

June 3, 2016

Comments on EPC proposed changes to Animal Feeding Operation Rules from Iowa Environmental Council and Environmental Law & Policy Center

Thank you for this opportunity to offer comments on behalf of the Iowa Environmental Council and the Environmental Law & Policy Center, on the EPC's Notice of Intended Action to amend the rules for "Animal Feeding Operations," in Chapter 65 of the Iowa Administrative Code. IEC is an alliance of 65 Iowa environmental organizations and over 370 individual members working together to protect and preserve Iowa's environment. The Environmental Law & Policy Center is the Midwest's leading public interest environmental legal advocacy and eco-business innovation organization, and among the nation's leaders.

As a general principle, we want to express our strong concern about the process for developing such rules. In the future, we urge the Iowa Department of Natural Resources to seek input from a more representative group of stakeholders during the rule-development phase. That should include environmental and community interests, and not just regulated stakeholders. This approach would result in proposals that more fairly represent the broad interests of the citizens of the state.

Specifically, our primary concerns are as follows:

Revising the definition of public use area to focus on structures (65.1(1), page 11)

We oppose the proposed change to delete reference to Table 2: Major Water Sources – Lakes in the definition of "Public use areas" to be considered for facility-siting requirements. The entire lake area of lakes with public access should be protected for public use, not just the more developed areas and structures.

Manure retention requirements and application on snow-covered and frozen ground (ITEM 6, page 14)

We oppose the proposed change that would allow the DNR to continue to accept insufficient manure storage capacity as a reason for emergency application of manure on snow-covered and frozen ground by confinement feeding operations that have no manure storage structures constructed after May 26, 2009. The previous rule, which had been negotiated by stakeholders including livestock organizations, allowed this as a temporary exemption between 2010-2015, which was to end after that five year period.

The proposed rule change would re-establish what was a temporary exemption, to apparently extend it indefinitely, allowing undesirable manure application practices and related pollution to continue into the future. This is unfair to farmers who made responsible improvements to their manure storage capacity so they would not have to winter-apply. Such backpedaling also reduces the motivation of farmers and other businesses to take the department's rules seriously and respond to new requirements in the future.

Waivers for separation distance exemptions (ITEM 27, page 20)

We oppose the proposed exemption to separation distance requirements from a residence, business, church, school, and public use area under terms that the involved parties negotiate. The proposal allows such a waiver if it is "specific to the construction of expansion project for which it is submitted." However, then the proposed change goes on to say that "The waiver may include specific language to include future projects or expansions."

IEC believes the proposed changes are contradictory and inappropriately broad. They seem to allow a waiver to separation distances to continue in perpetuity, “for any future protect or expansion.” Such vague, open-ended waivers for expansion of animal feeding operations could constitute a significant taking of the rights of future property owners. We propose that any such waiver only apply to specific planned construction.

Reducing requirements for Manure Management Plan content (ITEM 44, page 24)

We oppose the proposed change to delete the mailing address for the owner of confinement feeding operations.

We also propose an addition: that the address(es) of the contributing confinement feeding operation facilities, be part of the required record for manure management plans.

Improving transparency of records (ITEM 47, page 24)

We support addition of language to improve access to and transparency of manure management plan record keeping, at the end of the first paragraph of 65.17(13), as follows: “Records must be made available to DNR upon request, including during an unannounced inspection, and to the public in response to a public records request.”

Allowing “unformed” settled open feedlot effluent basins in karst areas (ITEM 68, pages 34-35)

We oppose what we believe would be a significant and unfortunate change to allow “**unformed**” settled open feedlot effluent basins in areas identified as karst terrain. This conflicts with existing rules that only allow more protective “**formed**” structures in karst areas. If anything, we need to strengthen, not weaken, rules that apply to animal feeding operations and manure application in karst areas that are especially vulnerable to pollution of surface and ground water.

A current proposal to build a hog CAFO in Allamakee County that would necessitate applying liquid manure to karst terrain in the watersheds of several Outstanding Iowa Waters has highlighted the lack of protection of surface and ground waters in Iowa’s AFO regulations. The Council believes that this rulemaking effort is an excellent opportunity for our state to update our regulations governing nutrient and manure management plans, in order to protect our valuable water resources in karst areas.

Current manure management plan requirements are intended to minimize pollution to surface waters from runoff. Iowa regulations relating to the land application of manure currently include no requirements or even recommended practices for minimizing water pollution in karst regions. They are not sufficient to protect surface water or groundwater from contamination that occurs when land-applied manure rapidly infiltrates into aquifers and interconnected surface waters through the thin soils and cracked bedrock characteristic of karst topography. Contamination of both streams and drinking water wells can easily result. IEC strongly recommends the development of manure land application requirements that protect ground and surface waters in karst regions. (The recommended practices of a Wisconsin interagency task force comprised of diverse stakeholders could be the basis of such requirements. This report is attached to these comments as Attachment A.)

Subjective rule for application of effluent on saturated soils (ITEM 75-79, pages 53-56)

We oppose the proposed rule change for application of feedlot effluent on saturated soils from the current “Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of the application,” to a proposed subjective rule that “precipitation has not exceeded the water-holding capacity of the soil to accept the manure application without the possibility of runoff.” We are concerned that the vague rule that is being proposed would leave

too much room for interpretation, especially since the proposed rules do not include a definition of saturated soil, and would be even more difficult to enforce than the current rule. It also does not consider predictable ground saturation during the next 24 hours, which the previous rule addressed.

We propose that a better guideline is one that can be tracked via weather service records, such as Ohio has adopted, based on the saturation of the top 2 inches of soil and/or a 50% chance of precipitation exceeding one-half inch in the next 24-hour period.

Additional Change to reduce size threshold for CAFOs categorized as "Medium CAFOs"

We propose that the state of Iowa update its policies to reflect nationally recognized size thresholds for CAFOs to categorize "Medium CAFOs" as 300-999 beef cattle (rather than 500 and above) and small CAFOs as less than 300 animal units, based on the U.S. EPA Regulatory guidance.

Note: Since 2006, all livestock operations in Minnesota with 300 or more animal units must complete a manure management plan or have manure spread by a certified commercial applicator to be in compliance with the Minnesota Pollution Control Agency requirements (Land Application of Manure – Minimum State Requirements, online at <https://www.pca.state.mn.us/sites/default/files/wq-f8-11.pdf>). The state of Ohio also uses size definitions similar to EPA size definitions for levels of restrictions on animal production facilities, especially for determining limits on manure on frozen or snow-covered ground or saturated ground (Ohio Revised Code, Title IX, Chapter 903: Concentrated Animal Feeding Facility definitions, online at: <http://codes.ohio.gov/orc/903.01v1>).

Both states have additional requirements for manure application in sensitive areas, such as well-head zones, drainage ditches and open tile intakes, steeply sloping land and soils high in phosphorus. In addition, the Ohio rules state that "no matter the size of a livestock, dairy or poultry facility, if it is an AFO, it may be designated a CAFO if, after being inspected by a permitting authority, it is found to be adding a significant amount of pollutants to surface waters. It is also important to note that the NPDES permit will cover both the production area and the land application areas."

Thank you again for this opportunity to comment. We look forward to working with the Department of Natural Resources and other stakeholders to refine the rules to appropriately protect Iowa's surface and ground waters and to be consistent with the goals of Iowa's Nutrient Reduction Strategy.

Sincerely,



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