 resulting from expenditures not normally a part of the

1 operating expenses of any such agency.

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

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

7 Sec. 35. Section 459.102, subsections 37, 45, and
8 46, Code 2005, are amended by striking the
9 subsections.

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

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

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

19 DIVISION III

20 AGRICULTURAL PRODUCTION LIENS

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

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

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

31 b. For a lien arising out of producing a crop, the
32 lien becomes effective the day that the crop is first
33 planted. In order to perfect the lien, the contract
34 producer must file a financing statement in the office
35 of the secretary of state as provided in section
36 554.9308. The contract producer must file a financing
37 statement for the crop within forty-five days after
38 the crop is first planted. The lien terminates one
39 year after the crop is no longer under the authority
40 of the contract producer. For purposes of this
41 section, a crop is no longer under the authority of
42 the contract producer when the crop or a warehouse
43 receipt issued by a warehouse operator licensed under
44 chapter 203C for grain from the crop is no longer
45 under the custody or control of the contract producer.
46 ~~Section 554.9515 shall not apply to a financing~~
47 ~~statement perfecting the lien.~~ The lien may be
48 terminated by the contract producer who files a
49 termination statement as provided in chapter 554,
50 article 9."

S-3172

Page 26

- 1 2. Title page, line 1, by inserting after the
- 2 words "relating to" the following: "agricultural
- 3 production including".
- 4 3. Title page, line 2, by inserting after the
- 5 word "operations," the following: "and agricultural
- 6 production liens,".
- 7 4. By renumbering as necessary.

By DAVID JOHNSON

S-3172 FILED APRIL 26, 2005

ADOPTED

Kibbie co-chair
Johnson co-chair
Fraise
Houser

Succeeded By
SF/HF 312

SSB# 1246
Agriculture

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CO-CHAIRPERSONS FRAISE
AND JOHNSON)

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

A BILL FOR

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

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

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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-4597-subchapter-III7-which~~
~~5 may-be-assessed-pursuant-to-section-455B-191-or-459-6047-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.

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DIVISION III

CONFORMING AMENDMENTS

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Sec. 25. 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. 26. Section 455B.103A, subsections 1 and 5, Code 2005, are amended to read as follows:

1. 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:

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 VI~~7~~; chapter 459A; or a rule
5 adopted pursuant to this chapter; ~~or~~ chapter 459, subchapters
6 I, II, III, IV, and VI~~7~~; 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 VI~~7~~; ~~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 VI~~7~~; 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 VI~~7~~; or chapter 459A, ~~or~~ by rules adopted in
27 accordance with this chapter; ~~or~~ chapter 459, subchapters I,
28 II, III, IV, and VI~~7~~; 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 VI~~7~~; 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.

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