

FILED MAR 07 2006

SENATE FILE 2369
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 3240)

Passed Senate, Date 3-13-06 Passed House, Date 4-18-06

Vote: Ayes 50 Nays 0 Vote: Ayes 96 Nays 0

Re-passed
4-18-06 50-0 Approved April 26, 2006

A BILL FOR

1 An Act relating to requirements for open feedlot operations, by
2 providing for nutrient management plans and operating permits,
3 and providing an effective date and retroactive applicability.

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

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SF 2369

1 Section 1. NEW SECTION. 459A.202 OPERATING PERMIT
2 REQUIREMENTS.

3 1. The owner of an open feedlot operation qualifying under
4 this section shall apply for an operating permit on or before
5 July 31, 2007.

6 2. Except as provided in subsection 3, an open feedlot
7 operation qualifies under this section if all of the following
8 apply:

9 a. The open feedlot operation commenced operation prior to
10 April 14, 2003, and the physical facilities of the open feed
11 lot operation have not expanded since that date.

12 b. The open feedlot operation was not required to be
13 issued an operating permit prior to April 14, 2003, but is
14 required to obtain an operating permit on and after that date,
15 pursuant to all of the following:

16 (1) Rules adopted by the department, including but not
17 limited to rules adopted as part of 567 IAC ch. 65, that were
18 in effect prior to April 14, 2003, and have been subsequently
19 amended.

20 (2) Regulations adopted by the federal government,
21 including but not limited to the environmental protection
22 agency as a part of 40 C.F.R. pts. 122 and 412, that were in
23 effect prior to April 14, 2003, and have been subsequently
24 amended.

25 3. An open feedlot operation does not qualify under this
26 section if the open feedlot operation is required by the
27 department to be issued an operating permit only because of
28 special conditions determined applicable by the department
29 according to the results of a departmental evaluation as
30 established by rules adopted by the department.

31 4. This section is repealed on July 1, 2009.

32 Sec. 2. Section 459A.205, subsection 3, paragraph a, Code
33 Supplement 2005, is amended to read as follows:

34 a. For an open feedlot operation submitting an application
35 for a construction permit on or after ~~September~~ April 30, 2006

1 2007, a nutrient management plan as provided in section
2 459A.208.

3 Sec. 3. Section 459A.208, subsection 1, Code Supplement
4 2005, is amended to read as follows:

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

10 b. (1) The owner of an open feedlot operation shall
11 comply with the provisions of paragraph "a" by July 31, 2007.

12 (2) This paragraph "b" is repealed on July 31, 2007.

13 Sec. 4. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.

14 This Act, being deemed of immediate importance, takes effect
15 upon enactment, and is retroactively applicable to February
16 13, 2006.

17 EXPLANATION

18 This bill amends a provision in Code chapter 459A, which
19 authorizes the department of natural resources to regulate
20 open feedlot operations, and supplements provisions in Code
21 chapter 459, which authorize the department of natural
22 resources to regulate all animal feeding operations. Much of
23 the bill concerns nutrient management plans required to be
24 developed and implemented by owners of open feedlot operations
25 and requirements for operating permits which are not
26 specifically addressed in the Code chapter, but are subject to
27 rules adopted by the department of natural resources in
28 accordance with requirements for concentrated animal feeding
29 operations required by the United States environmental
30 protection agency under the national pollutant discharge
31 elimination system.

32 The United States environmental protection agency has
33 recently amended requirements that provide that an open
34 feedlot operation that would not have been considered as a
35 concentrated animal feeding operation prior to April 14, 2003,

1 is considered a concentrated animal feeding operation after
2 that date and must: (1) develop and implement a nutrient
3 management plan by February 13, 2006, and (2) obtain a
4 national pollutant discharge elimination system operating
5 permit by December 31, 2006. The United States environmental
6 protection agency has revised these deadlines to provide that
7 a concentrated animal feeding operation must develop and
8 implement a nutrient management plan and seek a national
9 pollutant discharge elimination system permit by July 31,
10 2007. See 40 C.F.R. pts. 122 and 412. The revisions of the
11 regulations were made in response to a court decision,
12 Waterkeeper Alliance et al. v. E.P.A., 399 F.3d 486 (2nd Cir.
13 2005).

