

## **Summary of Iowa EPC actions on DNR AFO rules**

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The Iowa Environmental Protection Commission met July 20 in Windsor Heights and approved an extensive set of rules regulating animal feeding operations. The Iowa Department of Natural Resources had been working on these rules for the last several years. Some of the rules were necessary to implement legislation passed in 2002.

Most of the components of the 117-page proposed rule are technical requirements pertaining to manure management plans, construction permits and other animal feeding operation regulations. Of the proposed rules that were of primary concern to livestock producers, the EPC took the following action:

### **Definition of residence**

This definition is used to determine what qualifies as a residence for purposes of separation distances for confinement structures and has been in the DNR rules as currently written since 1999. The DNR and EPC had proposed to remove the requirement that to qualify for separation distances, a residence must be connected to electricity, a water supply and a sewage disposal system. Responding to comments from the public and legislators, and after extensive discussion at the meeting, EPC rejected this proposal and elected to stay with the current definition.

### **Manure application on frozen or snow-covered ground**

- A. 100-day storage. The proposed rule stated that due to the possibility that ground could be frozen or snow covered for the entire period from Dec. 21 to April 1, a confinement operation should not plan to apply liquid manure during that time period. In addition, the rule provided that confinement operations without alternatives to manure application must have sufficient storage capacity to retain manure generated from Dec. 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored.

Comments from the public and legislators urged the DNR and EPC to make the rule consistent with legislation adopted in 2009 by deleting the proposal from the rule. In response, the DNR proposed to add a statement to the rules that for the winter of 2010-2011, it would accept insufficient manure storage capacity as a reason for emergency manure application. EPC first voted to delete this portion of the rule by a vote of 3-2, but the amendment failed because five votes are needed to pass an EPC motion. EPC then passed an amendment that extended the DNR's proposed dates to 2014-2015. Thus, the DNR will now accept insufficient manure storage capacity as a reason for emergency liquid manure application on frozen or snow-covered ground up to and including the winter of 2014-2015.

- B. Removal of tile block before snow melt. If liquid manure from a confinement operation with an MMP is applied on snow-covered ground under the emergency provisions, the 2009 legislation requires all surface tile intakes down grade and on land in the MMP to be blocked during manure application and for two weeks afterward. The DNR proposed to require a producer to report the removal of the tile block as a manure release to the DNR if the block was removed after the two-week period in the legislation, but before "completion of snowmelt." Based on comments from the public and legislators, the DNR recommended that EPC reject its proposal. EPC accepted that recommendation.
- C. Phosphorus Index. The DNR initially proposed that for emergency applications, the P Index would have to be recalculated using frozen ground conditions. In response to public comments pointing out that any difference in the calculations would be insignificant and that recalculating the P Index before an emergency application would be an unnecessary burden, the DNR and EPC agreed to withdraw the proposal.

### **Definition of common management**

The DNR and EPC had initially proposed to continue the DNR's policy of considering confinement feeding operations under common management if the operations fed livestock for the same owner. Considering livestock ownership as common management results in contract feeding operations feeding animals for the same owner and that are within the adjacency distance of each other to be one operation. Based on comments from the public and legislators, the DNR changed its recommendation to exclude ownership of contract-fed livestock from the definition of common management, making this definition consistent with the Iowa Code definition for open feedlots and dry-bedded confinement operations. EPC approved the DNR's recommendation.

### **Secondary containment**

DNR rules have prohibited an outlet valve in a secondary containment barrier installed to allow a manure storage structure to be built closer than the 500-foot minimum setback to a creek, etc. The DNR proposed to allow a relief valve, but required it to remain closed and required any accumulated liquid to be tested for ammonium and nitrate nitrogen and approved by the DNR before the liquid is discharged or land applied. In response to public comment objecting to testing of accumulated liquid, the DNR and EPC changed the final rule to allow liquid from an overflow to be land applied according to the MMP. Thus, although the final rule still requires a relief outlet or valve in a secondary containment structure to remain closed, it appears any accumulated liquid that is not from an overflow may be discharged through the valve.

### **Phosphorus Index**

Since the P Index rules were first adopted, the rules have required that for P Index calculations of sheet and rill erosion, the soil type used shall be “the most erosive soil map unit that is at least 10 percent of the total field area.” The DNR proposed to replace the current rule language with “dominant critical soil map unit consistent with the NRCS conservation planning guidelines. See NRCS Technical Note 29.” Following public comments, the DNR recommended that the proposed change apply to new and updated MMPs submitted on and after Sept. 15, 2010. EPC adopted the DNR’s recommendation.

### **Manure applicator certification**

The DNR proposed to clarify the current legal requirement that confinement operations with MMPs must apply manure as certified confinement site manure applicators or use a commercial manure service. However, the DNR’s recommendation in response to public comments mistakenly appeared to require confinement producers to use only a commercial manure service. The DNR and EPC corrected the mistake in the final rule.

### **Definition of partially roofed animal feeding operation**

The DNR proposed to add a new definition stating that a partially roofed animal feeding operation is one in which the animals have unrestricted access from any roofed structure to an outside lot and the square footage of the outside area is at least 10 percent of the roofed area. The effect of this definition is that a confinement feeding operation with an outside area of less than 10 percent of the roofed area is a confinement operation, even though it is not totally roofed as required by the Iowa Code. EPC voted 4-1 to delete the DNR’s proposal, but that amendment failed because five votes are needed to pass an EPC motion. This DNR proposal remains in the final rule.