

Recommended Changes Chapter 65 AFO Rules Review
Submitted by
Jefferson County Farmers & Neighbors, Inc. (JFAN)
February 23, 2024

The DNR is tasked with an important mission that directly affects every citizen in Iowa:

“To conserve and enhance our natural resources in cooperation with individuals and organizations to improve the quality of life in Iowa and ensure a legacy for future generations.”

Pure and simple, it's the DNR's duty to protect the state's natural resources for the people of Iowa.

Jefferson County Farmers & Neighbors, Inc. works closely with communities in Jefferson County and in other Iowa counties to address the factory farming issues they face. Our 19 years of experience gives us firsthand knowledge and insights as to how the CAFO rules and regulations affect water quality, public health, and quality of life.

This experience guided the recommendations we offered in three sets of public comments in [October 2022](#), [June 2023](#), and [September 2023](#). They aimed to improve the Iowa code to better “improve the quality of life in Iowa and ensure a legacy for future generations,” something the DNR is not currently achieving.

Therefore, it is disappointing and troubling that the DNR rejected most of the recommendations JFAN proposed.

Of the 72 recommendations JFAN made since 2022, five mostly small recommendations were incorporated. An additional three were initially incorporated then later rescinded. (Changes incorporated at the recommendation of the Iowa Environmental Council concerning karst terrain – modified from their original recommendations – were also initially incorporated than removed.)

The agricultural industry and JFAN agreed on two logistical recommendations: returning the definitions to Chapter 65 and hyperlinking the code to the (unfortunately) removed language incorporated by reference.

A total of 66 recommendations were ignored. These are common sense recommendations that would address weaknesses in the regulations in order to better protect water quality and public health. They were made based on years of experience working with people in rural communities and observing how the regulations currently fail Iowans, fail to protect our waterways, and provide significant advantages to the livestock industry – a consequential industry for all of Iowa.

Unfortunately for the people of Iowa, it's evident that the DNR favors the health and wellbeing of the multibillion-dollar, multinational livestock industry over the health and wellbeing of Iowa's 3 million residents and its 300,000 waterways.

According to a May 2023 document obtained from the DNR through a Freedom of Information Act request, we learned the producers group submitted at least 52 recommendations. They resubmitted this document in September 2023 and highlighted several points they still wanted adopted. The DNR replied, “I'm pretty sure we did some of the things they are still questioning.”

Yes, the DNR did. Of the 52 recommendations we are aware of, 33 were incorporated into this latest revision of Chapter 65.

Executive Order Number Ten also adversely impacted the revision of Chapter 65 by calling for a reduction of restrictive language, removal of language found in the corresponding statute to be incorporated by reference, and a prohibition of strengthening current rules and regulations.

Not only does this create a disjointed, less usable version of Chapter 65, it also poses great environmental harm because no rule or regulation could be made more stringent than what is already in the Iowa Code however much that may be needed for the public good.

We already see directly see the influence EO10 had on the removal of initially adopted karst language that would better protect water quality and reduce the risk of Iowans drinking water high in nitrates from well water contamination.

EO10 is unjust and a public health threat that benefits no one from the multibillion-dollar multinational livestock industry.

JFAN supports the comments submitted by the Iowa Chapter Sierra Club on the damaging impacts, and unconstitutionality, of Executive Order Number Ten.

It is very clear from the direction both the DNR and the Governor's Office currently takes that this agency will never fulfill its mission and that water quality and public health are low on the list of DNR and state government priorities. This is unacceptable.

The DNR can remedy this by changing its priorities and taking significant action to correct the weaknesses in CAFO rules and regulations during this last revision of Chapter 65.

Our final set of public comments urges the DNR to live up to its responsibilities: make public health and water quality a priority over the financial interests of the livestock industry.

We have included a list of the 66 recommendations not incorporated into Chapter 65 that we believe would help reduce the pollution risks of animal feeding operations as well as the language we recommend for each. We urge you to adopt them.

We want to focus on a few areas here that we especially feel are essential to address.

Common Ownership and the LLC Loophole

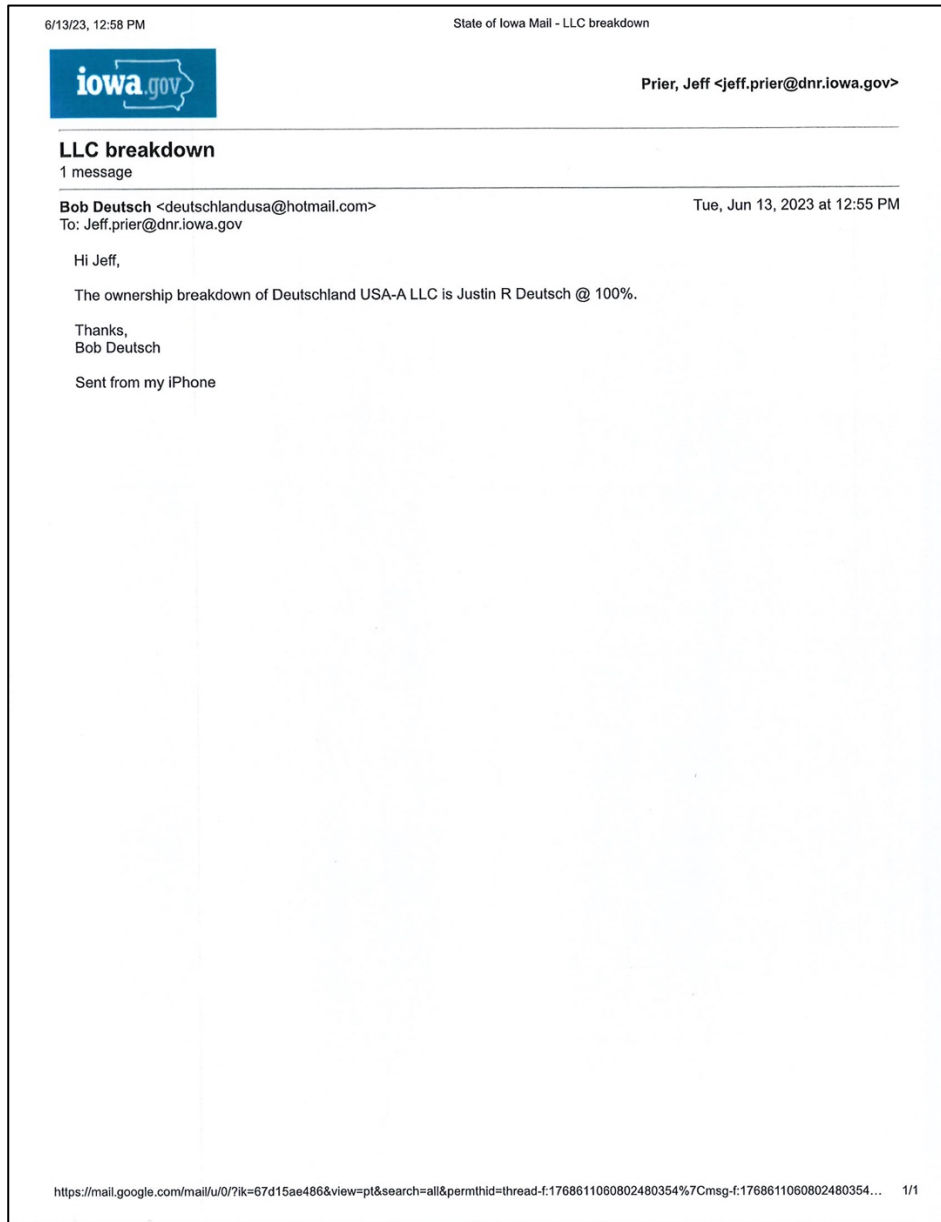
The DNR does not have a good process for determining whether adjacent CAFOs are commonly owned. CAFOs are typically formed under LLC corporations, and for years, the DNR determined that it was the LLC that owned the confinement, not the principles who owned the LLC.

This created a loophole, enabling CAFO owners to put smaller, commonly owned adjacent confinements into two separate LLCs thus enabling multiple buildings to be regulated as separate, smaller confinements and not as one larger operation.

The DNR recognized this problem and attempted to close this loophole in 2019 by requiring CAFOs to be regulated as one larger confinement if the owners of an LLC held a 10% or more interest in the adjacent confinement.

But the DNR didn't establish a reliable vehicle for confirming the claim of an LLC principle. The DNR only requires a letter.

A letter is not a legal document, and anything can be written in one. A one- or two-line declaration of non-ownership proves nothing. Here is an example of an email submitted to the DNR for an adjacent CAFO in Jefferson County to "prove" non-ownership.



In theory, the LLC loophole is closed. In practice, it is not.

The LLC Loophole is often used in Jefferson County. As we clearly illustrated in our September 2023 comments, a full quarter of the CAFOs in Jefferson County are adjacent and either suspected

to be or have been proven to be commonly owned. Given this easy-to-use loophole, it's highly unlikely that Jefferson County is an outlier this regard.

