



STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
CHUCK GIPP, DIRECTOR

Work Plan Agreement 9/11/13 Between

The Iowa Department of Natural Resources and the Environmental Protection Agency Region 7

Attached to this correspondence is – the Notice of Intended Action for proposed rulemaking regarding NPDES permitting regulations and manure application setback requirements. The DNR has recommended approval of this document by placing it on the agenda, also attached, for decision at the March 18, 2014 meeting of the Environmental Protection Commission. - This satisfies Objective 1, item 1 and Objective 2, item 1.

Objective 1: Recommend promulgation of NPDES permitting regulations for confinement CAFOs that discharge to waters of the U.S.

1. DNR intends to recommend to the Environmental Protection Commission (Commission) that the Commission incorporate by reference the federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S. Within 180 days of execution of this Work Plan or within 180 days of notification from Region 7 that the previously submitted list of regulations to be incorporated is correct, whichever occurs last, DNR will recommend action to promulgate the proposed rules in the Iowa Administrative Bulletin pursuant to Iowa Code Chapter 17A.
2. DNR will recommend that the Commission adopt by reference the revised rules within one year of execution of this Work Plan.

Indicia of Progress: Within 180 days of receipt of written acknowledgment from Region 7 that the federal regulations to be adopted by reference is correct or within 180 days of execution of this Work Plan, whichever occurs last, DNR recommends that the Commission publish Notice of Intended Action. DNR recommends that the Commission adopt the revised rules within one year of execution of this Work Plan.

Objective 2: Recommend promulgation of Iowa regulations related to setback and separation distances so that they are equivalent to federal requirements.

1. DNR intends to recommend to the Commission that the Commission adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs. Within one year of execution of this Work Plan, DNR agrees to recommend adoption by reference of applicable regulations related to setback and separation distances for open feedlot CAFOs. DNR will recommend rulemaking as set forth in Paragraph 1 of Objective 1 above.

Indicia of Progress: Within 180 days of receipt of written acknowledgment from Region 7 that the federal regulations to be adopted by reference are correct or execution of this Work Plan, whichever occurs last, DNR recommends that the Commission publish a Notice of Intended Action. DNR recommends that the Commission adopt the revised rules within one year of execution of this Work Plan.

Respectfully submitted to Region 7 on March 6, 2014.

Bill Ehm, Division Administrator
Iowa Department of Natural Resources
Environmental Services Division

Agenda

Environmental Protection Commission

Tuesday, March 18, 2014
DNR Air Quality Suite 1
7900 Hickman Road
Windsor Heights, Iowa

10:00 AM – EPC Business Meeting begins

10:30 AM – Public Participation¹ – Requests to speak must be submitted to Jerah Sheets at Jerah.Sheets@dnr.iowa.gov or 515-313-809 prior to the meeting or at the meeting prior to the start of Public Participation

1:00 PM – Referrals to the Attorney General Peeters Development Co. Inc. D/B/A Mt. Joy Mobile Home Park (Peeters)

Agenda topics

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|----|--|-----------------------------------|
| 1 | Approval of Agenda | |
| 2 | Approval of Minutes | |
| 3 | Director's Remarks | |
| 4 | Air Quality - Title V Fee Budget Review | Wendy Walker
(Information) |
| 5 | Contract with the University of Iowa for IDNR SHL TMDL Contract | Jason Palmer
(Decision) |
| 6 | Contract – City of Des Moines – Easter Lake Watershed Project Phase One | Rachel Glaza
(Decision) |
| 7 | Solid Waste Environmental Management System Program's Grant Award Criteria-Update | Jennifer Wright
(Decision) |
| 8 | Solid Waste Environmental Management Systems Program 2014 Participants | Jennifer Wright
(Decision) |
| 9 | Contract – City of Des Moines – Community Guide for Property Cleanup Following a Disaster | Alex Moon
(Decision) |
| 10 | Solid Waste Alternatives Program – Contract Recommendations | Tom Anderson
(Decision) |
| 11 | Clean Water and Drinking Water State Revolving Loan Fund – FY 2014 Intended Use Plans – Fourth Quarter Updates | Patti Cale-Finnegan
(Decision) |
| 12 | Contract – University of Iowa State Hygienic Laboratory Small Watersheds | Roger Bruner
(Decision) |
| 13 | Referrals to the Attorney General Peeters Development Co. Inc. D/B/A Mt. Joy Mobile Home Park (Peeters) | Diana Hansen
(Decision) |
| 14 | Contract with Surdex Corporation for LiDAR collection of 1,185 square miles in NE Iowa | Chris Ensminger
(Decision) |

15	Notice of Intended Action: Chapters 64 and 65-amendments requiring CAFOs to comply with NPDES permit requirements	William Ehm (Decision)
16	Monthly Reports	Bill Ehm (Information)
17	General Discussion	
18	Items for Next Month's Meeting	
	<ul style="list-style-type: none"> • April 15, 2014 – EPC Business Meeting, Windsor Heights • May 19, 2014 – EPC Education Tour Hancock County • May 20, 2014 – EPC Business Meeting, Hancock County 	

For details on the EPC meeting schedule, visit

<http://www.iowadnr.gov/InsideDNR/BoardsCommissions.aspx>.

