

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

08 APR -9 PM 1:31
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
LOWELL VOS)
d/b/a LOWELL VOS FEEDLOT)
WOODBURY COUNTY, IOWA)
Respondent.)

Docket No. CWA-07-2007-0078

**RESPONDENT'S INITIAL
PREHEARING EXCHANGE**

COMES NOW the Respondent, Lowell Vos d/b/a Lowell Vos Feedlot, by and through his attorney, Eldon L. McAfee, and for his Initial Prehearing Exchange states:

1. a. Expert witnesses Respondent intends to call:

(1) Brad Woerner, Eisenbraun & Associates, Inc.. Mr. Woerner is the Respondent's engineer who prepared the design plans for the runoff controls for the Iowa DNR construction permit application and the NPDES permit. Brad is expected to testify as to Respondent's efforts to comply with the Iowa Plan and obtain an Iowa DNR construction permit and NPDES permit.

(2) Jerry Sindt, U.S.D.A. N.R.C.S., District Conservationist. Mr. Sindt is expected to testify as to N.R.C.S.'s work with Mr. Vos to comply with the Iowa Plan and obtain and implement an NPDES permit.

(3) Charles Slocum, U.S.D.A. N.R.C.S., Civil Engineer. Mr. Slocum is expected to testify as to N.R.C.S.'s work with Mr. Vos to comply with the Iowa Plan and obtain and implement an NPDES permit.

(4) Stewart Melvin, P.E., PhD, Curry-Wille & Associates and retired Iowa State University Professor, Agricultural Engineering. Dr. Melvin is expected to testify as to Iowa DNR implementation and regulation of open feedlots under the Clean Water Act, both before and after April 13, 2003.

b. Other witnesses Respondent intends to call:

(1) Lowell Vos, Respondent. Mr. Vos is expected to testify as to the fact that his animal feeding operation is a newly defined CAFO pursuant to 40 C.F.R. section 122.23(g)(2), was in compliance with federal EPA CAFO regulations in effect prior to April 14, 2003, and was therefore not required to have an NPDES permit until July 31, 2007. He is also expected to testify as to his compliance with the Iowa Plan as set out in ¶3 of his Defenses to Proposed Civil Penalty and compliance with NPDES permit requirements under the Clean Water Act. Further, Lowell is expected to testify that his operation has not had an actual discharge of pollutants in violation of the Clean Water Act. Further, Lowell is expected to testify about the lack of economic benefit he received by not building runoff control structures.

(2) Wayne Gieselman, Iowa DNR. Mr. Gieselman is expected to testify as to the events leading up to the Iowa Plan and the development and implementation of the Iowa Plan by the Iowa DNR.

(3) Gene Tinker, Iowa DNR. Mr. Tinker is expected to testify as to the development and implementation of the Iowa Plan by the Iowa DNR, both in general and specifically as to the Vos feedlot. Mr. Tinker is also expected to testify as to the review and approval of the Iowa DNR construction permit and NPDES permit for the Vos feedlot.

(4) Ken Hessenius, Iowa DNR. Mr. Hessenius is expected to testify as to the development and implementation of the Iowa Plan by the Iowa DNR, both in general and specifically as to the Vos feedlot. Mr. Hessenius is also expected to testify as to the review and approval of the Iowa DNR construction permit and NPDES permit for the Vos feedlot. Mr. Hessenius is also expected to testify as to inspections of the Vos feedlot. Mr. Hessenius is also expected to testify as to Iowa DNR implementation and regulation of open feedlots under the Clean Water Act, both before and after April 13, 2003.

(5) Jeff Prier, Iowa DNR. Mr. Prier is expected to testify as to the development and implementation of the Iowa Plan by the Iowa DNR, both in general and specifically as to the Vos feedlot. Mr. Prier is also expected to testify as to inspections of the Vos feedlot. Mr. Prier is also expected to testify as to the review and approval of the Iowa DNR construction permit and NPDES permit for the Vos feedlot.

(6) Deborah (Frundle) Tinker, Geologist, Iowa Geological Survey Bureau, Iowa DNR. Ms. Tinker is expected to testify as to the development and implementation of the Iowa Plan by the Iowa DNR, both in general and specifically as to the Vos feedlot. Ms. Tinker is also expected to testify as to the review and approval of the Iowa DNR construction permit and NPDES permit for the Vos feedlot.