This issue was broached more than once during environmental coalition meetings with the DNR. AFO attorney Kelli Book didn't have a specific recommendation to resolve this shortfall, and asked if we had a solution. She eventually suggested an affidavit, so in our June 2023 public comments, JFAN recommended a DNR affidavit signed under oath be submitted by owners of adjacent CAFOs. It wasn't an ideal solution, but it was better than a letter. That didn't make it into the September revision Chapter 65 revision.

We further pursued the issue and talked with several attorneys, eventually identifying the actual document that would prove the percentage of ownership held by the principles of an LLC: an Operating Agreement developed at the time an LLC is formed. Our September 2023 public comments included this recommendation. Again, that was disregarded. The LLC loophole continues to exist in this recent Chapter 65 revision when there is a solution to eliminate the problem.

The LLC loophole is damaging to the environment and to Iowans. CAFOs taking advantage of the loophole aren't regulated according to their proper size. Adjacent SAFOs don't need to submit manure management plans. Two adjacent SAFOs with a combined total of about 2500 hogs generates approximately 750,000 gallons of manure. None of that manure is accounted for and there is no way to know if manure is being overapplied on farm fields. **This is a water quality problem.**

Adjacent commonly owned SAFOs don't have separation distances from anything other than some water sources. **This is a quality of life and public health problem.** Numerous peer-reviewed studies find toxic hydrogen sulfide and ammonia gases generated in confinement buildings may harm the respiratory systems of neighbors. Children are especially susceptible to a higher risk of asthma.

Neighbors report their quality of life is disrupted not only from the noxious odors but also the incessant loud screaming of distressed hogs. It's hard enough for residents to live 1250 feet away from a larger confinement, but it's miserable to be within a few hundred feet of one.

Adjacent medium sized CAFOs (2480-head or even, brazenly, 2499-head) CAFOs are not regulated as a large confinement that would require a construction permit, greater separation distances, and in most counties, a Master Matrix. **This, too, is a quality of life problem.**

The LLC loophole benefits no one but the CAFO industry.

We urge the DNR to put water quality and the health and well-being of the general public before the financial interests of the livestock industry. Therefore, we urge the DNR to require Operating Agreements when adjacent CAFOs or SAFOs are proposed in order to properly enforce AFO regulations and actually close the LLC loophole.

Karst Terrain

In November, the EPA notified the Minnesota Department of Agriculture, the Minnesota Pollution Control Agency and the Minnesota Department of Health that the state is failing in its duty to

protect Minnesotans from high levels of nitrate in their drinking water. This notification addresses people living in karst terrain who get their drinking water from private wells.

The EPA is requiring the three Minnesota agencies to identify everyone living in karst terrain who has a private well, to test to test their water if so requested, and to provide alternative water sources if the drinking water tests high in nitrates. This will be a costly endeavor for Minnesota.

Further the EPA suggests the state change its permitting system for large livestock confinements by requiring the monitoring of manure and wastewater stored on site as well as monitoring runoff from manure applied to crop fields.

The EPA has the authority to take emergency or enforcement action if Minnesota agencies don't follow through on the EPA's directive. The EPA's response was a result of a petition calling for emergency action under the federal Safe Drinking Water Act filed by a group of organizations including the Minnesota Well Owners Organization, Minnesota Center for Environmental Advocacy, and the Environmental Working Group.

This is a scenario that could very well happen in Iowa if the DNR doesn't change how it regulates CAFOs built in karst terrain.

The Iowa Environmental Council's comments on karst are knowledgeable and detailed, and **IFAN supports their current recommendations as well as those made in previous public comments.** Karst is an unsuitable and risky area for CAFO development. The cracks and fractures that develop in soluble bedrock create a direct conduit to groundwater aquifers from surface application of manure. Sinkholes that form under CAFOs can result in a catastrophic pit failure causing manure to grossly contaminate groundwater aquifers that neighbors depend upon for drinking water. The current language on karst currently in Chapter 65 is inadequate and irresponsible.

In the September 2023 draft of Chapter 65, the DNR did adopt a modified version IEC's 25-foot vertical separation distance from karst bedrock and formed storage structures. The language in that draft included a 5-foot vertical separation distance instead of the 25-foot IEC recommendation. Not ideal, but an improvement.

It further stipulated that CAFOs with a vertical separation distance between 5- and 15-feet have a minimum 5-foot continuous layer of low permeability soil or nonsoluble bedrock or a two-foot thick compacted clay liner or geosynthetic clay liner constructed according to NRCS Standard 521.

However, that language was removed and the original karst language reinstated after the Governor's Office reviewed the September 2023 draft of Chapter 65 for preclearance prior to the formal comment period.

According to the [February 19 edition of The Gazette](#), industry groups including the Iowa Cattlemen's Association, Iowa Farm Bureau Federation, Iowa Pork Producers Association, and the North Central Poultry Association exerted political pressure to remove the rule, and the Governor's Office, citing Executive Order Number 10, complied.

The producer groups lobbied against IEC recommendations as early as last spring. In their

May 2023 public comments, and re-emphasized in a September 2023 email to Ms. Book, the groups stated,

“p. 19, 65.7(3) “The two feet of compacted clay or geosynthetic clay options will be financially difficult or impossible to implement for most farms”

The producer groups are citing concerns about costs that a small number of CAFO developers may experience, but the financial costs of CAFOs to the Iowa public are extensive. The Iowa Environmental Council and JFAN laid out very clear costs associated with this industry in previous comments. To reiterate, the following are expenses connected with animal feeding operations:

- Director medical expenses cost Iowans between \$6.25 – \$27.5 million **each year**
- Indirect medical expenses account for \$35 – \$167 million **each year**
- Public water supply treatment costs \$165 million **each year**
- Private well treatment costs Iowans between \$4 – \$7.4 million **each year**

In ignoring these costs, DNR prioritizes the financial interests of the livestock industry over the financial interests of 3+ million Iowans. We have worked with Iowans forced to pay for treating their wells to remove E.coli bacteria and with rural neighbors forced to abandon their polluted private wells to go on public rural water systems.

A half million metropolitan Des Moines residents are forced to pay higher utility rates because the Des Moines Water Works is forced to run its denitrification system to remove nitrates in excess of 10 mg/liter. The utility is currently looking to build wells at a cost of \$30 million to find a cleaner water source than the Des Moines and Raccoon Rivers.

A 2015 [Des Moines Register article](#) reported the DNR found over 60 Iowa cities and towns had high nitrate levels in drinking water and that 260 cities and towns are highly susceptible of becoming contaminated by nitrates and pollutants – that’s nearly 30% of all municipal water systems in the state. Very few small systems have the financial capability to build and run expensive denitrification systems like Des Moines. As a result, many Iowans are drinking nitrate-laced water, which studies link to a variety of cancers and birth defects.

The drinking water of communities in karst areas are especially at risk for nitrate pollution. The current rules callously ignore the physical suffering these Iowans may experience from a preventable problem.

The DNR’s karst rules are also short sighted. If these avertable conditions were eliminated, healthy people would contribute more productivity and wealth to Iowa’s economy.

The burden of cost should be placed on the CAFO developer, not externalized to community members living in karst terrain.

The producer groups also state:

“Anecdotally, this requirement will eliminate approximately 25% of the currently allowed sites. The consequence of this draft rule and especially this provision will disincentivize legacy open feedlots and dairies in Northeast Iowa from converting their open pen areas to roofed or partially roofed barns to reduce the risk from stormwater runoff and potential impacts on water quality.”

Granted, open pen areas can contribute stormwater runoff to nearby waterways. But there is also the very real risk of a cracked concrete pit seeping manure directly into groundwater or a catastrophic pit failure should a sinkhole develop beneath a confinement pit. The potential for devastating groundwater contamination from either of these situations would inflict an even greater impact on rural residents using private wells than from stormwater runoff from open pen feedlots.

Further, shifting animals currently in feedlots to CAFOs, whether roofed or partially roofed, generates air pollution from the anaerobic breakdown of liquid manure in confinement pits. Fans spewing forth hydrogen sulfide and ammonia, recognized by the EPA as hazardous gases, as well as particulates contribute to environmental asthma, COPD, and other respiratory ailments for neighbors, documented in numerous peer-reviewed studies over the last 50 years.

If adoption of this rule were to “eliminate approximately 25% of the currently allowed sites”, that is a pretty clear sign that those AFOs shouldn’t be there in the first place.

Therefore, we underscore our support for the Iowa Environmental Council’s recommendation on CAFO siting in karst terrain.

Manure Management Plans

Iowa has 751 impaired waterways. Half of all the state’s waters are polluted, and only half are tested each year for the EPA’s 303d list. Many of Iowa’s drinking water sources, swimming beaches, boating and fishing opportunities are compromised by the number of pollutants in our waterways. The DNR’s handling of manure management plans only contributes to this problem.

