

IOWA DEPARTMENT OF NATURAL RESOURCES

<p>Petition by Iowa Citizens for Community Improvement and Food & Water Watch for the amendment of rules relating to the master matrix for confinement feeding operations and amendment of the master matrix.</p>	<p>PETITION FOR RULE MAKING</p>
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Iowa Citizens for Community Improvement and Food & Water Watch (Petitioners) present this petition for rulemaking pursuant to Iowa Code section 17A.3, 567 IAC 5.1, and the Uniform Rules on Agency Procedure. The petition requests that the Department of Natural Resources (Department or DNR) promulgate revised regulations for the so-called “master matrix” that will create a more effective process for involving county boards of supervisors in the permitting of new and expanding confinement feeding operations (CFOs). The standards requested in this petition are largely based on data demonstrating that the current master matrix regime has failed to accomplish what the legislature intended. It utterly fails to provide either local control by assuring a meaningful degree of county involvement in the approval of new or expanded CFOs, or adequate protection of communities and natural resources from the adverse impacts of these facilities. The petition thus requests that the Department revise its master matrix regulations and the master matrix itself, as described herein, to better address existing needs and to reflect the original intent of the Iowa Legislature when it enacted the master matrix legislation, Senate Bill 2293, in 2002.

I. Relevant Law

The Iowa Legislature has tasked DNR with adopting regulations, pursuant to Iowa Code chapter 17A,¹ for the development and use of a master matrix tool for county boards of supervisors to use to evaluate applications for new and expanding CFOs. Iowa Code section 459.305(1) states:

The department shall adopt rules for the development and use of a master matrix. The purpose of the master matrix is to provide a comprehensive assessment mechanism in order to produce a statistically verifiable basis for determining whether to approve or disapprove an application for the

¹ 2002 Iowa Legis. Serv. Ch. 1137 § 62(3) (West).

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 Bruce Trautman

construction, including expansion, of a confinement feeding operation structure requiring a permit pursuant to section 459.303.

Iowa Code section 459.305(1)(a) requires that the master matrix be used to determine the appropriate location for and design concerning a proposed CFO structure. Iowa Code section 459.305(1)(b) requires DNR to design the master matrix as follows:

The master matrix shall be designed to produce quantifiable results based on the scoring of objective criteria according to an established value scale. Each criterion shall be assigned points corresponding to the value scale. The master matrix shall consider risks and factors mitigating risks if the confinement feeding operation structure were constructed according to the application.

Iowa Code section 459.305(1)(c) states that the master matrix “must be a practical tool” including “criteria presented in the form of questions that may be readily scored according to ascertainable data and upon which reasonable persons familiar with the location of a proposed construction site would not ordinarily disagree.”

Iowa Code section 459.305(2) specifies that the master matrix must “include criteria valuing environmental and community impacts for use by county boards of supervisors and the department.” Further, “[c]riteria valuing environmental impacts shall account for animal agriculture’s relationship to quality of the environment and the conservation of natural resources.” Factors DNR may consider in establishing these criteria include: topography, surface water drainage characteristics, suitability of the soils and hydrology or hydrogeology of the site, proximity to public use areas and critical public areas, and proximity to water sources, including high-quality water resources. *Id.*

Iowa Code section 459.304 sets out a framework for county use of the master matrix, in pertinent part, as follows:

A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the department for filing. If the board has submitted such resolution to the department, the board may evaluate the construction permit application and submit an adopted recommendation to the department to approve or disapprove a construction permit application as provided in this subsection. The board must make its decision to recommend approval or disapproval of the permit application as provided in this subsection.

Iowa Code § 459.304(3). When conducting an evaluation, a board must “us[e] the master matrix as provided in section 459.305.” Iowa Code § 459.304(3)(b). The board must score all master matrix criteria and provide a recommendation on the application to the DNR, with an explanation for the recommendation and any supporting documentation. Iowa Code § 459.304(3)(c)–(d).