¹ Comments during the public participation period regarding proposed rules or notices of intended action are not included in the official comments for that rule package unless they are submitted as required in the Notice of Intended Action.

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

15

DECISION

TOPIC

Notice of Intended Action: Chapters 64 and 65-amendments requiring CAFOs to comply with NPDES permit requirements

The Iowa Legislature directed the Commission to adopt rules requiring confinement feeding operations that are concentrated animal feeding operations (CAFOs) to comply with applicable National Pollutant Discharge Elimination System (NPDES) permit requirements. These rules “shall be no more stringent” than the requirements in U.S. EPA’s rules set out in 40 CFR Parts 122 and 412. See Iowa Code §459.311(2). Adoption of the proposed rule is also required by the Work Plan entered into between the Department and U.S. EPA on September 11, 2013. Pursuant to the Work Plan, the Department is required to recommend to the Commission that it “incorporate by reference the federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S.” To meet these requirements, the Department has drafted a proposed rule that incorporates by reference U.S. EPA’s CAFO rule. See Item 7 of the attached draft Notice of Intended Action (NOIA). In recommending adoption of the federal CAFO rules, the Department is also recommending to the Commission that it rescind the outdated term “operation permit” from the confinement feeding operation rules. See Items 2, 5 and 6 of the attached draft NOIA. The proposed amendments eliminate the need for “operation permits” in the confinement animal feeding operation program.

In addition, the proposed amendments also incorporate the Work Plan requirement that the Department recommend to the Commission that it “adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs.” To meet this requirement, the Department drafted a proposed rule that incorporates by reference the federal setback requirements. See Item 8 of the attached draft NOIA. To ensure equivalency with the open feedlot program, the Department is also proposing that the Commission adopt this setback requirement for confinement feeding operations as well. See Items 3 and 4 of the attached draft NOIA.

Lastly, to assist stakeholders in understanding how the basic NPDES permitting requirements in 567 IAC Chapter 64 apply to the more specific requirements for CAFOs in 567 IAC Chapter 65, the Department is recommending changes to the existing rule that outlines how these two chapters work in conjunction with each other regarding NPDES CAFO permits. See Item 1 of the attached draft NOIA.

By letter dated January 23, 2014, U.S. EPA Region 7 informed the Department that the proposed amendments “meet the requirements ... of the Work Plan and ensure that Iowa’s NPDES authorities are consistent with federal requirements.”

Bill Ehm
Administrator
Environmental Services Division

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 459.103(3), 459.311(2) and 459A.104(1) the Environmental Protection Commission (Commission) proposes to amend Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The Iowa Legislature has directed the Commission to adopt rules requiring confinement feeding operations that are concentrated animal feeding operations (CAFOs) to comply with applicable National Pollutant Discharge Elimination System (NPDES) permit requirements. These rules “shall be no more stringent” than the requirements in U.S. EPA’s rules set out in 40 CFR Parts 122 and 412. See Iowa Code §459.311(2). Adoption of the proposed rule is also required by the Work Plan Agreement (Work Plan) entered into between the Department of Natural Resources (Department) and U.S. EPA on September 11, 2013. The Work Plan required that the Department recommend to the Commission the adoption of certain rules, including the adoption by reference of “federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S.”

In light of the reasons above, the Commission is now proposing a rule that incorporates by reference U.S. EPA’s CAFO rule. See Item 7 of the proposed rule. The Commission is also rescinding the outdated term “operation permit” from the confinement feeding operation rules. See Items 2, 5 and 6 of the proposed rule. This proposed rule eliminates the need for “operation permits” in the confinement animal feeding operation program.

In addition, the proposed rule also incorporates the Work Plan requirement that the Department recommend to the Commission that it “adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs.” The Commission considered this recommendation and is now proposing a rule that incorporates by reference the federal setback requirements. See Item 8 of the proposed rule. To ensure equivalency with the open feedlot program, the Commission is also proposing this setback requirement for confinement feeding operations as well. See Items 3 and 4 of the proposed rule.

To assist stakeholders in understanding how the basic NPDES permitting requirements in 567 IAC Chapter 64 apply to the more specific requirements for CAFOs in 567 IAC Chapter 65, the Commission is proposing changes to the existing rule that outlines how these two chapters work in conjunction with each other regarding NPDES CAFO permits. See Item 1 of the proposed rule.