The current paper system is inefficient and antiquated, making it difficult for the DNR to enforce necessary MMP and manure application regulations. The DNR doesn’t have a handle on where manure is being applied because cross checking paper plans of numerous CAFOs is time consuming, cumbersome, confusing, and not realistic. Also, the agency simply doesn’t have the staff.

Here are the problems that JFAN sees based on our reviewing hundreds of MMPs over a 17-year period:

1. A field can be in numerous MMPs and lead to manure overapplication. We know that because JFAN maps out where all the manure is applied in Jefferson County using data from MMPs. This kind of information is unknown in nearly every other county because it’s a time-consuming and costly process.

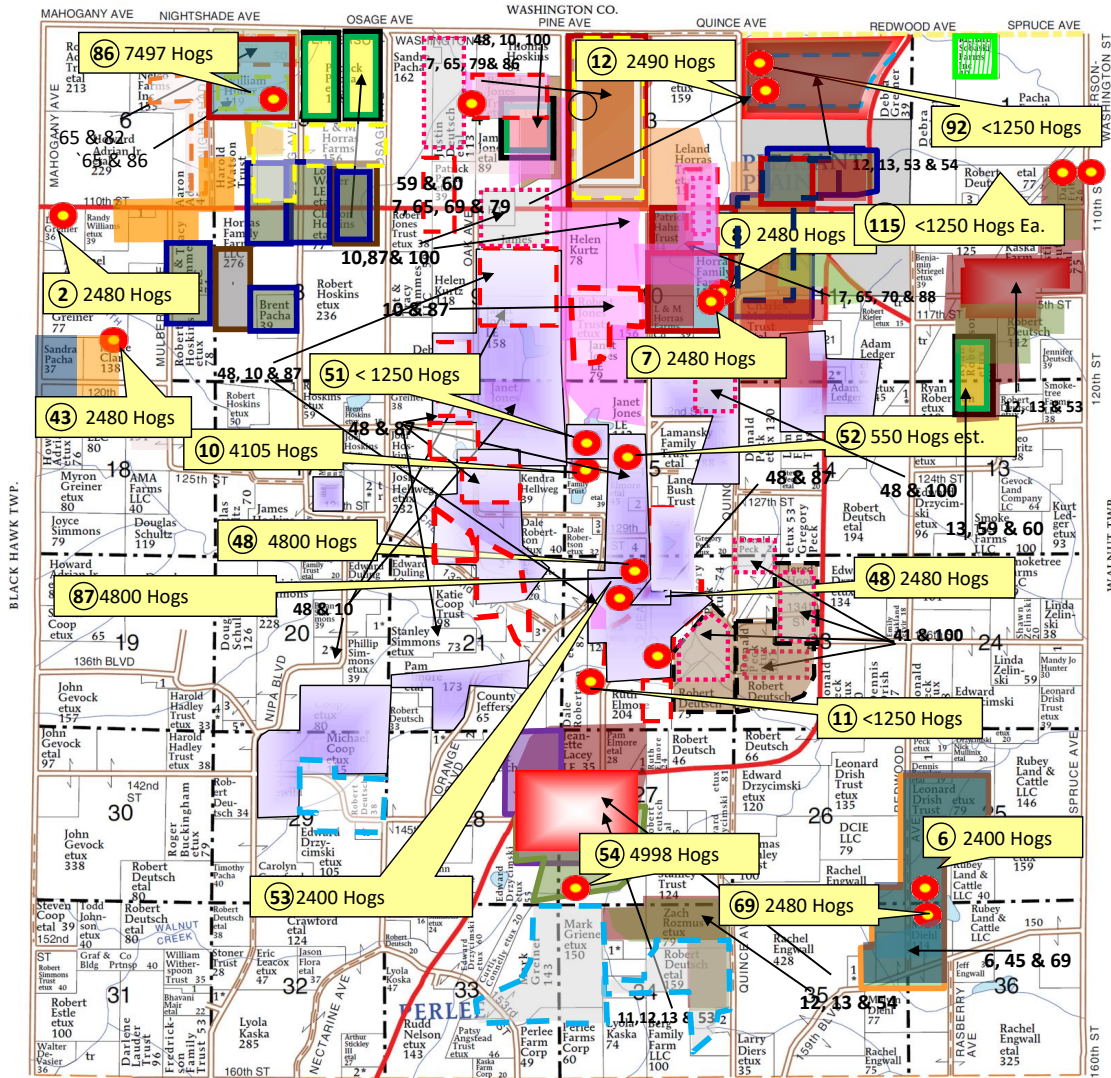
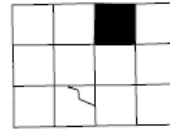
In Jefferson County, we identified numerous fields that are in two or more MMPs, and in some years, in as many as five, including in the Lake Darling watershed. This color-coded map illustrates the extent of this problem. While most farmers may work together to coordinate which fields they use in a particular year, the DNR has no way to know that is actually taking place. It’s a self-policing system with significant consequences on water quality.

T-73-N

PENN PLAT

(Landowners)

R-9-W



2. AMA Farms	42. Toast Finisher	59. Dale's Site •	86. Daniels Site
6. Casey Diehl Hawk Site	43. AMA Farm #2	60. Dav Site •	87. E & H Livestock
7. DCCK Pork	45. Casey Diehl Home Site	65. Lewis Brothers •	88. MYPs – Ag Brighton Site •
8. DJB Family Farms	46. Hog House LLC •	69. Diehl Pork Site 2 Hawk Farm	91. Quincet Pork
10. Hilltop Haven	48. E&H Livestock	70. Cody Sobaski •	92. Piglet LLC
11. Hilltop Farm	51. 128th St.	72. Cody Sobaski •	100. Jones Site
12. KK Finishers	52. E&H Livestock	75. Topy Sobaski •	103. Jones Farm
13. Brighton	53. Penn Site	79. BBLR Pork, LLC •	115. Guy Site
41. Porkopolis	54. RWP LLC - Mark Greiner	82. Aaron Adam •	

▲ Feedlot ● CAFO • CAFO's Outside Jefferson Co.

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Plat Map Image Courtesy of Farm & Home Publishers via FarmandHomePublishers.com

2. There is also no way for the DNR to actually track how much manure is being applied to fields and when manure applications are taking place. CAFO owners are expected to “do the right thing.” Not all do.
3. Manure management plans are considered just that – plans. They are subject to change, and the DNR only requires a yearly update of what the CAFO owner thinks will take place.

This is no way to operate an enforcement agency for an industry that has consequential impacts on water quality and public health.

Digital technology exists to eliminate this problem. Why is the DNR not using it? We have roughly 13,000 AFOs and billions of gallons of manure generated every year. It’s time to develop an online database of MMPs and a geospatial mapping system to update MMP oversight.

Our waterways are too polluted and drinking water in both municipal systems and private wells are compromised. It’s unacceptable and unfair that public water and private well treatment costs, cited above, are passed onto Iowans when the DNR can put in place a system that can help to reduce water pollution.

It’s time the DNR steps up and addresses this problem. We reiterate our previous comments and urge the DNR implement these recommendations within the next two years:

1. Develop an electronic MMP system for submitting all four-year manure management plans and updates.
2. Develop a geospatial mapping system for all fields receiving manure in Iowa to cross check for fields in more than one MMP.
3. Develop a GPS-based reporting system for manure applications that include real-time application rates and dates of application.
4. The system should flag the DNR when a field receives more than one manure application per year.
5. The DNR should proactively investigate and issue a violation if an overapplication occurs.
6. Develop an interactive tool for the general public to view the database of MMPs, the geospatial mapping system, and the application reporting system.
7. Ensure all MMPs are completely analyzed by DNR staff to ensure nitrogen and phosphorus calculations and the P Index are correct. In our analyses of MMPs, we’ve often identified errors including P Index calculations.

County Board of Supervisors Demand for A Hearing

In the June draft of Chapter 65, the DNR accepted JFAN’s recommendation to extend the amount of time from 14 days to 30 days that a county board of supervisors has to demand a hearing for a newly permitted CAFO. But the September draft added that a board of supervisors must signal its intent to demand a hearing postmarked no later than 14 days following the receipt of the DNR’s preliminary decision on a CAFO application.

That cancels out the 30-day expansion change.

In their May 2023 comments, producer groups wrote:

“In addition, to allow flexibility to county boards of supervisors to waive the 14-day appeal period and allow producers to proceed with construction, and consistent with current department policy, as we understand it, we propose that a county board of supervisors’ authority to waive the 14-day appeal period be stated in the subrule.”

The producer groups then called for the following language change:

“Due to the need for expedited scheduling, the county board of supervisors shall, as soon as possible but not later than 14 days following receipt of the department’s notice of preliminary decision, notify the department in writing that the board intends to file a demand for hearing.”