(7) Reza Khosravi, Iowa DNR. Mr. Khosravi is expected to testify as to the events leading up to the Iowa Plan and the development and implementation of the Iowa Plan by the Iowa DNR. . Mr. Khosravi is also expected to testify as to the review and approval of the Iowa DNR construction permit and NPDES permit for the Vos feedlot.

(8) Robert Palla, Iowa DNR. Mr. Palla is expected to testify as to Iowa DNR implementation and regulation of open feedlots under the Clean Water Act, both before and after April 13, 2003. Mr. Palla is also expected to testify as to the review and approval of the Iowa DNR construction permit for the Vos feedlot.

(9) Ubbo Agena, Iowa DNR, retired. Mr. Agena is expected to testify as to Iowa DNR implementation and regulation of open feedlots under the Clean Water Act, both before and after April 13, 2003.

(10) Joe Garthright, Triple D Contracting, Inc. Garthright is expected to testify as to Mr. Vos' efforts to comply with the Iowa Plan and construct the necessary runoff controls for his feedlot.

(11) Carol Balvanz, formerly with the Iowa Cattlemen's Association. Ms. Balvanz is expected to testify as to the events leading up to the Iowa Plan and the development and implementation of the Iowa Plan by the Iowa DNR.

(12) Evan Vermeer, formerly with the Iowa Cattlemen's Association. Mr. Vermeer is expected to testify as to the implementation of the Iowa Plan by the Iowa DNR.

c. Documents and exhibits Respondent intends to introduce into evidence:

- (1) May 11, 1999 EPA Memorandum
- (2) Summary of Iowa Rules on Environmental Regulation of Open Feedlot Operations.
- (3) Timeline of Lowell Vos' efforts to comply with the Iowa Plan.

(4) March 22, 2001 Iowa Department of Natural Resources and Iowa Cattlemen's Association letter to Gail Hutton, EPA Region VII, with enclosures including the Iowa Plan and forms.

Additional documents, including documents in reply or rebuttal, will be provided as a supplement to this Initial Prehearing Exchange as provided by the Prehearing Order and 40 C.F.R. §22.19.

2. This paragraph is not applicable to Respondent.
3. Respondent's defense does not admit liability.
4. Respondent does yet know the proposed penalty amount. Depending on the proposed penalty amount, the Respondent may take the position that that he is unable to pay the proposed penalty and/or that the proposed penalty will have an adverse impact on the Respondent's ability to continue in business.
5. This paragraph is not applicable to Respondent.
6. Respondent submits that the hearing in this case should be held in Sioux City, Woodbury County, Iowa pursuant to §22.19(d). Respondent is available for the hearing during the months of July or August. Respondent estimates that the time needed for his direct case will be 3 days.

This Initial Prehearing Exchange will be supplemented, including any reply or rebuttal material, as provided by the Prehearing Order and 40 C.F.R. §22.19.

Dated this 7th day of April, 2008.

BEVING, SWANSON & FORREST, P.C.



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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the 7th day of April, 2008.

By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Federal Express Other: _____

Signature: Nancy Franklin

Original and one copy to:

Kathy Robinson
Regional Hearing Clerk
U.S. EPA
901 North 5th Street
Kansas City, KS 66101

Copy to:

J. Daniel Breedlove
Asst. Regional Counsel
U.S. EPA
Region VII
901 North 5th Street
Kansas City, KS 66101

080407



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

MEMORANDUM

SUBJECT: Mike Murphy's question regarding the applicability of the 25-year, 24-hour storm exemption to animal feeding operations

TO: Martha Steincamp
Regional Counsel

FROM: Christopher B. Peak *CP*
Assistant Regional Counsel

DATE: May 11, 1999

In a May 6, 1999, email, Mike Murphy of the Iowa Department of Natural Resources requested information regarding whether under federal law, the 25-year, 24-hour storm exemption applies to animal feeding operations with greater than 1,000 animal units, thereby exempting them from the definition of a concentrated animal feeding operation (CAFO) and the requirements to obtain an NPDES permit. I have researched the issue, and based on the following analysis, I conclude that no animal feeding operation that discharges only in the event of a 25-year, 24-hour storm event is required to obtain an NPDES permit.

40 CFR Part 122.23 states that CAFOs are point sources subject to the NPDES permit program. 40 CFR Part 122.23 defines CAFO as an animal feeding operation that meets the criteria of Appendix B to 40 CFR Part 122, or is designated on a case-by-case basis. Appendix B (a copy of which is attached) states, "An animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if either of the following criteria are met." The two criteria, in summary, are 1) the operation confines more than 1000 animal units; or 2) the operation confines at least 300 animal units, and a) pollutants are discharged to navigable waters through a man-made device, or b) navigable waters pass through the facility and the animals have direct access to it.