14 The bill extends the date when an owner of an open feedlot
15 operation is required to comply with nutrient management plan
16 requirements in Code chapter 459A or obtain an operating
17 permit under national pollutant discharge elimination system
18 and departmental rules. Code section 459A.205 provides that
19 an application for a construction permit must be accompanied
20 by the nutrient management plan on or after September 30,
21 2006. The bill extends that date to April 30, 2007. Code
22 section 459A.208 provides that an open feedlot operation of
23 1,000 or more animal units or one that would otherwise be
24 required to be issued an operating permit must develop a
25 nutrient management plan by December 31, 2006. The bill
26 extends that date to July 31, 2007.

27 Finally, the bill provides that the owner of an open
28 feedlot operation qualifying under the provisions of the bill
29 has until July 31, 2007, to apply for an operating permit.
30 The bill provides that the open feedlot operation does not
31 qualify for the extension if the open feedlot operation is
32 required by the department to be issued an operating permit
33 only because special conditions exist according to the results
34 of a departmental evaluation. See 567 IAC-65.103.

35 The bill repeals a number of the extension periods after

1 the extension periods have expired.

2 The bill takes effect upon enactment and is retroactively
3 applicable to February 13, 2006.

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H-8516

1 Amend Senate File 2369, as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Sec. _____. Section 459A.102, Code Supplement 2005,
6 is amended by adding the following new subsections:

7 NEW SUBSECTION. 8A. "Designated area" means a
8 known sinkhole, a cistern, an abandoned well, an
9 unplugged agricultural drainage well, an agricultural
10 drainage well surface inlet, a drinking water well, a
11 designated wetland, or a water source. However,
12 "designated area" does not include a terrace tile
13 inlet or surface tile inlet other than an agricultural
14 drainage well surface tile inlet.

15 NEW SUBSECTION. 8B. "Designated wetland" means
16 the same as defined in section 459.102.

17 NEW SUBSECTION. 9A. "Grassed waterway" means a
18 natural or constructed channel that is shaped or
19 graded and established with suitable vegetation for
20 the stable conveyance of surface water runoff.

21 NEW SUBSECTION. 9B. "High-quality water resource"
22 means the same as defined in section 459.102.

23 NEW SUBSECTION. 20A. "Stockpile" means to store
24 solids from an open feedlot operation outside of an
25 open feedlot operation structure or outside of an area
26 that drains to an open feedlot operation structure.

27 NEW SUBSECTION. 23. "Water source" means the same
28 as defined in section 459.102."

29 2. Page 2, by inserting after line 12 the
30 following:

31 "Sec. _____. NEW SECTION. 459A.403 SOLIDS
32 STOCKPILING.

33 A person may stockpile solids, subject to all of
34 the following:

35 1. a. The person shall not stockpile the solids
36 within the following distances:

37 (1) Two hundred feet from a designated area other
38 than a high-quality water resource.

39 (2) Eight hundred feet from a high-quality water
40 resource.

41 b. The person shall not stockpile solids within
42 two hundred feet from a terrace tile inlet or surface
43 tile inlet unless the solids are maintained in a
44 manner that will not allow precipitation-induced
45 runoff to drain from the solids to the terrace tile
46 inlet or surface tile inlet.

47 c. The person shall not stockpile solids in a
48 grassed waterway or where water pools on the soil
49 surface.

50 d. The person shall not stockpile solids on land

H-8516

1 having a slope of more than five percent unless
2 methods, structures, or practices are implemented to
3 prevent or diminish precipitation-induced runoff from
4 the stockpiled solids.

5 2. The person must remove the stockpiled solids
6 and apply them in accordance with the provisions of
7 this chapter, including but not limited to section
8 459A.410, within six months after the solids are
9 stockpiled."

10 3. Title page, line 2, by inserting after the
11 word "plans" the following: ", stockpiling of
12 solids,".

13 4. By renumbering as necessary.

By DOLECHECK of Ringgold

SENATE FILE 2369

H-8538

1 Amend the amendment, H-8516, to Senate File 2369,
2 as passed by the Senate, as follows:
3 1. Page 1, line 37, by striking the word "Two"
4 and inserting the following: "Four".
5 2. Page 2, line 1, by striking the word "five"
6 and inserting the following: "three".
7 3. Page 2, line 2, by inserting after the words
8 "implemented to" the following: "contain the
9 stockpiled solids, including but not limited to using
10 hay bales, silt fences, temporary earthen berms, or
11 other effective measures, and to".
12 4. By renumbering as necessary.