The DNR then added the following industry language change to Chapter 65:

A county board of supervisors that has submitted an adopted recommendation to the department may waive the right to file a demand for hearing following receipt of the department’s notice of preliminary decision by filing a written notice of waiver with the department”

While it may be the preference for producer groups to see construction proceed as quickly as possible, this language change negates the real need for time when communities have major environmental concerns about a permitted site.

In 2018, a 7499-head hog confinement was permitted in Jefferson County. The CAFO is in the Lake Darling watershed, and fields contained its MMP were in multiple other MMPs, many in the Lake Darling watershed. Further, there were vulnerable children and elderly residents living near the confinement as well as a local organic farm that initially had plans to open a retail store on their farmstead.

The community worked with county supervisors to urge them to appeal the permit based on general environmental grounds even though the supervisors approved the Master Matrix.

The 14 days did not give the community enough time to contact experts and gather the necessary data for discussing the appeal with the board of supervisors. The presentation that was made lacked some information that, had time been available, could have been obtained to affect the supervisors’ decision.

The DNR is once again giving priority to the desires of the livestock industry over the needs of the community.

Therefore, we urge the DNR to rescind the following language:

65.105(7) A county board of supervisors that has submitted may contest the department’s preliminary decision to approve or disapprove an application for permit by filing a written intent to demand a hearing and a demand for a hearing before the commission. ~~The intent to demand a hearing shall be sent to the director of the department and must be postmarked no later than 14 days following the board’s receipt of the department’s notice of preliminary decision.~~ The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the board’s receipt of the department’s notice of preliminary decision. A county board of supervisors that has submitted an adopted recommendation to the department may waive the right to file a demand for hearing following the receipt of the department’s notice of

preliminary decision by filing a written notice of waiver with the department. an adopted recommendation to the department

JFAN Recommendations Not Incorporated

The following is an abbreviated list of the 66 recommendations that were not incorporated in the latest draft of Chapter 65. These are all based on our experience working with communities that would make the rules more effective and better protect water quality, public health, and quality of life.

For the benefit of Iowans and our environment, we urge the DNR to reevaluate Chapter 65 and incorporate each of these recommendations into the code.

1. Animal capacity should be documented with the submittal of delivery receipts following each livestock delivery to ensure 2499 hogs is really 2499 hogs. Double stocking is prohibited.
2. The definition of "Owner" includes a person who has an ownership interest in a partnership or corporation that has legal or equitable title to the property or AFO structures.
3. The definition of "Owner" includes direct or indirect ownership of all family members not just a spouse or dependent child.
4. To confirm or disprove common ownership of adjacent CAFOs of all sizes (SAFOs and CAFOs), an Operating Agreement developed during the formation of each partnership or LLC the owns the adjacent CAFOs should be submitted.
5. Common management definition includes integrators.
6. The definition of "document" includes an Operating Agreement developed when an LLC or partnership is formed to prove or disprove common ownership.
7. The definition of "interest" includes ownership interest when it is held directly, indirectly through a family member, not just a spouse or dependent child.
8. The definition of "covered" excludes a naturally occurring crust on the surface of stored manure as liquid manure is always accruing on top of the crust. This is a common point taken on the Master Matrix.
9. Retain the detailed guidelines for manure management plans and adopt as a required practice.
10. If ownership of a CAFO changes, the new owner should publish a public notice in a newspaper having a general circulation in the county and the transfer should be published on the DNR's website.
11. If ownership of a CAFO changes and common ownership exceeds 1000 animal units, the transferee shall complete the Master Matrix.
12. The definition of public use area includes recreational trails.

The Iowa Environmental Council is highly knowledgeable about the impacts of CAFOs on karst terrain, and we have deferred to their recommendations made in all public comments since 2022. Our previous comments included points 13 and 14. We want to reiterate our support for IEC's recommendations in points 15 and 16 as well as all those they currently submit.

13. To make a karst terrain determination, the DNR should not just rely on the AFO Siting Atlas to identify karst, but shall incorporate site-specific investigations and regional knowledge of sinkholes that have occurred and are not identified on the AFO Siting Atlas.
14. The number of soil corings for a CAFO constructed in karst should be increased from one to six corings.
15. No construction of any type of structure should be permitted within a 25-foot vertical separation distance between the bottom of a confinement pit and karst bedrock. **The DNR first accepted a modified version of this recommendation, scaling it down to 5 feet. The DNR submitted this change to the governor's office in September. It was removed after the governor's office review.** The regulation reverted to the original language that doesn't adequately protect karst from confinement pits.
16. If there is between a 5-15 foot vertical separation distance between the bottom of a confinement pit and karst, then (1) a minimum 5-foot continuous layer of low permeability soil or non-soluble bedrock or (2) a 2-foot thick compacted clay liner or geosynthetic clay liner must be constructed directly beneath the floor of the structure. The design of the formed structure must be prepared and sealed by a PE or an NRCS engineer. **Again, the DNR had this in their September draft to the governor's office, but it was removed after the governor's office review. The old, insufficient karst regulations are now in place.**
17. If the site may be located in karst, a soils exploration study or statement from a qualified department staff that a soils exploration study is not needed shall be included.
18. The Departmental Evaluation Rule should remain in place. This provides the DNR director the ability to deny a CAFO based on site unsuitability. The DNR director should use it.
19. The corporation (integrator) that owns the hogs and that provides the directions for the management of the confinement should be included on the Construction Design Statement in order to determine common management.
20. DNR must spell out what constitutes "sufficient and proposed alternative information" when granting a temporary or permanent waiver for separation distance of manure application.
21. The definition of "non-substantial revisions" in a construction approval letter should be clearly spelled out and not subject to the CAFO developer's definition.
22. Increase the amount of time that a county board of supervisors has to file an appeal for an approved CAFO permit with the Environmental Protection Commission from 14 to 30 days. **The DNR did originally make this change, but then added a provision that negated the change.**

23. A new construction permit should be required for confinement buildings empty for 12 months that are being repopulated with over 1000 animal units. The DNR changed that time period to 24 months.
24. Further, all confinement pits should be inspected by a licensed professional engineer or a DNR engineer before repopulating the building.
25. All new confinements should be inspected by a licensed professional engineer and a DNR AFO engineer after completion of construction and commencement of operation.
26. Return removed language to the definition of alternative technology so that the credibility and effectiveness of the alternative technology can be properly evaluated.
27. Expand the definition of “commercial enterprise” to include businesses that operate for part of the year, such as those in seasonal tourist destinations.
28. Slatted concrete floors should not be considered a “covered” surface in a confinement building as they are designed with numerous openings that allow waste products to pass from livestock into the below ground pit. Odors come up through the floor and are blown out into the neighboring, something a covered surface is intended to reduce.
29. “Educational institution” shall include buildings where homeschool students who are enrolled in homeschool programs served by local school districts go to study.
30. A person who has an interest in a confinement feeding operation and who is the subject of a pending civil enforcement action shall not acquire legal responsibility or an interest in any additional permitted confinement feeding operations for the period that the enforcement action is pending. Currently the regulation addresses only those classified as habitual violators.
31. Increase the amount of freeboard for a confinement pit from one foot to two feet in order to avoid spillage in an emergency.
32. A construction permit should be required for a confinement building that uses a confinement pit in conjunction with a small animal feeding operation (SAFO) if the total animal units is 1000 or more. (Currently it’s not required.)
33. The DNR should require a construction permit for buildings being modified after the completion of the last construction or modification if the confinement exceeds 1000 or more animal units. Currently there is a 120-day window where one would not be required.
34. Retain language on SAFOs that prohibits their construction on a one-hundred-year floodplain.
35. Retain the language on SAFOs that requires a floodplain determination permit for construction to begin.
36. Retain language on SAFOs that requires them to comply with applicable separation distances.
37. A construction permit application should include the name of the corporation that owns the livestock (integrator).

38. Delete the language that excludes a board of supervisors from using a Master Matrix if CAFO built prior to April 1, 2002 is expanding and the animal unit capacity is 1,666 or less. Any expansion over 1000 should require a permit and Master Matrix.
39. If the site of a currently operating CAFO is later found to be in a designated wetland, an expansion should not be allowed to take place regardless if a construction permit application or manure management plan was previously submitted to the department.
40. The separation distance of a CAFO to a public use area should be taken from the public use area's property line, not the facilities where people congregate and remain for a significant period of time.
41. If the separation distance to a CAFO is waived by a school or public land, its title holder should execute the waiver after a public notice is filed in a newspaper having general circulation in the county not less than 14 days before the waiver is filed.
42. A confinement feeding operation that meets the definition of a qualified operation shall only use an aerobic structure for manure storage and treatment but the definition should not apply to confinements that collect manure in a confinement pit.