The paragraph that follows states, "provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event."

I interpret this language as applying to both 1000+ animal unit operations and 300 animal unit/direct discharge operations for the following reasons. First, the plain language of Appendix B states that "no animal feeding operation is a concentrated animal feeding operation as defined



above..." The operations "defined above" include both 1000+ animal unit operations and 300 animal unit/direct discharge operations. Had the drafters intended the 25-year, 24-hour storm exemption to apply to only one type of facility or the other, they would have stated, "as defined in subparagraph a", or "as defined in subparagraph b".

More important, however, is the overall structure of Appendix B. Appendix B begins with a narrative, unnumbered paragraph that makes the broad statement "an animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if..." For the purpose of readability, the next paragraph defining the two class of CAFOs is broken down into subparagraphs which are assigned letters and numbers. Then, in a new, unnumbered paragraph, the equally broad language, "provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if..." appears. The fact that this language appears in a new paragraph indicates that it modifies the entire paragraph above, not just a part of it.

This interpretation is further supported by the fact that language appears after subparagraph b which is clearly intended to apply only to part b, and it is not indented. Had the drafters intended the 25 year, 24-hour storm exemption to apply only to part b, it likewise would have appeared within the same paragraph.

Mike Murphy states that the Draft Unified National Strategy for AFOs (Unified Strategy) takes the position that all AFOs with more than 1,000 animal units are CAFOs required to obtain NPDES permits. The confusion over EPA's position in the Unified Strategy likely originates from Section 4.4, entitled Priorities for the Regulatory Program, which states the following:

"Of the estimated 450,000 animal feeding operations, only about 6,600 facilities had over 1,000 animal units as of 1992. Due to increases in the number of large facilities over the past six years, EPA and USDA believe that as many as 10,000 such facilities may exist today. EPA and USDA expect to update this estimate based on new information. Based on size alone, these facilities are considered to be CAFOs and therefore are "point sources" subject to having an NPDES permit if they cause the addition of pollutants to waters." EPA believes that virtually all CAFOs with over 1,000 animal units are covered by the permit program and are a priority for permit issuance."

However, the Unified Strategy does not suggest that all AFOs over 1,000 animal units are CAFOs, regardless of the 25 year, 24-hour storm exemption. In the earlier section 4.2, entitled Regulatory Program for Some AFOs, which specifically addresses which facilities are required to obtain NPDES permits, the Unified Strategy quotes the regulatory definition, including the 25-year, 24-hour storm exemption. Given the regulatory definition, I interpret the Unified Strategy's language "based on size alone" as restating the point that a 1,000+ animal unit operation that discharges is a CAFO on the basis of its size, not the means of the discharge, manmade or otherwise, which is determinative in facilities of 301-1,000 animal units.

In addition, EPA published in December, 1995, a document entitled "Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations" (Guide Manual). In Section 3.1, entitled "Applicability of the 25-Year, 24-Hour Storm Exemption", the Guide Manual states, "According to 40 CFR 122, Appendix B, an animal feeding operation is not a CAFO if it discharges only in the event of a 25-year, 24-hour storm or larger. *This exemption applies to all feedlots, including CAFOs designated as such on a case-by-case basis.*"

Finally, the specific question posed by Mike Murphy has not been addressed in the case law. However, the case of Carr v. Alta Verde Industries, 931 F.2d 1055 (5th Cir. 1991), sheds light on the issue. The case addressed whether the facility at issue fit within the 25-year, 24-hour storm exemption. The significance of the opinion for the purposes of Mike Murphy's question is that Alta Verde Industries maintained an animal feeding operation with more than 1,000 animal units. While there was a question in the case whether the exemption applied to the particular facility, there is no question in the Court's opinion that, as a general matter, the 25-year, 24-hour storm exemption can apply to facilities with greater than 1,000 animal units.

Therefore, I conclude that any animal feeding operation which discharges only in the event of a 25-year, 24-hour storm event is not a CAFO, and is therefore not required to obtain an NPDES permit.

If you have any questions, please contact Chris Peak at (913) 551-7843.