By DOLECHECK of Ringgold

H-8538 FILED APRIL 12, 2006

SENATE FILE 2369

H-8533

1 Amend the amendment, H-8516, to Senate File 2369,
2 as passed by the Senate, as follows:
3 1. Page 1, line 37, by striking the word "Two"
4 and inserting the following: "Four".
5 2. Page 2, line 1, by striking the word "five"
6 and inserting the following: "three".
7 3. Page 2, line 2, by inserting after the words
8 "implemented to" the following: "contain the
9 stockpiled solids, including but not limited to using
10 hay bales or other effective measures, and to".
11 4. By renumbering as necessary.

By DOLECHECK of Ringgold

H-8533 FILED APRIL 12, 2006

**HOUSE AMENDMENT TO
SENATE FILE 2369**

S-5203

1 Amend Senate File 2369, as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Sec. _____. Section 459A.102, Code Supplement 2005,
6 is amended by adding the following new subsections:

7 NEW SUBSECTION. 8A. "Designated area" means a
8 known sinkhole, a cistern, an abandoned well, an
9 unplugged agricultural drainage well, an agricultural
10 drainage well surface inlet, a drinking water well, a
11 designated wetland, or a water source. However,
12 "designated area" does not include a terrace tile
13 inlet or surface tile inlet other than an agricultural
14 drainage well surface tile inlet.

15 NEW SUBSECTION. 8B. "Designated wetland" means
16 the same as defined in section 459.102.

17 NEW SUBSECTION. 9A. "Grassed waterway" means a
18 natural or constructed channel that is shaped or
19 graded and established with suitable vegetation for
20 the stable conveyance of surface water runoff.

21 NEW SUBSECTION. 9B. "High-quality water resource"
22 means the same as defined in section 459.102.

23 NEW SUBSECTION. 20A. "Stockpile" means to store
24 solids from an open feedlot operation outside of an
25 open feedlot operation structure or outside of an area
26 that drains to an open feedlot operation structure.

27 NEW SUBSECTION. 23. "Water source" means the same
28 as defined in section 459.102."

29 2. Page 2, by inserting after line 12 the
30 following:

31 "Sec. _____. NEW SECTION. 459A.403 SOLIDS
32 STOCKPILING.

33 A person may stockpile solids, subject to all of
34 the following:

35 1. a. The person shall not stockpile the solids
36 within the following distances:

37 (1) Four hundred feet from a designated area other
38 than a high-quality water resource.

39 (2) Eight hundred feet from a high-quality water
40 resource.

41 b. The person shall not stockpile solids within
42 two hundred feet from a terrace tile inlet or surface
43 tile inlet unless the solids are maintained in a
44 manner that will not allow precipitation-induced
45 runoff to drain from the solids to the terrace tile
46 inlet or surface tile inlet.

47 c. The person shall not stockpile solids in a
48 grassed waterway or where water pools on the soil
49 surface.

50 d. The person shall not stockpile solids on land

S-5203

S-5203

Page 2

1 having a slope of more than three percent unless
2 methods, structures, or practices are implemented to
3 contain the stockpiled solids, including but not
4 limited to using hay bales, silt fences, temporary
5 earthen berms, or other effective measures, and to
6 prevent or diminish precipitation-induced runoff from
7 the stockpiled solids.

8 2. The person must remove the stockpiled solids
9 and apply them in accordance with the provisions of
10 this chapter, including but not limited to section
11 459A.410, within six months after the solids are
12 stockpiled."

13 3. Title page, line 2, by inserting after the
14 word "plans" the following: ", stockpiling of
15 solids,".

16 4. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5203 FILED APRIL 18, 2006

CONCURRED

Fraise Co-Chair
Houser Co-Chair
Kibbie
Mulder

Succeeded By
SF / HF ~~3240~~ 2369

SSB# 3240
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 requirements for open feedlot operations, by
2 providing for nutrient management plans and operating permits,
3 and providing an effective date and retroactive applicability.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 459A.202 OPERATING PERMIT
2 REQUIREMENTS.

3 1. The owner of an open feedlot operation qualifying under
4 this section shall apply for an operating permit on or before
5 July 31, 2007.

6 2. Except as provided in subsection 3, an open feedlot
7 operation qualifies under this section if all of the following
8 apply:

9 a. The open feedlot operation commenced operation prior to
10 April 14, 2003, and the physical facilities of the open feed
11 lot operation have not expanded since that date.