Points 43-66 are regarding manure management plans (MMPs)

43. Restore the recommended practices for manure application. They should be part of the code but, at the very least, they should be listed to provide guidance.
44. Delete the current waiver to provide a new Manure Management Plan if, when constructing a CAFO, there is no change in animal category for determining animal units nor an increase in manure volume. **This recommendation was first accepted then removed.** The nitrogen and phosphorus levels of manure can change depending on feed, and this language doesn't take that into account.
45. MMP updates that are electronically filed should also include changes in fields receiving manure.
46. MMP updates filed electronically should include all information in a paper update. Currently, an electronic update includes only some of the information in a paper update. It's impossible to determine field changes.
47. Retain the removed language on applying manure to snow covered or frozen ground – already a bad practice – that protects water quality.
48. Use consistent names for field designations listed on page 3 of the MMP with a recommendation to use FSA Field Numbers to cross reference fields in other MMPs. Fields may have a variety of names making it difficult to identify overlapping fields in multiple MMPs.
49. Each MMP should be completely analyzed by the DNR and not spot checked as is the current practice.
50. If a field in an MMP is in another MMP, the name of that CAFO should be identified.

51. All MMPs should be reported and fully uploaded into an MMP database enabling the DNR to flag fields in more than one MMP.
52. For fields in more than one MMP, the AFO owner should notify the DNR in writing when applying manure to avoid over application by another CAFO.
53. All fields should be plotted out using geospatial mapping including manure application rates to identify and eliminate overlapping manure applications in a given year.
54. Manure application location and rates should be reported to this database each time manure is spread, taking the concept of MMPs being “plans” into real time accountability.
55. The DNR should provide access to the MMP database to the general public.
56. The geospatial mapping should be accessible to the general public through the AFO Siting Atlas.
57. Use Iowa State University’s Maximum Return to Nitrogen Rate to avoid manure overapplication.
58. The DNR shall disapprove all incomplete MMPS after 60 days. No new confinements shall be populated until an MMP is approved.
59. To determine manure application rates for manure originating from an anaerobic lagoon or aerobic structure, the availability of the soil to hold water based on weather events and soil types should be determined using documented quantifiable measures recommended by certified hydrologists, not just a “good faith estimate.”
60. To confirm the correct water-to-manure ratio for applying manure using spray irrigation, samples of diluted manure should be sent to the State Hygienic Laboratory, and documentation of the ratio of water-to-manure should be kept with all manure application records.
61. To complete accurate MMP calculations, the DNR should only require annual manure samples from the AFO’s confinement pit. For a new CAFO, the first year’s manure sample should be taken from a local CAFO affiliated with the same corporation (integrator). An average of manure taken from local CAFOs from the same corporation may be used if the samples were collected within the previous twelve months. Currently calculations can be obtained from a variety of sources that may not accurately reflect real nitrogen and phosphorus levels.
62. We found six instances where “credible sources” is cited as a baseline of evaluation for various parts of the manure management plan. In each case we asked for “credible sources” to be defined. They weren’t.
63. When sheet and rill erosion is calculated for the phosphorus index, the soil type map unit used for the calculation shall be the most erosive soil map unit that is at least 10 percent of the total field area. In all manure management plans submitted to the department for approval, the dominant critical soil map unit consistent with NRCS conservation planning guidelines shall be used to calculate sheet and rill erosion for the phosphorus index.

64. Recent soil samples to accurately calculate Phosphorus Indexes should be submitted with original MMPs. Currently for original MMPs, a soil sample may be provided that was taken within the last four years.
65. If a manure sample is taken to determine nitrogen and phosphorus content, the sample should be taken according to ISU Extension and Outreach Publication “How to Sample Manure for Nutrient Analysis”, and the DNR should require documentation of the sampling protocol and a split sample to verify nitrogen and phosphorus content.
66. CAFOs taking Master Matrix points for the separation distances for land application of manure must submit manure application records with their annual MMPs to ensure compliance with the Master Matrix.

Conclusion

It’s time for the DNR to really consider who it’s working for: the citizens of Iowa or the multibillion-dollar, multinational livestock industry. Right now, it’s pretty clear the livestock industry is the beneficiary of the latest version of Chapter 65.

This agency, and this state government, has a responsibility to the people of Iowa. You are in a position to actually do something constructive to protect Iowa’s waterways and the public health and quality of life of its citizens.

Taxpaying citizens deserve better than this. The DNR can do better than this. We urge you to put the welfare of people and the environment first and adopt all of JFAN’s and the Iowa Environmental Council’s recommendations for Chapter 65. This agency has a mission to keep Iowans safe. We urge you to do everything necessary to do so.

Addendum

Full Language of JFAN Recommendations for Chapter 65

Comments we recommend the DNR either add or retain are in red. Comments we recommend the DNR remove are in red.

567-65.1(459, 459A, 459B) Definitions and incorporation by reference.

65.1(1) Definitions.

“Alternative technology”

“Alternative technology settled open feedlot effluent control system” or “AT system” means use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent. **The department may allow an open feedlot operation covered by the NPDES permit application requirements of 567—65.102(459A) or 567— 65.103(455B,459A) to use an AT system, provided the open feedlot operation satisfactorily demonstrates the AT system will provide an equivalent level of performance to that achieved by a runoff containment system that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter. Demonstration of equivalent performance must include submitting results of computer modeling which compares**

the predicted performance of the proposed system with that of a conventional runoff containment system over the same period. The specific requirements which must be met for an open feedlot operation to qualify for use of an AT system and the information which must be submitted to the department are outlined in rule 567—65.110(459A).

Design requirements have been established for two types of AT systems. These are a vegetative infiltration basin (VIB) followed by a vegetative treatment area (VTA) and a stand-alone vegetative treatment area (VTA). If other AT systems are developed that meet the equivalent performance standard established under EPA's CAFO rules, the department will consider their acceptance on a case-by-case basis.

“Animal Capacity”

“Animal capacity” means the maximum number of animals which the owner or operator will confine in an ~~animal feeding operation~~ AFO at any one time. The animal capacity shall be what is currently approved or permitted on the site and is listed in the MMP or NMP, unless a portion of the facility has been properly closed or taken out of operation through the small AFO election **and shall be documented by the submittal of delivery receipts after each livestock delivery. Double stocking is prohibited.** In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned, in accordance with the definition of “abandoned AFO structure.”

“Commercial Enterprise”

“Commercial enterprise” means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, ~~which is customarily and regularly used by the general public during the entire calendar year~~ and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

“Common Management”

“Common management” means ~~significant control by the ability of~~ an individual ~~or the same group of individuals to~~ determine of the management of the day-to-day operations of each of two or more confinement AFOs. “Common management” ~~does not~~ includes ~~the corporation that controls~~ a contract livestock facility by a contractor as defined in Iowa Code section [202.1](#).

“Common Ownership”

“Common ownership” for confinement feeding operations means the ownership of an animal a confinement feeding operation as a sole proprietor, or a 10 percent or more ownership interest held by a person, in each of two or more animal confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or ~~both other~~ **family members. When applying for a permitted or unpermitted adjacent AFO under an LLC or partnership, a legally signed Operating Agreement developed when the LLC or partnership is formed that lists each owner and their percentage of ownership is required.**

The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse ~~or dependent child, or both~~ or other family members.

“Covered”

“Covered” means organic or inorganic material, placed upon an animal feeding operation AFO structure used to store manure, which significantly reduces the exchange of gasses between the stored manure and the outside air. Organic materials include, but are not limited to, a layer of chopped straw, or other crop residue. ~~or a naturally occurring crust on the surface of the stored manure.~~ Inorganic materials include, but are not limited to, wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. ~~A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.~~

“Document”

“Document” means any form required to be processed by the department under this Chapter regulating ~~animal feeding operations~~ AFOs, including but not limited to applications or related materials for permits as provided in Iowa Code section 459.303, ~~manure management plans~~ MMPs as provided in Iowa Code section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department’s analysis of the application including using and responding to a master matrix pursuant to Iowa Code section 459.304, and notices required under those sections. ~~Document also includes official legal business documents for an LLC listing each owner and their percent of ownership along with the signature page.~~

“Educational institution”

“Educational institution” means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts ~~including buildings where homeschool students study who are enrolled in homeschool programs served by local school districts.~~

“Interest”

“Interest” means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is an interest when it is held directly, indirectly through a spouse ~~or dependent child or both~~ or other family member.