IOWA RULES ON ENVIRONMENTAL REGULATION OF OPEN FEEDLOT OPERATIONS

BACKGROUND

1. On July 12, 1976, the following pertinent rules were adopted by the Iowa Division of Environmental Quality:

“400 IAC 20.2 - Water pollution control facilities shall be constructed and maintained to meet the minimum-waste control requirements stated in the following paragraphs; provided that if site topography, operating procedures, experience and available information indicate that adequate water pollution control can be achieved with less than the minimum requirements, the minimum requirements may be waived; provided further that if site topography, operating procedures, experience and other available information indicate that more than minimum requirements will be necessary to achieve adequate water pollution control, additional control provisions may be required.”

“400 IAC 20.2(2) – The minimum level of waste control for an open feedlot covered by the operation-permit application requirements of 20.3(1), 20.3(3), or 20.3(4) shall be retention of all waste from the feedlot areas and from other waste-contributing areas resulting from the twenty-five-year, twenty-four-hour frequency-precipitation event. As an alternative to providing the above specified level of waste control, a feedlot may take such actions as are necessary to eliminate the conditions under which the feedlot was required to apply for a permit, provided that elimination of such conditions will provide an adequate level of waste control. All waste removed from the feedlot and its waste-control facilities shall be disposed of by land disposal in accordance with 20.2(6).

Control of wastes from open feedlots may be accomplished through use of waste-retention basins, terraces, or other runoff control methods. Diversion of uncontaminated surface drainage prior to contact with feedlot or waste-storage areas may be required. Waste-solids settling facilities shall precede the waste-retention basins or terraces.” (emphasis added)

“400 IAC 20.2(4) - In lieu of providing the applicable level of waste control specified in 20.2(1), 20.2(2) or 20.2(3), the department may permit the use of waste treatment or other methods of waste control when the department determines that an adequate level of waste control will be provided.” (emphasis added)

2. These rules were moved to the Department of Water, Air and Waste Management, 900 IAC Chapter 65 on June 22, 1983 but there were no substantive changes.

3. On December 3, 1986, these rules were moved to the Department of Natural Resources, Environmental Protection Division, 567 IAC Chapter 65, again, with no substantive changes.

4. On June 17, 1987, these rules were amended as follows:

567 IAC 65.2 “Waste control facilities shall be constructed and maintained to meet the minimum-waste control requirements stated in the following paragraphs; ~~provided that if site topography, operating procedures, experience and available information indicate that adequate water pollution control can be achieved with less than the minimum requirements, the minimum requirements may be waived; provided further that if site topography, operating procedures, experience and other available information indicate that more than minimum requirements will be necessary to achieve adequate water pollution control, additional control provisions may be required.~~”

567 IAC 65.2(2) “The minimum level of waste control for an open feedlot covered by the operation-permit application requirements of subrule 65.3(1), ~~65.3~~, or 65.3(42) shall be retention of all waste *flows* from the feedlot areas and from *all* other waste-contributing areas resulting from the twenty-five-year, twenty-four-hour frequency-precipitation event. ~~As an alternative to providing the above specified level of waste control, a feedlot may take such actions as are necessary to eliminate the conditions under which the feedlot was required to apply for a permit, provided that elimination of such conditions will provide an adequate level of waste control. Open feedlots which design, construct, and operate waste control facilities in accordance with the requirements of any of the waste control alternatives listed in Appendix A of these rules shall be considered to be in compliance with this rule, unless waste discharges from the waste control facility cause a violation of state water quality standards. If water quality standards violations occur, the department may impose additional waste control requirements upon the feedlot, as specified in subrule 65.2(4).~~”