12 b. The open feedlot operation was not required to be
13 issued an operating permit prior to April 14, 2003, but is
14 required to obtain an operating permit on and after that date,
15 pursuant to all of the following:

16 (1) Rules adopted by the department, including but not
17 limited to rules adopted as part of 567 IAC ch. 65, that were
18 in effect prior to April 14, 2003, and have been subsequently
19 amended.

20 (2) Regulations adopted by the federal government,
21 including but not limited to the environmental protection
22 agency as a part of 40 C.F.R. pts. 122 and 412, that were in
23 effect prior to April 14, 2003, and have been subsequently
24 amended.

25 3. An open feedlot operation does not qualify under this
26 section if the open feedlot operation is required by the
27 department to be issued an operating permit only because of
28 special conditions determined applicable by the department
29 according to the results of a departmental evaluation as
30 established by rules adopted by the department.

31 4. This section is repealed on July 1, 2009.

32 Sec. 2. Section 459A.205, subsection 3, paragraph a, Code
33 Supplement 2005, is amended to read as follows:

34 a. For an open feedlot operation submitting an application
35 for a construction permit on or after ~~September~~ April 30, 2006

1 2007, a nutrient management plan as provided in section
2 459A.208.

3 Sec. 3. Section 459A.208, subsection 1, Code Supplement
4 2005, is amended to read as follows:

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

10 b. (1) The owner of an open feedlot operation shall
11 comply with the provisions of paragraph "a" by July 31, 2007.

12 (2) This paragraph "b" is repealed on July 31, 2007.

13 Sec. 4. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.
14 This Act, being deemed of immediate importance, takes effect
15 upon enactment, and is retroactively applicable to February
16 13, 2006.

17 EXPLANATION

18 This bill amends a provision in Code chapter 459A, which
19 authorizes the department of natural resources to regulate
20 open feedlot operations, and supplements provisions in Code
21 chapter 459, which authorize the department of natural
22 resources to regulate all animal feeding operations. Much of
23 the bill concerns nutrient management plans required to be
24 developed and implemented by owners of open feedlot operations
25 and requirements for operating permits which are not
26 specifically addressed in the Code chapter, but are subject to
27 rules adopted by the department of natural resources in
28 accordance with requirements for concentrated animal feeding
29 operations required by the United States environmental
30 protection agency under the national pollutant discharge
31 elimination system.

32 The United States environmental protection agency has
33 recently amended requirements that provide that an open
34 feedlot operation that would not have been considered as a
35 concentrated animal feeding operation prior to April 14, 2003,

1 is considered a concentrated animal feeding operation after
2 that date and must: (1) develop and implement a nutrient
3 management plan by February 13, 2006, and (2) obtain a
4 national pollutant discharge elimination system operating
5 permit by December 31, 2006. The United States environmental
6 protection agency has revised these deadlines to provide that
7 a concentrated animal feeding operation must develop and
8 implement a nutrient management plan and seek a national
9 pollutant discharge elimination system permit by July 31,
10 2007. See 40 C.F.R. pts. 122 and 412. The revisions of the
11 regulations were made in response to a court decision,
12 Waterkeeper Alliance et al. v. E.P.A., 399 F.3d 486 (2nd Cir.
13 2005).

14 The bill extends the date when an owner of an open feedlot
15 operation is required to comply with nutrient management plan
16 requirements in Code chapter 459A or obtain an operating
17 permit under national pollutant discharge elimination system
18 and departmental rules. Code section 459A.205 provides that
19 an application for a construction permit must be accompanied
20 by the nutrient management plan on or after September 30,
21 2006. The bill extends that date to April 30, 2007. Code
22 section 459A.208 provides that an open feedlot operation of
23 1,000 or more animal units or one that would otherwise be
24 required to be issued an operating permit must develop a
25 nutrient management plan by December 31, 2006. The bill
26 extends that date to July 31, 2007.

27 Finally, the bill provides that the owner of an open
28 feedlot operation qualifying under the provisions of the bill
29 has until July 31, 2007, to apply for an operating permit.
30 The bill provides that the open feedlot operation does not
31 qualify for the extension if the open feedlot operation is
32 required by the department to be issued an operating permit
33 only because special conditions exist according to the results
34 of a departmental evaluation. See 567 IAC-65.103.