“Owner”

“Owner” means ~~the a~~ a person who has legal or equitable title to the property where the AFO is located, ~~or the a~~ a person who has legal or equitable title to the AFO structures, ~~or a person who has an ownership interest in a partnership or corporation that has legal or equitable title to the property or AFO structures.~~ “Owner” does not include a person who has a lease to use the land

where the AFO is located or to use the AFO structures. ~~“Owner” includes a person’s ownership interest in a partnership or corporation with legal or equitable title to the property.~~

“Public use area”

“Public use area” means that portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges and cabins, shelter houses, playground equipment, ~~recreational trails~~, ~~swimming~~ beaches at lakes, and fishing docks, fishing houses, fishing jetties or fishing piers at lakes. It does not include a highway, road right- of-way, parking areas, ~~recreational trails~~ or other areas where the public passes through, but does not congregate or remain in the area for significant periods of time

567—65.5(459, 459A, 459B) Transfer of legal responsibilities or title.

If title or legal responsibility for a permitted ~~animal feeding operation~~ AFO or an animal truck wash is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the construction permit and these rules. The person to whom the construction permit was issued and the person to whom title or legal responsibility is transferred shall notify the department **in writing** of the transfer of legal responsibility or title of the operation within 30 days of the transfer. **The person to whom responsibility is transferred shall publish a public notice containing the information in section 65.106(2)(a) in a newspaper having general circulation in the county.** Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the construction permit to reflect the transfer of legal responsibility **including submitting a master matrix in counties where one is adopted and filing a public notice if the total animal unit exceeds 1000.** A person who has been classified as a habitual violator under Iowa Code section **459.604** shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator. **A person who has an interest in a confinement feeding operation and who is the subject of a pending civil enforcement action shall not acquire legal responsibility or an interest in any additional permitted confinement feeding operations for the period that the enforcement action is pending.**

65.7(1) Karst terrain submittal requirements

65.7(1) Karst terrain submittal requirements. Prior to beginning construction of a structure identified in the introductory paragraph of this rule, the person planning the construction shall determine whether the proposed structure will be located in potential “karst terrain,” as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed structure is in potential karst terrain. **The karst terrain determination shall incorporate site-specific investigation and regional knowledge of sinkholes that have occurred that are not identified on the AFO Siting Atlas.**

567–65.7(4) Unformed structures.

The construction of unformed structures, including structures at SAFOs, is prohibited in karst terrain or an area that drains into a known sinkhole. In potential karst, at least ~~one~~ **six** corings at **least 25 feet apart** shall be taken to a minimum depth of 25 feet below the bottom elevation of the proposed unformed storage structure or into bedrock, whichever is shallower. If a 25 feet vertical separation distance can be maintained between the bottom of the unformed structure and limestone, dolomite, or other soluble rock then the structure is not considered to be in karst terrain. No intact or weathered bedrock, including sandstone, shale, limestone, dolomite, or soluble rock, shall be removed or excavated during the construction of a storage structure.

567—65.100(1)b (459,459B) Minimum manure control requirements and

b. Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in unformed manure storage structures or unformed egg wash water storage structures shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures or formed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of ~~one foot~~ **two feet of** freeboard in the structure unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow.

567—65.101(459,459B) Requirements and recommended practices for land application of manure from an animal feeding operation

65.101(1) Application rate based on crop nitrogen use. A confinement feeding operation that is required to submit a ~~manure management plan~~ MMP to the department under rule ~~567—65.16~~ 567—65.111(459,459B) shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. Calculations to determine the maximum manure application rate allowed under this subrule shall be performed pursuant to rule 567—65.112(459,459B) **using the Iowa State University Nitrogen Rate Calculator** <http://cnrc.agron.iastate.edu>

65.3(5) Recommended practices. Except as required by rule in this chapter, the following practices are recommended:

a. **Nitrogen application rates.** To minimize the potential for leaching to groundwater or runoff to surface waters, nitrogen application from all sources, including manure, legumes, and commercial fertilizers, should not be in excess of the nitrogen use levels necessary to obtain optimum crop yields for the crop being grown.

b. **Phosphorus application rates.** To minimize phosphorous movement to surface waters, manure should be applied at rates equivalent to crop uptake when soil tests indicate adequate phosphorus levels. Phosphorous application more than crop removal can be used to obtain maximum crop production when soil tests indicate very low or low phosphorus levels.

c. **Manure application on frozen or snow-covered cropland.** Application of dry or liquid manure on frozen or snow-covered cropland should be avoided where possible. If

manure application must take place in the winter time, the following are guidelines to minimize runoff and subsequent loss of nutrients.

- (1) Apply manure to areas where land slopes are 4 percent or less or where control practices are sufficient to prevent runoff from reaching surface water or groundwater during winter.
- (2) If applying manure on a terraced field or sloping field, avoid application to areas that drain to tile intakes that directly discharge to surface water or groundwater.
- (3) Do not apply manure in grassed waterways.
- (4) Apply manure early in winter prior to significant snowfall.
- (5) Avoid application near tile intakes, ditches, gullies, areas of concentrated flow, creeks, streams, lakes, and other surface water.
- (6) Avoid application near water wells, sinkholes, losing streams, areas with shallow bedrock, agricultural drainage wells, or other pathways to groundwater.
- (7) Do not apply manure on top of deeper snow cover, especially in late winter.
- (8) Applying manure on soybean stubble where less snow is captured is preferable to applying manure on standing cornstalks.
- (9) In late winter, wait until the snow has melted before applying manure.
- (10) Avoid application during active runoff events or when rainfall, snow, or warming conditions are predicted that could cause snowmelt or runoff.
- (11) Fields and tiles should be observed during snowmelt and runoff events to identify and remediate any runoff that may occur. If discolored or odorous water is being discharged, immediate efforts should be taken to prevent the water from reaching surface water or groundwater and changes should be made to prevent the discharge from recurring. Sampling and analysis of runoff for nitrogen and phosphorus may be used to better evaluate management practices in order to avoid wasting valuable nutrients or causing water quality violations.

d. Manure application on cropland subject to flooding. Manure application on cropland subject to flooding more than once every ten years should be injected during application or incorporated into the soil after application. Manure should not be spread on such areas during frozen or snow-covered conditions.

e. Manure application on land adjacent to water bodies. Unless adequate erosion controls exist on the land and manure is injected or incorporated into the soil, manure application should not be done on land areas located within 200 feet of and draining into a stream or surface intake for a tile line or other buried conduit. No manure should be spread on waterways except for the purpose of establishing seedings.

f. Manure application on steeply sloping cropland. Manure application on tilled cropland with greater than 10 percent slopes should be limited to areas where adequate soil erosion control practices exist. Injection or soil incorporation of manure is recommended where consistent with the established soil erosion control practices.

567-65.101(2) General requirements for application rates and practices.

b. For manure originating from an anaerobic lagoon or aerobic structure, application rates and practices shall be used to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. In determining appropriate application rates and practices, the person land-applying the manure shall consider the site conditions at the

time of application including anticipated precipitation and other weather factors, field residue and tillage, site topography, the existence and depth of known or suspected tile lines in the application field, and crop and soil conditions, including ~~a good-faith estimate~~ **documented quantifiable measures recommended by certified hydrologists** of the available water holding capacity given precipitation events, the predominant soil types in the application field and planned manure application rate.

d. For manure from an earthen waste slurry storage basin, earthen manure storage basin, or formed manure storage structure, restricted spray irrigation equipment shall not be used unless the manure has been diluted with surface water or groundwater to a ratio of at least 15 parts water to 1 part manure. **Samples of the diluted manure should be sent to the State Hygienic Laboratory and documentation of the ratio of water to manure should be kept with all manure application records.** Emergency use of spray irrigation equipment without dilution shall be allowed to minimize the impact of a release as approved by the department.

65.101(3)d Surface Application of Manure on frozen or snow-covered ground

d. For persons who anticipate the need to apply liquid manure on frozen or snow-covered ground, MMPs shall include a description of land identified for the application of liquid manure due to an emergency if allowed pursuant to subrule 65.101(4). The phosphorus index for each potential emergency application field must be calculated, and application rates should be calculated appropriately. Locations of downgradient surface water drain tile intakes within all fields included in the plan should be identified by map or coordinates. Future applications of liquid manure must take the nutrients added during emergencies into consideration.

65.101(2) Separation distance requirements for land application of manure.

e. ~~Variance~~ Waivers. ~~Variance~~ Waivers to paragraph “c” of this subrule may be granted by the department if sufficient and proposed alternative information **[spell out exactly what is acceptable.]** is provided to substantiate the need and propriety for such action. Waivers may be granted on a temporary or permanent basis. The request for a ~~variance~~ waiver shall be in writing and include information regarding **65.3(5)**

567-65.102 (459,459B) Departmental evaluation

The department may evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan with respect to its potential adverse impacts on natural resources or the environment.

- a.* In conducting the evaluation, the department shall consider the following factors:
- (1) The likelihood manure will be applied to frozen or snow-covered cropland.
 - (2) The proximity of the structures or manure application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.
 - (3) Topography, slope, vegetation, potential means or routes of conveyance of manure spilled or land-applied. This factor includes but is not limited to whether the manure application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether manure for land application is hauled or otherwise

transported more than five miles.