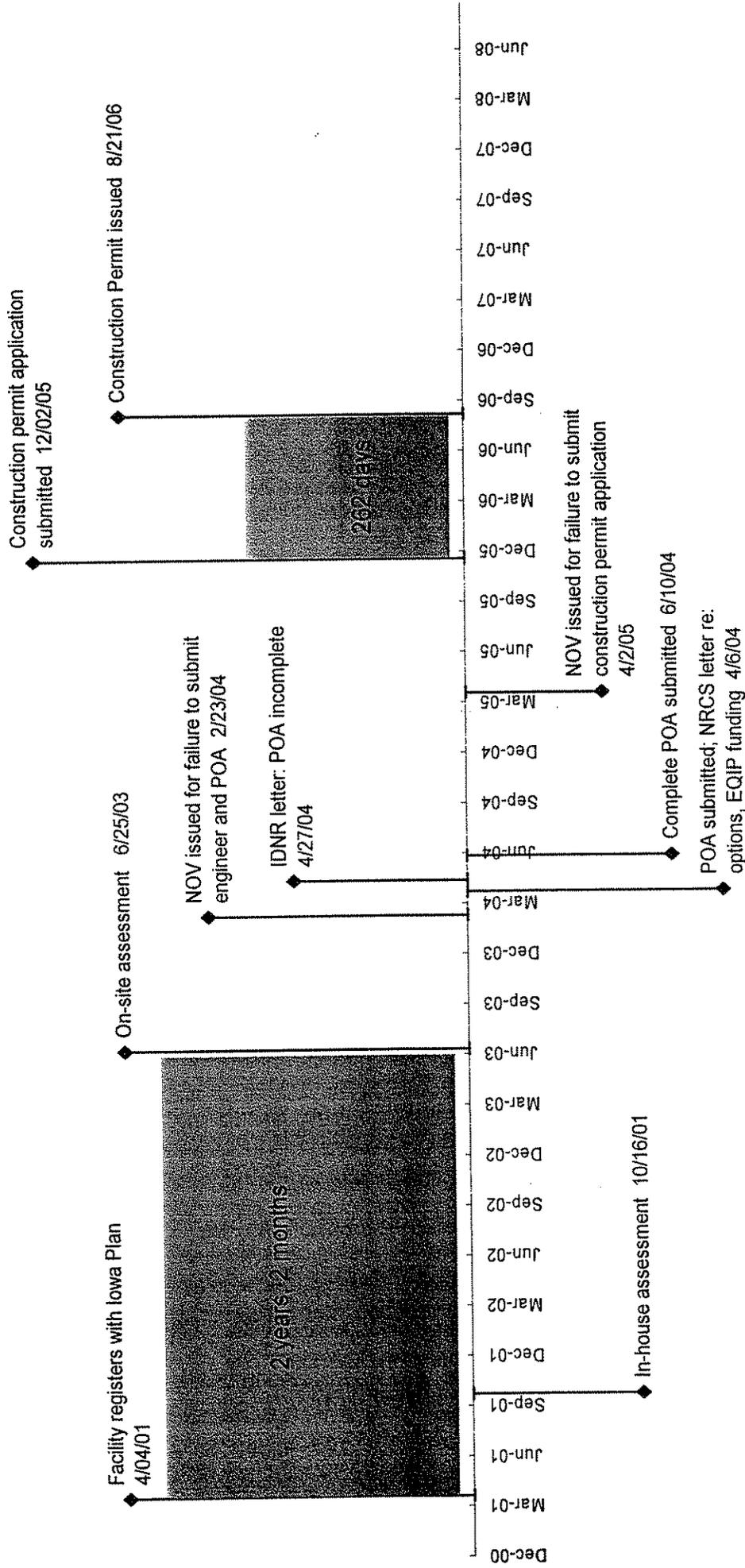
Control of wastes from open feedlots may be accomplished through use of waste-retention basins, terraces, or other runoff control methods. Diversion of uncontaminated surface drainage prior to contact with feedlot or waste-storage areas may be required. Waste-solids settling facilities shall precede the waste-retention basins or terraces.”

567 IAC 65.2(4) “*If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of waste control than that specified in subrule 65.2(1), 65.2(2), or 65.2(3) is required to provide an adequate level of water pollution control for a specific animal-feeding operation, the department may establish different minimum-waste control requirements for that operation.*”

65.2(5) “In lieu of ~~providing using the applicable level waste control methods~~ specified in subrule 65.2(1), 65.2(2), or 65.2(3), the department may ~~permit~~ allow the use of waste treatment or other methods of waste control ~~when the department~~ if it determines that an adequate level of manure control will be provided result.”

5. These rules remained in effect until September 14, 2005 when DNR rules were rewritten following the passage of H.F. 805 by the Iowa Legislature and effective on June 30, 2005.

Lowell Vos: Timeline



IOWA DEPARTMENT OF NATURAL RESOURCES

March 22, 2001

Gail Hutton
Director of Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, KS 66101

Re: Agreement between the Iowa Department of Natural Resources and the Iowa Cattlemen's Association

This letter formalizes the agreement made March 21, 2001, between the Iowa Department of Natural Resources and the Iowa Cattlemen's Association. The two parties have agreed to a three-part plan to bring Iowa cattlemen and other open feedlot owners into compliance with existing state and federal laws, specifically those laws specified by the Clean Water Act requiring National Pollutant Discharge Elimination System permits for open feedlots.