35 The bill repeals a number of the extension periods after

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S.F. _____ H.F. _____

1 the extension periods have expired.

2 The bill takes effect upon enactment and is retroactively
3 applicable to February 13, 2006.

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SENATE FILE 2369

AN ACT

RELATING TO REQUIREMENTS FOR OPEN FEEDLOT OPERATIONS, BY PROVIDING FOR NUTRIENT MANAGEMENT PLANS, STOCKPILING OF SOLIDS, AND OPERATING PERMITS, AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.

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

Section 1. Section 459A.102, Code Supplement 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 8A. "Designated area" means a known sinkhole, a cistern, an abandoned well, an unplugged agricultural drainage well, an agricultural drainage well surface inlet, a drinking water well, a designated wetland, or a water source. However, "designated area" does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

NEW SUBSECTION. 8B. "Designated wetland" means the same as defined in section 459.102.

NEW SUBSECTION. 9A. "Grassed waterway" means a natural or constructed channel that is shaped or graded and established with suitable vegetation for the stable conveyance of surface water runoff.

NEW SUBSECTION. 9B. "High-quality water resource" means the same as defined in section 459.102.

NEW SUBSECTION. 20A. "Stockpile" means to store solids from an open feedlot operation outside of an open feedlot operation structure or outside of an area that drains to an open feedlot operation structure.

NEW SUBSECTION. 23. "Water source" means the same as defined in section 459.102.

Sec. 2. NEW SECTION. 459A.202 OPERATING PERMIT REQUIREMENTS.

1. The owner of an open feedlot operation qualifying under this section shall apply for an operating permit on or before July 31, 2007.

2. Except as provided in subsection 3, an open feedlot operation qualifies under this section if all of the following apply:

a. The open feedlot operation commenced operation prior to April 14, 2003, and the physical facilities of the open feedlot operation have not expanded since that date.

b. The open feedlot operation was not required to be issued an operating permit prior to April 14, 2003, but is required to obtain an operating permit on and after that date, pursuant to all of the following:

(1) Rules adopted by the department, including but not limited to rules adopted as part of 567 IAC ch. 65, that were in effect prior to April 14, 2003, and have been subsequently amended.

(2) Regulations adopted by the federal government, including but not limited to the environmental protection agency as a part of 40 C.F.R. pts. 122 and 412, that were in effect prior to April 14, 2003, and have been subsequently amended.

3. An open feedlot operation does not qualify under this section if the open feedlot operation is required by the department to be issued an operating permit only because of special conditions determined applicable by the department according to the results of a departmental evaluation as established by rules adopted by the department.

4. This section is repealed on July 1, 2009.

Sec. 3. Section 459A.205, subsection 3, paragraph a, Code Supplement 2005, is amended to read as follows:

a. For an open feedlot operation submitting an application for a construction permit on or after September April 30, 2006

2007, a nutrient management plan as provided in section 459A.208.

Sec. 4. Section 459A.208, subsection 1, Code Supplement 2005, is amended to read as follows:

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

b. (1) The owner of an open feedlot operation shall comply with the provisions of paragraph "a" by July 31, 2007.

(2) This paragraph "b" is repealed on July 31, 2007.

Sec. 5. NEW SECTION. 459A.403 SOLIDS STOCKPILING.

A person may stockpile solids, subject to all of the following:

1. a. The person shall not stockpile the solids within the following distances:

(1) Four hundred feet from a designated area other than a high-quality water resource.

(2) Eight hundred feet from a high-quality water resource.

b. The person shall not stockpile solids within two hundred feet from a terrace tile inlet or surface tile inlet unless the solids are maintained in a manner that will not allow precipitation-induced runoff to drain from the solids to the terrace tile inlet or surface tile inlet.

c. The person shall not stockpile solids in a grassed waterway or where water pools on the soil surface.

d. The person shall not stockpile solids on land having a slope of more than three percent unless methods, structures, or practices are implemented to contain the stockpiled solids, including but not limited to using hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

2. The person must remove the stockpiled solids and apply them in accordance with the provisions of this chapter, including but not limited to section 459A.410, within six months after the solids are stockpiled.

Sec. 6. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. This Act, being deemed of immediate importance, takes effect upon enactment, and is retroactively applicable to February 13, 2006.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2369, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2006

THOMAS J. VILSACK
Governor