By letter dated January 23, 2014, U.S. EPA Region 7 informed the Department that the proposed rule “meet the requirements ... of the Work Plan and ensure that Iowa’s NPDES authorities are consistent with federal requirements.”

Jobs Impact Statement

After analysis and review of this rule making, the Commission has determined that jobs could be negatively impacted. However, in complying with Iowa Code §459.311(2), which requires the rules to be no more stringent than the federal regulations, and by including only federal regulations essential to fully implement the NPDES permit program for confinement feeding operations, the Commission has necessarily minimized adverse impacts on jobs.

Any interested person may make written suggestions or comments on the proposed rule on or before _____. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail gene.tinker@dnr.iowa.gov.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

_____, 2014	6 p.m.	Washington County Conservation Board Education Center, Marr Park 2943 Highway 92 Ainsworth
_____, 2014	6 p.m.	Northeast Iowa Community College Dairy Center, Room 115 1527 Highway 150 South Calmar
_____, 2014	6 p.m.	Lime Creek Nature Center 3501 Lime Creek Road Mason City
_____, 2014	6 p.m.	Clay County Administration Building Boardroom 300 W. 4 th Street Spencer
_____, 2014	6 p.m.	Carroll County Courthouse Meeting Room 114 E. 6 th Street Carroll
_____, 2014	11 a.m.	Wallace State Office Building Fourth Floor Conference Room 502 E. 9 th Street Des Moines

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rule.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

The proposed rule is intended to implement Iowa Code chapters 455B, 459, 459A, and 459B.

The following amendments are proposed.

ITEM 1. Amend rule 567—64.18(455B) as follows:

567—64.18(455B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, ~~if an animal feeding operation is required to apply for and obtain an NPDES permit,~~ the provisions of this chapter relating concerning NPDES permits which relate to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply to animal feeding operations which are required to apply for and obtain an NPDES permit to the extent that such requirements are not inconsistent with 567—Chapter 65.

ITEM 2. Amend rule 567—65.1(459,459B) by rescinding the definition of “operation permit.”

ITEM 3. Amend paragraph 65.3(3)“g” as follows:

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

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. ~~For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(e)(5).~~

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

ITEM 4. Adopt new paragraph 65.3(3)“h” as follows:

h. *Setback requirements for confinement feeding operations with NPDES permits.* The following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5), as amended through July 30, 2012.

ITEM 5. Rescind and reserve rule 567—65.4(459,459B).

ITEM 6. Amend subrule 65.5(2) as follows:

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall:

a. ~~Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in the following subparagraphs shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation:~~

- ~~(1) 300 beef cattle.~~
- ~~(2) 200 dairy cattle.~~
- ~~(3) 750 butcher and breeding swine (over 55 lbs.).~~
- ~~(4) 3000 sheep or lambs.~~
- ~~(5) 16,500 turkeys.~~
- ~~(6) 30,000 broiler or layer chickens.~~
- ~~(7) 150 horses.~~
- ~~(8) 300 animal units.~~

b. ~~Institute~~ institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This paragraph shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

ITEM 7. Rescind rule 567—65.6(459,459B) and adopt the following new rule in lieu thereof:

567--65.6(459,459B) Concentrated animal feeding operations; NPDES permits. Iowa Code subsection 459.311(2) requires a confinement feeding operation that is a concentrated animal feeding operation as defined in 40 CFR 122.23(b) to comply with applicable NPDES permit requirements pursuant to rules adopted by the commission. The following regulations, as amended through July 30, 2012, are adopted by reference:

- 40 CFR 122.21-Application for a permit
- 40 CFR 122.23-Concentrated animal feeding operations
- 40 CFR 122.42(e)-Additional conditions applicable to specified categories of NPDES permits
- 40 CFR 122.63(h)-Minor modification of permits
- 40 CFR Part 412-Concentrated Animal Feeding Operations (CAFO) Point Source Category

ITEM 8. Amend paragraphs 65.101(6)“b” and “c” as follows:

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

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. ~~For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions~~

~~equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(e)(5).~~

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. CAFOs.

(1) Land application discharges from a CAFO are subject to NPDES requirements. The discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent to waters of the United States from a CAFO as a result of the application of that manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where the discharge is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For the purpose of this paragraph, where the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent as specified in 65.112(8), a precipitation-related discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent from land areas under the control of a CAFO is an agricultural storm water discharge.

(2) Setback requirements for open feedlot operations with NPDES permits. The following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5), as amended through July 30, 2012.

Date

Chuck Gipp, Director