

**IOWA LIVESTOCK
ENVIRONMENTAL
REGULATIONS & NUISANCE
LAW UPDATE**

**IOWA PORK CONGRESS
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MANURE APPLICATION

All livestock operations

- No water pollution
- No manure app. within 200 feet of designated area (800 feet if high quality water resource, see DNR website for list) unless:
 - manure injected or incorporated on same date or
 - permanent vegetation 50 ft. around water source & no manure on 50 ft. area (does not apply to ag drainage wells)
 - Note: Incidental spillage when incorporating
- Designated areas are:
 - Creeks, rivers, lakes, designated wetlands, known sinkhole, cistern, drinking water or abandoned well, ag drainage well or surface inlet
 - Excludes terrace tile or surface tile inlets and lakes or ponds with no outlet and which are entirely on one landowner's land

MANURE APPLICATION

Confinement operations – liquid manure

- Must be injected or incorporated in 24 hrs. if applied within 750 ft. of residence, bus., church, school or public use area
 - (250 ft. if use low pressure spray irrigation - <25 psi, center pivot < 9 ft. high)
- Does not apply if:
 - Waiver from owner of residence, etc. or
 - Operation has less than 500 animal units capacity
- Note: For the separation distances from designated areas and residences, etc., DNR may consider incidental spillage (on endrows, etc.) while incorporating as surface application

MANURE APPLICATION

Frozen or snow covered ground

- Legislation effective July 1, 2009
- New DNR rule on this legislation is proposed
 - Public comment period open until Feb. 1
 - Won't be in effect until after this winter season
- For 2010 winter application – producers must follow legislation requirements

MANURE APPLICATION

Frozen or snow covered ground

- Does not apply to:
 - Manure from open feedlot operations
 - Dry manure (can't be pumped & doesn't flow under pressure)
 - Liquid manure from confinement operations using formed storage with less than 500 animal units (1,250 hogs weighing more than 55 lbs. or 10,000 pigs weighing less than 55 lbs.)
 - Liquid manure injected or incorporated on the same date of application

MANURE APPLICATION

Frozen or snow covered ground

- No surface application of liquid manure from a confinement operation on
 - Snow covered ground from Dec. 21 to Ap. 1
 - Frozen ground from Feb. 1 to April 1except in an emergency
 - Frozen ground
 - Impermeable to soil moisture
 - Does not include ground frozen only in top 2" or less
 - Snow covered ground
 - At least 1" of snow or 1/2" of ice

MANURE APPLICATION

Frozen or snow covered ground

- An emergency is when there is an immediate need to apply manure due to unforeseen circumstances beyond the producer's control
 - Includes, but is not limited to:
 - natural disaster
 - unusual weather conditions, or
 - equipment or structural failure

MANURE APPLICATION

Frozen or snow covered ground

- To apply liquid manure on frozen or snow covered ground due to an emergency, a producer must:
 - Telephone DNR before application
 - Apply the manure on land identified in the MMP – either in the original MMP or the next updated MMP submitted to DNR after the manure is applied
 - Apply the manure on land with a P Index of 2 or less
 - During manure application and for 2 weeks after, block any surface tile intake on land in the MMP & down grade
 - Properly manage the manure storage structure
 - For structures built after July 1, 2009, have at least 180 days of storage

MANURE APPLICATION

Frozen or snow covered ground

- Other considerations:
 - Does it comply with EQIP requirements?
 - Will it impact federal NPDES permit requirements?
 - If the operation has a master matrix and took points for injection or incorporation of manure (item 26(e)), to surface apply because of an emergency producer must obtain written approval for a waiver from a DNR field office
 - Contact DNR as soon as possible for assistance, even if not required by law
 - Community and neighbor relations

MANURE APPLICATION

Frozen or snow covered ground

- Proposed DNR rules:
 - Would require all confinement operations with an MMP to have enough storage from Dec. 21 to Ap. 1
 - Telephone call to DNR before manure application would not be considered complete unless the owner's name, facility name, facility ID number, reason for emergency application, application date, estimated number of gallons, and size and legal description of fields are given
 - If tile block is removed before completion of snow melt, would be deemed a manure release (i.e., must call DNR as soon as possible but no later than 6 hours after removing the block)
 - Would require P Index to be recalculated assuming frozen ground conditions

MANURE APPLICATION

Restrictions on manure on soybeans

- EPC rule effective May 14, 2008:
 - 100# N/acre limit on land in an MMP to be planted to soybeans
 - 100# N/acre limit “does not apply on or after June 1 of each year” – regular limit of 3.8# N/bu of soybean yield applies
 - Complete ban on May 14, 2013 if EPC reviews available scientific information and publishes notice that a complete ban will be put in place