The open feedlot plan for Iowa consists of three basic parts:

- a registration period starting on the effective date of this agreement and ending Dec. 31, 2001, during which those feedlots that are registered will have amnesty from penalties for not having a permit and limited amnesty for water quality violations (see attached amnesty document);
- an environmental assessment period, during which DNR will assign a high, medium or low ranking to registered feedlots based upon an in-house assessment (see environmental assessment document) and a later field assessment that will confirm or modify the initial ranking; and
- a compliance period of two to five years with highest priority facilities expected to comply the most quickly.

This plan has the goal of bringing open feedlots into compliance within five years, yet recognizes the real-world limitations of staffing and time for the DNR, time and money for cattlemen, and infrastructure problems with existing engineering, cost-share and contractors.

The plan was developed with significant compromises on the part of the principal parties, the DNR and the ICA. These two groups have been meeting since Dec. 19, 2000, and have actively sought the input and participation of the Iowa Dairy Products Association, Iowa State University Extension, the Iowa Beef Center, the Iowa Farm Bureau Federation, the U.S.D.A. Natural Resources Conservation Service, the Iowa Department of Agriculture, the Conservation Districts of Iowa, the Izaak Walton League and the Iowa Environmental Council.

During the process of drafting this agreement, the DNR, the ICA and ISU Extension have provided preliminary details of the plan to more than 600 producers at meetings held

IOWA DEPARTMENT OF NATURAL RESOURCES

throughout the state. A plan has been developed to jointly publicize the registration, assessment and compliance elements of the plan, using news releases, radio and websites to provide the final details and registration forms to producers. A conference to train and inform engineers and consultants is scheduled for April 10. The DNR needs time to inform and train staff on the details of the program.

We request the U.S. EPA's assistance to allow time for publicizing this new program. In January of 2001, the ICA and the DNR asked the U.S. EPA to suspend open feedlot inspections in Iowa provided the DNR and the ICA reached an agreement on how to bring feedlots into compliance. This represents that agreement. The DNR and the ICA are requesting that the U.S. EPA continue to suspend federal inspections until May 1, allowing time to publicize the program to open feedlot producers and give them time to sign up for the program. The DNR and the ICA are also requesting the U.S. EPA to agree to inspect only unregistered, unpermitted lots when they resume inspections.

Respectfully submitted:

Jeffrey R. Vonk, Director
Department of Natural Resources

David Petty, Past President
Iowa Cattlemen's Association

cc: Ralph Summers, U.S. EPA
Carol Balvanz, ICA
Wayne Gieselman, DNR
Lyle Asell, DNR
Patty Judge, Secretary of Agriculture
Dusky Terry, Governor's Office

Attachments:

Open Feedlot Registration Form
Policy Procedure 5-b-15
IDNR Environmental Priority Assessment Form
Open Feedlot Education Plan Proposal

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

POLICY/PROCEDURE STATEMENT

TOPIC: Concentrated Animal Feeding Operation Amnesty Program

Policy Procedure Number: 5-b-15

Date: March 22, 2001

Effective Date: March 22, 2001

Preparer: Wayne Gieselman

Approval: Director: Jeff Vonk

Date:

Applicable Code of Iowa or Iowa Administrative Code Rule:

455B.183 (1); 567 IAC 64.3 and 65.4 – operation permit required.

Attachments:

Registration Form 542-4013
Environmental Priority Assessment for Open Feedlots

REASON OR BACKGROUND

All open feedlots are required to meet minimum manure control requirements, consisting of settling out of solids prior to discharge to a water of the state. Depending on site-specific factors, a greater level of control may be required to avoid water pollution. All manure removed from control facilities must be land-applied in a manner which will not cause surface or groundwater pollution.

In addition, under federal and state law large open feedlots [1,000+ animal units¹, or 300+ animal units with a discharge from a man-made manure drainage system or a stream that traverses the feedlot area] are required to have a permit to operate from this department.² Such facilities are also required to achieve a higher level of manure control, that is to retain all manure flows from the feedlot areas and other manure-contributing areas resulting from the “25-year, 24-hour precipitation event.”³ The operating permit contains provisions that require specific operational practices, including monitoring and reporting requirements, to assure compliance with this standard.