II. Summary of Argument in Support of the Proposed Rule

Pollutants emitted from CFOs are responsible for significant adverse environmental and community impacts throughout Iowa, and, as the number of CFOs in the state has skyrocketed since the promulgation of the original master matrix regime, the scale of these impacts has also increased. When the General Assembly passed the Master matrix legislation in 2002, DNR’s database indicates that, in Iowa, there were approximately 1,000 CFOs with more than 1000 animal units. Today, only fifteen years later, there are more than 3,000 CFOs of that size in the state, not including more than 5,000 operations of unknown size that are completely unaccounted for in the state’s database. There are also more than 800 identified water quality impairments in the state, and the vast majority of which impairments are caused by pollutants and conditions associated with animal waste, such as *E. coli* bacteria, excessive algal growth, and diminished aquatic life.

In passing the original Master matrix legislation, the General Assembly intended to facilitate local government involvement in the permitting of new and expanded CFOs, and to ensure that CFOs would only receive construction permits if they could demonstrate that they would not adversely affect the local community or water quality. The master matrix and DNR’s regulations to implement the statute have failed to meet these legislative goals.

Rather, the DNR’s administrative regulations have imposed unnecessary burdens on county boards of supervisors by requiring them to enroll in the master matrix process every year, rather than only once. The master matrix regulations are so lax that they have amounted to little more than a rubber stamp and paper-pushing administrative burden on county boards. CFOs must only obtain fifty percent of possible points in the master matrix, and many of those points are awarded for practices that are nearly universal and are not significantly protective of local water quality, air quality, or other specific community concerns. As a result, the master matrix provides little or no protection for the very assets that were the focus of the original legislation: passage rates for CFO applicants are nearly one hundred percent.

The proposed rules are written to achieve intended goals of the original master matrix legislation of fifteen years ago. Its provisions are drafted in alignment with the results of DNR surveys of master matrix implementation and input provided by elected county boards of supervisors who have experience in implementing the existing DNR regulations. The proposed rules take carefully into account input from citizens who have experienced how the master matrix has been implemented in their communities and who have participated in a series of eight meetings on the topic in early 2017. The anecdotal county and citizen input often mirrored the findings derived from DNR's analysis of past master matrix applications, lending further support to the priority changes proposed in this Petition. The Petition proposes that the DNR revise its master matrix regulations to require only a one-time county adoption of a construction evaluation resolution, rather than an annual adoption resolution. It also proposes to reduce other burdens on county boards of supervisors and to revise the master matrix appeal process. The Petition further proposes that the DNR adopt a new master matrix scoring system that requires higher total points for passage and a higher percentage of points in each point category. It further proposes to combine certain master matrix criteria that are duplicative, revise or clarify certain criteria, eliminate certain criteria, and add criteria that address factors not addressed in the existing master matrix. The Petitioners believe that these changes will allow the public to achieve the original intended purposes of the master matrix legislation.

A brief in support of the proposed rules is attached.

III. Summary of Data in Support of the Proposed Rule

In 2007–2008, DNR conducted an analysis of more than 200 master matrices submitted to the agency since the master matrix regime was established in 2002. In a report issued concerning its analysis, the DNR described a breakdown of the points claimed, by criterion. The reported analysis provides one underlying basis for the proposed rules, and it is attached as Enclosure B. The DNR has also provided analysis and review of the state's CFO inventory and regulatory status through the annual Work Plan Reports created pursuant to its Work Plan Agreement with U.S. Environmental Protection Agency (EPA). The most recent Annual Report provides an additional basis for the proposed rules, and is attached as Enclosure C. DNR has issued its proposed 2016 303(d) list of Iowa's impaired waters, which lists waters impaired due to pollutants and conditions that are often associated with animal waste. The draft 303(d) list has also informed the proposed rules, and is attached as Enclosure D. Thirteen county boards of supervisors have recently adopted resolutions or sent letters to the legislature, seeking policy changes such as greater local control of CFOs, a stronger master matrix, and a moratorium on approvals of the construction of new confinement operations. These