(4) Whether the operation or manure application area is or will be located in a two-year capture zone for a public water supply.

b. In addition to the requirements in rules 567—65.9(459,459B), 567—65.10(459,459B), 567— 65.11(459,459B), 567—65.15(459,459B) and 567—65.17(459,459B), the department may deny a construction permit, disapprove a manure management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:

(1) Manure from the operation will cause pollution of a water of the state.

(2) Manure from the operation will cause a violation of state water quality standards.

(3) An adverse effect on natural resources or the environment will occur in a specific area due to the current concentration of animal feeding operations or the associated manure application areas.

c. The department also may establish permit conditions or require amendments to the manure management plan in addition to the minimum requirements established for such operations, on the location of structures or manure application, or other operational conditions necessary to avoid or minimize the adverse impacts.

d. A construction permit denial or condition, a manure management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be appealed according to the contested case procedures set forth in 561—Chapter 7.

567-65-103(1)h Confinement feeding operations required to obtain a construction permit prior to any of the following.

h. Repopulating a confinement feeding operation that had been a discontinued AFO for **24 12** or more months and if any of the following apply:

(1) The confinement feeding operation uses an unformed manure storage structure or egg wash water storage structure;

(2) The confinement feeding operation includes only confinement buildings and formed manure storage structures and has an animal unit capacity of 1,000 animal units or more.

All storage areas must be inspected by a licensed professional engineer or a DNR engineer before repopulating the building.

567- 65.103(2) Confinement feeding operations not required to obtain a construction permit.

a. A construction permit shall **not** be required for a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a ~~small animal feeding operation~~ SAFO **if the total animal units is 1000 or more**. However, this paragraph shall not apply to a ~~small animal feeding operation~~ SAFO that uses an unformed manure storage structure.

567-65.103(3) Operations that shall not be issued construction permits.

a. The department shall ~~not~~ issue a construction permit to expand or modify a confinement feeding operation ~~for 120 days~~ after completion of the last construction or modification at the operation ~~if the confinement contains or exceeds 1000 animal units, if a permit was not required for the last construction or modification~~

567—65.103(455B,459,459B) Construction permits—required approvals, and permits, determinations and declaratory orders.

65.103(1)e. Purchasing or acquiring an adjacent animal feeding confinement operation if after acquisition the animal unit capacity of the combined operation is 1,000 animal units or more.

567- 65.103(8) SAFOs.

The following requirements apply to small animal feeding operations, notwithstanding construction permit exemptions in subrule 65.7(2) and limited separation distance exemptions in rule 567—65.12(459,459B):

a. A person shall not construct a confinement feeding operation structure in the one hundred-year floodplain. A person shall not begin construction of a confinement feeding operation structure located on alluvial soil until the department issues a declaratory order pursuant to subrule 65.7(9) that the proposed location is not in the one hundred year floodplain. The AFO Siting Atlas may be a tool used to assist in the one hundred year floodplain and alluvial soil determinations.

b. A person shall not construct a confinement feeding operation structure on a floodplain as provided in rule 567—71.13(455B) until the department issues a floodplain development permit pursuant to 567—Chapters 70 to 76.

c. Confinement feeding operation structures must comply with applicable separation distance requirements in rule 567—65.11(459,459B) and the applicable manure storage structure design requirements in rule 567—65.15(459,459B)

567-64.104 Preconstruction submittal requirements

For adjacent permitted, unpermitted, and small animal feeding operations where a partnership or corporation is involved, a legally signed Operating Agreement shall be required to validate the percentage of ownership in the partnership or corporation.

567-65.104(1) Construction permit application.

Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required in the form. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit in accordance with subrule 65.106(5). A construction permit application for a confinement feeding operation shall be filed as instructed on the form and shall include the following:

d. The name of the corporation that owns the livestock (integrator).

l. The names of all parties with an interest or controlling interest in the confinement feeding operation who also have an interest or controlling interest in at least one other confinement feeding operation in Iowa, and the names and locations of such other operations along with a **legally signed Operating Agreement for adjacent CAFOs in individual LLCs or partnerships listing each owner and their percent of ownership.**

o. **Soil information indicating whether the proposed location contains soils classified as alluvial, pursuant to subrule 65.9(4).** A copy of the AFO Siting Atlas clearly showing the location of the proposed structure, with the 100-year floodplain and karst layers included. **If the proposed location contains soils classified as alluvial, a copy of the department's determination that the proposed location is not in a one hundred year floodplain, and a floodplain development permit pursuant to 567—Chapters 70 to 76, if required, shall be included.**

q. Information indicating whether the proposed location is in karst terrain pursuant to subrule 65.9(5). If the proposed location is in karst terrain, a soils exploration study or a statement from qualified department staff that a soils exploration study is not needed shall be included.

567-65.104(2) Construction approval letter

65.104(2)(b) Construction Approval Letter. After submission of items in paragraphs a through e and prior to issuance of the construction approval letter, the confinement feeding operation may make **non-substantial** revisions to the items and maintain the date construction is scheduled to begin.

Define "non-substantial"

567- 65.104(3)c(3) Construction design statement.

65.104(3)(c)(3).The name of the person planning construction at the confinement feeding operation, if in an LLC, the name of the owners of the LLC **and for adjacent CAFOs, a legally signed Operating Agreement for each LLC or partnership listing each owner and their percent of ownership along with the name of the corporation that owns the hogs,** the name of the confinement feeding operation, the location of the proposed formed manure storage structure, a detailed description of the type of confinement feeding operation structure being proposed, the dimensions of the structure, and whether the structure will be constructed of reinforced concrete or steel.

567- 65.105(7)County board of supervisors' demand for hearing.

a. A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written demand for a hearing before the commission. **Due to the need for expedited scheduling,** The county board of supervisors shall, as soon as possible but not later than ~~14~~ **30** days following receipt of the department's notice of preliminary decision notify the department in writing that the board intends to file a demand for hearing. The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the board's receipt of the department's notice of preliminary decision.

65.105(3) b(3) Master Matrix

~~(1) The board shall not use the master matrix to evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if the construction is for expansion of a confinement feeding operation structure constructed prior to April 1, 2002, and, after the expansion of the confinement feeding operation, its animal unit capacity is 1,666 animal units or less. The board may still submit comments regarding the application.~~

567- 65.107(4) Separation distance from designated wetlands.

Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a small animal feeding operation SAFO. A confinement feeding operation structure shall not be constructed closer than 2,500 feet away from a “designated wetland” as defined and referenced in rule ~~567— 65.1~~(459,459B). This requirement shall not apply to a confinement feeding operation structure if any of the following occur before the wetland is included in “Designated Wetlands in Iowa,” effective August 23, 2006:

~~a. The confinement feeding operation structure already exists. This exemption also applies to additional confinement feeding operation structures constructed at the site of such an existing confinement feeding operation structure after a wetland is included in “Designated Wetlands in Iowa,” effective August 23, 2006.~~

b. Construction of a confinement feeding operation structure has begun as provided in subrule ~~65.8~~(1).

~~c. An application for a permit to construct a confinement feeding operation structure has been submitted to the department.~~

~~d. A manure management plan MMP concerning a proposed confinement feeding operation structure for which a construction permit is not required has been submitted to the department.~~

567- 65.106(9) Measurement of separation distances.

Except as provided in paragraph 65.11(9)“f,” 65.107(9)“f,” the distance between confinement feeding operation structures and locations or objects from which separation is required shall be measured horizontally by standard survey methods between the closest point of the location or object (not a property line **except for a public use area**) and the closest point of the confinement feeding operation structure. The department may require that a separation distance be measured and certified by a licensed land surveyor, a PE licensed in the state of Iowa, or NRCS qualified staff in cases where the department cannot confirm a separation distance. For purposes of this subrule, structure shall not include areas that do not house animals or store manure or litter.

b. Measurement to a public use area shall be to the **property line. which attract the public to congregate and remain in the area for significant periods of time, not to the property line.**

567- 65.108(1) Exemptions to separation distance requirements from a residence, business, church, school and public use area.

As specified in Iowa Code section [459.205](#), the separation distances required from residences, businesses, churches, schools and public use areas specified in Iowa Code sections [459.202](#) and [459.204B](#) and required in subrules 65.107(1), 65.107(2), and 65.107(7), including Tables 6 to 6d at the end of this chapter, shall not apply to the following:

b. A confinement feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure, stockpile or qualified stockpile structure is located, under such terms and conditions that the parties negotiate. The waiver shall be specific to the construction or expansion project for which it is submitted. The waiver may include specific language to include future projects or expansions. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from] which separation is required. **The titleholder of a school or public land, such as the school district, county, DNR or other entity, shall execute the waiver after a public notice is filed in a newspaper having general circulation in the county not less than 14 days before the waiver is filed.** The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section [459.202](#). A copy of the recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required or as part of the construction permit application documents pursuant to subrule 65.104(1).

