

Iowa Policy Project Comments on EPC Proposed Rule changes to Animal Feeding Operation Rules

Thank you for this opportunity to offer comments on behalf of the Iowa Policy Project, on the EPC's Notice of Intended Action to amend the rules for "Animal Feeding Operations," in Chapter 65 of the Iowa Administrative Code. IPP has written papers on the subject of animal agriculture in Iowa on numerous occasions over the last ten years. Our primary concerns are reflected by our recent paper on manure application on inappropriate ground. We wish this paper, link below, to be part of our comments. <http://www.iowapolicyproject.org/2016Research/160504-manure.html>

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

The state of Ohio has made major changes in its regulation of manure application in the part of the state that drains into Lake Erie. These changes occurred because a toxin caused by cyanobacteria made the City of Toledo completely unable to use its drinking water supply for a time during the summer of 2014. Nutrient addition to a water body enhances growth of this organism, and these nutrients can come from many places including manure. In contrast to Ohio's choice to recognize the threat and to strengthen its regulations on manure application, Iowa proposes to weaken ours. This is surprising given the heightened attention in our state over the past year to ag-based threats to water quality.

Specifically, IPP notes the reversal of EPC policy with the proposed change to accept insufficient manure storage capacity as a reason for emergency application of manure on snow-covered and frozen ground by animal confinement operations of a certain size. Only last winter, insufficient storage was deemed no longer a reason for an "emergency" designation. Producers had been given five years to build storage to prevent having to apply manure during the winter and that is certainly enough. Ohio law passed in July 2015 gave no extra time for the largest animal operations to cease applying manure when ground is frozen or snow-covered. The state gave one more year for medium sized operations (300 to 999 Animal Units (AU)) to comply and two years for even smaller operations. The Iowa rule should remain as it is and actually restrictions should be strengthened.

Subjective rule for application of effluent on saturated soils (ITEM 75, pages 52)

Ground when frozen or snow-covered is not the only condition in which land should not receive manure. Research and experience also argue against the proposed rule change for application of feedlot effluent on saturated soils from the current "Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of the application," to a proposed subjective rule that "precipitation has not exceeded the water-holding capacity of the soil to accept the manure application without the possibility of runoff."

Again referring to Ohio, recent changes restrict manure application on ground that is frozen, snow-covered, saturated and when the local weather forecast predicts a rain event, as described below.

Manure application restrictions

A person may not surface apply manure in the western basin under any of the following circumstances:

- (1) On snow-covered or frozen soil;*
- (2) When the top two inches of soil are saturated from precipitation;*
- (3) When the local weather forecast for the application area contains greater than a 50 percent chance of precipitation exceeding one-half inch in a 24 hour period.*

unless the manure is injected into the ground, incorporated within 24 hours of surface application, applied onto a growing crop, or if in the event of an emergency, individuals should contact their local Soil and Water Conservation District Office. [LaBarge, Greg. Understanding Regulation, Definition, Noncompliance Penalties, On Fertilizer And Manure Application In Ohio Wleb. C.O.R.N Newsletter 2016-3. Ohio State University Extension.]

The definition for saturated is as follows:

Saturated soil occurs when all the pore spaces in the soil are filled with water. A soil that has an available water capacity above field capacity will be considered to be saturated. According to the Natural Resource Conservation Service Standard 590 for Ohio, when the available water capacity of a soil is above field capacity, then free water will appear on the surface of the soil when the soil is bounced, kneaded, or squeezed. For a fertilizer or manure application to be considered a violation of the law, the top two inches of the soil would need to be saturated and the application would have been made without incorporation, injection or a growing crop.

This definition comes from the Ohio Department of Agriculture's internal guidance as described in the Greg LaBarge reference above. It is not part of the law's regulatory requirements. How specifically to access an official weather forecast can be written into DNR rules.

Changing the smaller than 500 AU exemption

Finally, manure is manure, no matter the size of facility. Some de minimus size limit is appropriate to make regulation feasible, but having manure applications on unacceptable ground only for facilities above 500 animal units is an unfortunate choice, one that makes Iowa's law less protective of water quality and less efficient in the use of the manure as a resource.

Other states are more restrictive. For instance:

First, a 300-AU limit is consistent with the EPA designation for a medium facility. That size limit is used in many states for regulation of animal agriculture.

“Since 2006 all livestock operations with 300 or more animal units must complete a manure management plan or have manure spread by a certified commercial applicator

to be in compliance with MPCA [Minnesota Pollution Control Agency].” [Spiehs, M. *Frequently Asked Questions: Manure Management Plans*. University of Minnesota Extension. (undated)]

The University of Minnesota Extension document from which the above quote was taken also points out that record keeping and limits to manure application in sensitive areas applies to operations as small as 100 animal units (AU).

The state of Ohio also uses size definitions similar to EPA size definitions for restrictions on animal production facilities. Medium facilities, as small as 300 AU, were given just one year beyond passage of the law to come into compliance with manure application restrictions by building storage. Facilities as small as what the EPA would classify as 100 AU will in 2017 be required to comply with applying manure on saturated, snow-covered or frozen ground. [LAWriter Ohio Laws and Rules. Chapter 903; Concentrated Animal Feeding Facilities Definitions. Ohio Revised Code: TITLE [9] IX AGRICULTURE <http://codes.ohio.gov/orc/903.01v1>]

Iowa is already out of step. Being generous to some producers so they do not have to comply with reasonable applications mean more pollution and less utilization of the benefits of manure.

Tone of the rule changes do not fit with Iowa's Nutrient Reduction Strategy

The proposed rule changes conflicts with the goals of the Iowa Nutrient Reduction Strategy which call for a 45% reduction in nitrogen and phosphorous. Weakening rules for how manure is applied is clearly out of step with what the department is doing to comply with cleaning our streams and lakes of nutrients. In addition, when the NRS relies upon voluntary compliance rather than requirements for action to achieve its goals, the last thing Iowa should be doing is to weaken the regulations now in place.