Historically the DNR has been lax in its regulation of large open feedlots. There are currently only 33 open feedlots in Iowa with operation permits. However, it is estimated there may be up to 300 feedlots in Iowa that exceed 1,000 animal units and many more in the

¹ One animal unit = 1 beef cattle, 0.7 dairy cattle, 2.5 swine, 10 sheep, 55 turkeys, or 100 chickens.

² Under current federal law, livestock operations with more than 1,000 animal units are not required to have an NPDES permit if the operation discharges only in the event of a 25 year, 24-hour storm.

³ The standard is translated into site-specific, engineered control structures and practices, for which the producer has a number of options under DNR rules.

300-1,000 range.⁴ Our investigations of open feedlots have been on a complaint-only basis until recently. Even now we do not have the resources to do a large number of "routine" inspections. We have taken some enforcement actions against open feedlot operators, most often when serious pollution events have occurred. In cases where we have discovered a facility that did not have a permit but should, our action has been to require them to come into compliance, and resort to punitive enforcement action only if they did not respond promptly to do so.

Our lax enforcement and administration of the operation permit program for large open feedlots are inconsistent with our duties under the Clean Water Act and state law. Driven by lawsuits and three large manure spills, including one that occurred in Iowa, the federal EPA has begun an enforcement effort to bring open feedlots into compliance with the Clean Water Act. EPA has also reviewed our administration of federal requirements the implementation of which has been delegated to us, and has been critical of our lax enforcement. We face the prospect of losing grant funding or even authority to administer the federal operation permit program. In any event, EPA has indicated their intent to continue to inspect facilities in Iowa and follow up with enforcement actions. Irrespective of EPA actions, the fact remains that, depending primarily on topography and proximity to a stream, open feedlots have a high potential for causing water pollution if adequate manure controls are not in place and operated properly and the law requires that larger operations be regulated under a permit program.

The department has met with industry representatives to discuss this subject. They are interested in working with producers and the department to bring about compliance with these requirements, and they would prefer to deal with this department rather than the federal government on these issues. The department has determined, after consultation with stakeholders from the industry and environmental groups, that the most expeditious and efficient means of bringing the most facilities into compliance is to offer an amnesty period. During this period producers may identify their operations, and if permits are required they will be given a reasonable period of time to come into compliance, without the threat of punitive actions by the department for the failure to have obtained a permit. An education and outreach program will be conducted to alert and inform producers of the legal requirements and amnesty opportunity.

DETAILS

A producer feeding animals in an open feedlot existing prior to April 1, 2001, may complete and submit to the department Registration Form 542-4013 at any time postmarked prior to January 1, 2002. From and after the date of registration with the department, the producer will have immunity from being penalized for not having a permit, subject to the following provisions:

1. As indicated above, amnesty does not apply to new construction/operation beginning on or after April 1, 2001. Facilities that are required as of the effective date of this document, to take corrective actions through:
 - a. any pending notice of violation, or
 - b. an administrative order issued prior to December 1, 2000,

⁴ Previously, the Iowa DNR has not required operating permits for open feedlots with more than 1,000 animal units if "because of location, site topography, or other factors, no wastes from the feedlot are discharged into a stream or other water of the state."

shall continue to be subject to that notice of violation or administrative order until compliance with it is achieved.

2. This amnesty applies to the issue of failure to have a permit. It is recognized that many feedlots that register may not have the full level of controls required, and that some discharges may occur during the compliance periods contemplated under this amnesty program. The producer will not be subject to penalties due to this, provided that:
 - a. Minimum manure control [solids removal and land application of solids] must be maintained. IAC 567—65.2(1), 65.2(6), 65.2(7)
 - b. Discharges resulting from gross negligence or willful misconduct in manure handling and which are documented to have caused a violation of a water quality standard may be addressed through normal enforcement procedures.
 - c. The producer must maintain reasonable progress towards compliance as discussed sections 4-7 below. This may include interim manure control measures determined by the department and producer to address specific problems found through the priority assessment and/or on-site investigation.
 - d. Discharges which are documented to cause a violation of a numeric water quality standard, will be evaluated on a case-by-case basis. If the registered producer satisfies the requirements of a-c above the department would normally just require interim corrective actions to address the particular problem. However, if a fish kill is caused, at a minimum restitution for the value of the fish will be sought by the department.
3. If an investigation by DNR is commenced after May 1, 2001, and violation for failure to have a permit is documented prior to registration, amnesty will not apply. The DNR will not conduct investigations through December 31, 2001, except in response to a complaint or an owner/operator request for an evaluation of registered lots. Routine inspections will resume beginning January 1, 2002. Beginning January 1, 2002, unregistered facilities found to be operating without a permit where a permit is required, are not eligible for amnesty.
4. The department will evaluate information submitted with the registration pursuant to the Environmental Priority Assessment for Open Feedlots document and prioritize operations as "high priority", "moderate priority", or "low priority". On-site investigations may be required to clarify information and site characteristics. The goal of the department will be to have all high priority facilities on a compliance schedule within two years, and to have all facilities in compliance within 5 years. However, it is recognized that high priority facilities may have to install more extensive controls, and moderate or low priority facilities less extensive controls, and the compliance schedule deemed reasonable for the particular facility may be influenced by this fact. In general, the department will direct its efforts towards high priority facilities first.
5. If the department concludes that a permit is required, the facility will be notified by the department in writing to submit a complete application for permit. If it is apparent at any time that additional control facilities are needed to meet minimum