567—65.109(2)(459,459B) Construction certification.

For a confinement feeding operation that uses an unformed manure storage structure or an egg washwater storage structure, or an operation that meets or exceeds the threshold requirements for an engineer as defined in [567—65.1\(459,459B\)](#), a certification from a licensed PE that the confinement feeding operation structure was:

c. Inspected by the licensed PE **and a DNR AFO engineer** after completion of construction and before commencement of operation;

567—65.110(459,459B) Manure Management Plan (MMP) requirements.

JFAN recommendations:

1. The Field Designation on page 3 of the MMP form should be consistent in all MMPs and identified by the FSA Field Number. This will make it easier to cross reference fields in the MMPs of other CAFOs that may also use the same field.
2. Each MMP should be completely analyzed by the DNR to ensure the nitrogen and phosphorus calculations are correct. I have found errors in numerous MMPs I've analyzed, especially with regards to P Indexes.
3. If a field is used in another MMP, the name of the AFO(s) should be indicated for that field. Again, this makes it easier to see fields with the potential for overapplication of manure.

4. All MMPs should be reported and fully uploaded into an MMP database that enables the DNR and the public to easily view all the MMPs and identify where the manure will be applied. The database should be designed to flag fields that are in more than one MMP for DNR review.

5. For fields that are in more than one MMP, the AFO owner should notify the DNR in writing when they apply manure to that particular field, and the DNR should track this data.

6. All fields should be plotted out using geospatial mapping so it's clear what fields are getting manure with their respective application rates. Again, this will better enable the DNR and public to identify and eliminate overlapping manure application in a given year.

7. Manure application location and rates should be reported to this database each time manure is spread to ensure an overapplication doesn't take place. This takes the concept of MMPs being "plans" into real time accountability.

8. The current electronic system for annual update reporting should be updated and expanded to include all the information in a hard copy update.

65.110(3)(b) The owner of a confinement feeding operation who is required to submit a MMP under this rule shall submit an updated MMP on an annual basis to the department. The updated MMP ~~may~~ **must** be submitted by ~~hard-copy or by~~ online, electronic submittal. The updated plan must reflect all amendments made during the period of time since the previous MMP submission.

(1) The owner of the AFO shall ~~also~~ submit the updated MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. If the owner of the AFO has not previously submitted a MMP to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied, the owner must submit a complete MMP to each required county. The county auditor or other county official or employee designated by the county board of supervisors may accept the updated plan on behalf of the board. The updated plan shall include documentation that the county board of supervisors or other designated county official or employee received the MMP update.

~~(2) If the plan is submitted electronically, t~~The submittal process shall be as follows: The owner of the AFO shall submit the updated MMP to the department through the department's electronic web application. Once the submittal has been completed, the department shall provide electronic access of the updated MMP to the public through the online AFO Siting Atlas and database ~~board of supervisors of each county where the confinement~~

567- 65.110(5)(a) The MMP shall identify each farm field where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available. The locations shall be submitted to DNR in an electronic geospatial format. DNR shall add the geospatial data to the online AFO Siting Atlas and AFO database for public access.

567-65.110(4) The department shall review and approve or disapprove all complete ~~manure management plans~~ MMPs within 60 days of the date they are received. **The department shall disapprove all incomplete MMPs after 60 days. No new confinements shall be populated until an MMP is approved.**

567-65.111(459,459B) Manure Management Plan MMP content requirements.

65.112(1) General.

a. A confinement feeding operation that is required to submit a ~~manure management plan~~ MMP to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations **shall be obtained from annual samples of manure from the AFO's confinement pit and documentation of the manure analysis included with the MMP. In the first year of a new AFO, manure samples shall be taken from a AFOs affiliated with the same corporation that owns the hogs and provides the feed within the previous 12-month period. An average of manure taken from CAFOs from the same corporation may be used also if the samples were collected within the previous 12 months. ~~may be obtained from the tables in this chapter, actual testing samples or from other credible sources reviewed and approved by the department including, but not limited to, Iowa State University, the United States Department of Agriculture (USDA), a licensed PE, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.~~**

b. ~~Manure management plans~~ MMPs shall include all of the following:

- (1) The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number. **If adjacent CAFOs are held in an LLC or partnership, the legally signed Operating Agreement for each LLC or partnership listing each owner and their percent of ownership along with the signature page is required.**

567-65.111 Manure management plan MMP calculations to determine land area required for manure application.

a. The number of acres needed for manure application for each year of the crop schedule shall be determined as required in subrule 65.112(17).

b. Operations evaluated with the master matrix pursuant to 65.106(3) that claim points for additional separation distance for the land application of manure must maintain those distances for each year of the ~~manure management plan~~ MMP. Manure application records documenting those distances were followed must be submitted each year with the MMP.

Define Credible Sources in These Sections of Chapter 65:

567-65.111(1) General.

a. A confinement feeding operation that is required to submit an MMP to the department

shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other **credible sources** reviewed and approved by the department **including but not limited to** Iowa State University, the United States Department of Agriculture (USDA), a licensed PE, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils program, the Certified Crop Advisors program, or the Registry of Environmental and Agricultural Professionals program.

65.111(3) Estimate of manure concentration and production. An MMP must include an estimate of nitrogen and phosphorus concentration and an estimate of annual manure production by one of the following methods.

- a. Table values in Table 4 located at iowadnr.gov/afo/rules or other **credible sources**.

567- 65.111(5) Total nitrogen and total phosphorus (as P2O5) available from the confinement feeding operation.

To determine the nitrogen available to be applied per year, the factors in Table 3, “Annual Pounds of Nitrogen Per Space of Capacity,” multiplied by the number of spaces shall be used. To determine total phosphorus (as P2O5) available to be applied per year, the factors in Table 3a, “Annual Pounds of Phosphorus Per Space of Capacity,” multiplied by the number of spaces shall be used. If the tables are not used to determine the nitrogen or phosphorus available to be applied, other **credible sources** for standard table values or the actual nitrogen and phosphorus content of the manure may be used.

567- 65.111(13) Requirements for application of a nitrogen-based manure rate to a field.

- b. The correction factor for nitrogen losses shall be determined for the method of application by the following or from other **credible sources** for nitrogen volatilization correction factors.

- c. Nitrogen-based application rates shall be based on the optimum crop yields as determined in [65.17\(6\)](#) 65.112(6) and crop nitrogen usage rate factor values in Table 4 at the end of this chapter or other **credible sources**. However, subject to the prohibition in [65.17\(20\)](#), liquid manure applied to land that is currently planted to soybeans or to land where the current crop has been harvested and that will be planted to soybeans the next crop season shall not exceed 100 pounds of available nitrogen per acre. Further, the 100 pounds per acre application limitation in the previous sentence does not apply on or after June 1 of each year; in that event [65.17\(6\)](#) 65.112(6) and Table 4 would apply as provided in the first sentence of this paragraph.

- e. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University extension Extension and Outreach publication PMR 1003, “Using Manure Nutrients for Crop Production” or

other **credible sources** shall be used

567-65.111(14) Requirements for application of a phosphorus-based manure rate to a field.

a. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University ~~extension~~ Extension and Outreach publication PMR 1003, "Using Manure Nutrients for Crop Production" or other **credible sources** shall be used

f. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University Extension and Outreach publication PMR 1003, "Using Manure Nutrients for Crop Production" or other **credible sources** shall be used.

567- 65.111(4) Total nitrogen and total phosphorus (as P2O5) available from the confinement feeding operation.

a. If an actual sample is used to represent the nutrient content of manure, the sample shall be taken in accordance with Iowa State University ~~extension~~ Extension and Outreach publication PM 1558, "Management Practices: How to Sample Manure for Nutrient Analysis." AE 3550, "How to Sample Manure for Nutrient Analysis." The department **may shall** require documentation of the manure sampling protocol **or and** take a split sample to verify the nutrient content of the operation's manure.

567- 65.112(17) Use of the phosphorus index.

b. When sheet and rill erosion is calculated for the phosphorus index, the soil type map unit used for the calculation shall be the most **erosive soil map unit that is at least 10 percent of the total field area. In all manure management plans submitted to the department for approval, the dominant critical soil map unit consistent with NRCS conservation planning guidelines shall be used to calculate sheet and rill erosion for the phosphorus index. (See NRCS Technical Note No. 29.)**

~~3. For an original manure management plan MMP, previous soil sampling data that does not meet the requirements of subrule 65.17(16) 65.112(16) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of subrule 65.17(16) 65.112(16), the fields must be soil-sampled according to the requirements of subrule 65.17(16) 65.112(16) no more than one year after the original manure management plan MMP is approved and a new complete manure management plan MMP shall be submitted with the results of the new samples at the time of the next MMP update~~