STOCKPILING DRY MANURE

- Four different categories of regulation depending on type of livestock operation
 - Dry Animal Nutrient Product –regulated by Iowa Department of Agriculture
 - Open feedlot operations – 2006 legislation
 - Confinement operations – 2009 legislation - deep bedded cattle and hog barns
 - Confinement operations – 2009 legislation - other than deep bedded cattle & hog barns
- Federal EPA & DNR rules: CAFO's cannot discharge manure from production areas unless the discharge is pursuant to an NPDES permit. Definition of production area includes stockpiles

STOCKPILING DRY MANURE

Dry bedded confinements– 2009 legislation

- Dry bedded confinement cattle and hog barns
- Stockpiling:
 - At least 1,250 feet from a residence (other than barn owner's), business, church, school or public use area unless waiver is granted or the manure is from a SAFO (less than 500 animal units)
 - At least 400 feet from a designated area or 800 feet from a high-quality water resource
 - At least 200 feet from a surface tile inlet unless steps taken to ensure runoff won't reach tile inlet
 - Not in a grass waterway, where water pools, or where water will enter the stockpile
 - Not on more than 3% slopes unless measures to contain runoff are implemented
- Must remove and land apply manure within 6 months.

STOCKPILING DRY MANURE

Dry bedded confinements– 2009 legislation

- If the stockpile is on Karst terrain or an alluvial aquifer area (both of these areas are marked on maps from DNR) the stockpile must have a concrete floor and any underlying soluble rock, sand or gravel must be at least 5 feet below the surface
- Dry bedded manure: dry manure with “crop, vegetation, or forage residue or similar materials” used for the care of livestock
- In addition to stockpiling, this legislation also establishes other beneficial requirements such as a 200 ft. separation distance from deep bedded confinements barns to watersources (creeks, etc.) instead of the 500 ft. distance for other confinement barns

DRY ANIMAL NUTRIENT PRODUCT

- Must register with Iowa Dept. of Ag., list % of N,P, K & sell through an independent distributor
- Also must file an MMP statement with DNR
- Stockpiling:
 - Not in a grassed waterway
 - Not on greater than soil survey class B slopes
 - Not within:
 - 200 ft. of shallow private water supply or 100 ft. of deep well
 - 500 ft. of a surface intake, wellhead or cistern of ag drainage well, known sinkhole or major water source (rivers)
 - 200 ft. of creeks, streams, etc.

STOCKPILING DRY MANURE

Open feedlot operations – 2006 Iowa legislation

- Stockpile - store solids outside of a feedlot or structure or area that drains to a feedlot or structure
- Stockpiling:
 - At least 400 feet from a designated area or 800 feet from a high-quality water resource
 - At least 200 feet from a surface tile inlet unless steps taken to ensure runoff will not reach the tile inlet
 - Not in a grass waterway or where water pools
 - Not on more than 3% slopes unless measures to contain runoff are implemented
- Must remove and land apply solids within 6 months.

NEW DNR RULE

Appeals of construction permits to EPC

- Scheduled to go into effect March 17, 2010
- Changes to current rules include:
 - County will continue to have 14 days to file appeal but 30 days to file all documentation (will extend appeal period by 14 days)
 - EPC will have authority to designate experts (at least 7 days before hearing) to give testimony at the hearing – parties may ask them questions
 - All appeal materials, including the complete DNR file on the permit application, will be on the DNR website beginning no later than 5 days after county files demand for hearing
 - Any person may submit written material up to 15 days before the hearing and the material will be considered for inclusion in the appeal record by the chair of the EPC

MANURE APPLICATOR CERTIF.

- Commercial manure service: in the business of transporting, handling, storing, or applying manure for a fee
- DNR interpretation: If a producer applies the producer's manure (from a site that requires applicator certification) to someone else's land and receives money (for either the manure or the application), then the producer must be certified as a commercial applicator instead of as a confinement site manure applicator

OPEN BURNING

- DNR rules prohibit open burning of combustible materials unless:
 - DNR grants a variance
 - Exemptions include:
 - Trees and tree trimmings & landscape waste
 - Recreational fires
 - Residential waste
 - Paper or plastic pesticide containers and seed corn bags. Must be ¼ mile from someone else's building, livestock area, wildlife area or water source. Cannot exceed one day's accumulation or 50 pounds. If causes a nuisance, DNR may order relocation of burning.
- Effect of rule: Burn barrels at livestock buildings are prohibited.