manure controls required by law, a compliance schedule deemed appropriate to the circumstances of the particular facility, including the priority assessment discussed above, will be established.

6. The provisions of paragraph 2 will apply so long as the facility operator is cooperating with the department to achieve compliance within a reasonable time. The term "cooperate" does not mean that the producer may not question the conclusions of the department through normal informal or formal procedures that may be available.

Iowa Department of Natural Resources

Environmental Priority Assessment For Open Feedlots

Facility Name _____ Permit # _____

Mailing Address _____ Facility # _____

_____ Postmark date: _____

Telephone _____ Field Office # _____

Contact Person _____

Facility Location (911 Address) _____

Facility Location (Legal description) _____

Reviewer (Name and Title) _____ Date of Review _____

Entered in Database by _____ Date of Entry _____

Animal Units (10 points per 1000 animal units)

Actual number of animals	Multiplier for converting to 1000 beef cattle equivalent	Converted animal units	Points	Assessed pts
			TOTAL POINTS	

Topography

% Slope within feedlot area	Points	Assessed pts
0 - 4 %	20	
> 4 %	40	
	TOTAL POINTS	

Distance to Surface Water Bodies in flow pattern of runoff

Feet from closest edge of feedlot to surface water (does not include private pond)	Points	Assessed pts
0 - 100 ft.	40	
100 - 500 ft.	20	
> 500 ft.	10	
	TOTAL POINTS	

Drainage area of a feedlot, including clean water drainage which would traverse the feedlot. Add 1 point for every acre.

Number of acres	Points	Assessed pts
	TOTAL POINTS	

Classification of Surface Water

See IAC Chapter 567—61.3(5) Surface water classification for specific stream and lake designations. Points are cumulative for all impacted surface waters below feedlots. If the second receiving stream is less than a mile downstream from the initial receiving stream, automatically assess points for at least the first two streams. Distance to TMDL watershed segment limited to 2 miles, all others 1 mile.

Designated Use	Points	Assessed pts
TMDL, Associated with feedlot runoff Class HQR, HQ, C (Drinking water)	Site assess for pt. value – max 60	
Class A, B(CW), B(WW), B(LR), B(LW)	30	
General Use, Intermittent	10	
	TOTAL POINTS	

Direct Conduits to Surface or Ground Water Can be more than one and are cumulative.

Type of Conduit	Distance from closest edge of feedlot to conduit	Points	Assessed pts
Agricultural drainage well, Sinkhole	Within watershed of feedlot	Site assess for pt. value, max 60	
Private well, Public deep well	<400 ft.	40	
Public shallow well	<1000 ft.	40	
		TOTAL POINTS	

Parent Material, Soil Type, Quaternary Thickness The feedlot area and the first 1000 ft. within the runoff flow pattern.

Soil types as described by county soil survey	Points	Assessed pts
Highly permeable, well drained soils formed in alluvium, sand and gravel, eolian (wind blown) sand, glacial out wash, thin (<10 feet) loess over weathered (regolith) sandstone or limestone.	30	
Quaternary thickness <50 ft. to carbonate bedrock	30	
Quaternary thickness 50 – 100 ft to carbonate bedrock	5	
	TOTAL POINTS	

Additional Comments, both positive and negative (add or deduct points dependent on information submitted.)

TOTAL POINTS DEDUCTED	
TOTAL POINTS ADDED	

Cumulative Assessed Priority Points For Both Pages	
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Based on the priority assessment, this facility is classified as: **HIGH** _____
MEDIUM _____
LOW _____