DNR ENFORCEMENT

Environmental self audits

- Initiated by business owner to determine environmental compliance
- Benefits:
 - Immunity from penalties if a violation discovered during audit and promptly reported to DNR, before DNR investigates
 - Confidentiality of audit report
- No immunity from penalties if:
 - DNR not properly notified
 - Violations are intentional or result in injury to persons, property or environment
 - Substantial economic benefit giving violator a clear economic advantage over competitors

EPA AIR EMISSIONS REPORTING

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) & Emergency Planning and Community Right-to-Know Act (EPCRA) air release reporting requirements:
 - Qualifying Releases must be reported: more than 100 pounds of H₂S or NH₃ per 24 hour period
 - Not required at this time if farm was signed up under EPA Air Compliance Consent Agreement – reporting may be required for these farms once the monitoring study is completed
 - Exemptions

EPA AIR EMISSIONS REPORTING

- EPA Rule – issued 12/18/08, effective 1/20/09: New exemption to CERCLA & EPCRA air release notification requirements:
 - CERCLA – Any release of a hazardous substance from animal waste from farms.
 - EPCRA - Any release of a hazardous substance from animal waste from farms that have fewer than the number of animals in any of the following categories:
 - 700 mature dairy cows
 - 1,000 veal calves
 - 1,000 cattle (other than above)
 - 2,500 swine – 55 pounds or more
 - 10,000 swine – less than 55 pounds
 - Also includes horses, sheep, turkeys, chickens, and ducks

EPA AIR EMISSIONS REPORTING

3 Step Process

- Telephone DNR & Local Emer. Response Committee
- Initial written report within 30 days
- Follow-up written reports:
 - If significant increase
 - Increase in emission levels above the reported normal range of the continuous release
 - Status report
 - Filed within 30 days of the one year anniversary of the initial written report
 - EPA has indicated this is not required for EPCRA written notifications filed by producers last year

AG NUISANCE CASES

Iowa

- No cases went to trial in 2009
- 6 Currently Pending in Iowa District Courts
 - Swine
 - Jefferson County 1,200 head finisher
 - Story County 3,300 head finisher
 - Plymouth County 2,000 head finisher
 - Tama County 1,200 head finisher
 - Poultry - Buena Vista County egg oper.
 - Dairy - Woodbury County 4,000 cows

NUISANCE

Steps to help to avoid lawsuit

- Location
 - Separation distance
 - Prevailing winds
- Tree buffers
 - Existing trees
 - Fast growing trees planted with slower growing species
- Biofilters
- Clean pigs and buildings
- Manure treatments and additives
- Timing of manure agitation and application

NUISANCE

Protection for producer

- Insurance
 - Standard farm liability policies normally don't cover – but producer should always check with the insurance company and/or an attorney
 - Environmental policies available
 - Coverage for claims and costs of defense

MANURE EASEMENTS

- Iowa Court of Appeals
 - Crop farmer sold site for hog buildings to be built – receive manure
 - Deed reserved right to all manure, but manure easements stated hog producers were not obligated to provide manure
 - Hog buildings sold – new owner - manure to different farmer - farmer who sold site filed suit
 - Court ruled deed restriction not legally binding & that manure easements controlled – farmer who sold site not entitled manure

EPA FINAL CAFO RULE

- CAFO – 2,500 head of swine over 55 lbs, 10,000 swine less than 55 lbs.
- CAFO must obtain a federal discharge permit (NPDES) if the CAFO discharges or proposes to discharge
- CAFO discharges or proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur
- Iowa confinement operations cannot discharge by law
- Without an NPDES permit, can be no discharge – with an NPDES permit, can discharge from greater than 25-year, 24 hour storm event

EPA FINAL CAFO RULE

- A discharge also includes discharges from land application
- However, ag stormwater discharges do not require an NPDES permit
- An ag stormwater discharge – CAFO must apply manure in compliance with a site specific nutrient management plan
- This plan is not required to be submitted to EPA or DNR, but must be kept with records on site or “at a nearby office”

EPA FINAL CAFO RULE

- Is NPDES permit needed for an “accidental discharge”?
 - If the cause of an accidental discharge that has occurred in the past has been changed or corrected, the CAFO would not be considered to discharge or propose to discharge and an NPDES permit would not be required due to the accidental discharge

EPA FINAL CAFO RULE

- No Discharge Certification Option
 - Voluntary
 - For CAFOs that do not discharge or propose to discharge
 - Why do it?
 - If discharge occurs, penalties for discharge but not for failure to have an NPDES permit
 - If discharge occurs without NPDES permit or voluntary certification option, CAFO has burden to prove it did not discharge or propose to discharge

EPA FINAL CAFO RULE

- No Discharge Certification Option
 - EPA and DNR do not review the certification
 - Requirements for certification are:
 - Technical evaluation
 - Signed certification statement
 - Statement submitted to DNR