resolutions and letters are attached as Enclosure E. Animal waste includes nitrates. The state's most recent rural well groundwater quality survey and two most recent public water supply well groundwater summaries show widespread nitrate contamination throughout Iowa's public and private wells, and are attached as Enclosures F, G, and H. The DNR maintains a spreadsheet of manure spills from livestock operations that reach waterways, and the most recent version as of July 2017 is attached as Enclosure I. In 2008, the Iowa Policy Project analyzed problems with the state's CFO approval process in its report "Permitting Pigs," which provides additional data in support of the proposed rules and is attached as Enclosure J. Finally, DNR maintains two databases that informed this Petition: the Animal Feeding Operations Database and the Hazardous Materials Release Database. Both are available via the DNR website and are not enclosed.

IV. Text of the Proposed Rule

Revise as following subrule 567 IAC 65.10(3) "a":

(a) Enrollment periods.

(1) The county board of supervisors must file an adopted construction evaluation resolution with the department ~~between January 1 and January 31 of each year~~ to evaluate construction permit applications received by the department ~~between February 1 of that year and January 31 of the following year.~~

(2) Filed construction evaluation resolutions shall remain in effect ~~until the applicable enrollment period expires or~~ until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution, ~~whichever is earlier.~~

(3) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. ~~However, if the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements in paragraph 65.10(3) "b,"~~ the department shall send the board a warning letter explaining the board's obligations to conduct a master matrix evaluation of every construction permit application and to comply with the evaluation requirements in paragraph 65.10(3) "b," and offering to provide the board with a department training on how to conduct an evaluation using the master matrix. If the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements a second time, the department shall send the board a second warning letter explaining the board's obligations and offering a master matrix training. If the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements a third time, the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.

Revise as following subrule 567 IAC 65.10(3) “b”:

(b) *Use of the master matrix.* If a county board of supervisors has adopted and filed with the department a construction evaluation resolution, as provided in paragraph 65.10(3) “a,” the board shall evaluate all construction permit applications ~~filed during the applicable period~~ using the master matrix as follows:

Revise as following subrule 567 IAC 65.10(4):

(4) *Inspection of proposed construction site.* The department may conduct an inspection of the site on which construction of the confinement feeding operation is proposed after providing a minimum of 24 hours’ notice to the construction permit applicant or sooner with the consent of the applicant. If the county in which the proposed facility is located has adopted and submitted a construction evaluation resolution pursuant to subrule 65.10(3) ~~and has not failed subsequently to submit an adopted recommendation~~, the county may designate a county employee to accompany a department official during the site inspection. In such cases, the department shall notify the county board of supervisors or county designee at least three days prior to conducting an inspection of the site where construction of the confinement feeding operation is proposed. The county designee shall have the same right to access to the site’s real estate on which construction of the confinement feeding operation is proposed as the departmental official conducting the inspection during the period that the county designee accompanies the department official. The departmental official and the county designee shall comply with standard biosecurity requirements customarily required by the owner of the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

Revise as following the master matrix:

1. Revise the 1st criterion as follows:

Additional separation distance, above minimum requirements, from proposed confinement structure to the closest:

- Residence not owned by the owner of the confinement feeding operation,
- Hospital,
- Nursing home, ~~or~~
- Licensed or registered child care facility,
- Educational institution,
- Religion institution, or

- Commercial enterprise.

	Score	Air	Water	Community
250 feet to 500 feet	25	16.25		8.75
501 feet to 750 feet	45	29.25		17.50
751,001 feet to 1,000,250 feet	65	42.25		22.75
1,001,251 feet to 1,250,500 feet	85	55.25		29.75
1,251,501 feet or more	100	65.00		35.00

2. Revise the 2nd criterion as follows:

Additional separation distance, above minimum requirements, from proposed confinement structure to the closest public use area.

Replace existing separation distances with new, increased separation distances to be established by the Department. The Department will analyze a statistically significant and geographically representative sample of past Matrix applications and establish three new separation distance ranges that would each have been achieved by approximately 15% of past applicants.

	Score	Air	Water	Community
250 feet to 500 feet	5	2.00		3.00
501 feet to 750 feet	10	4.00		6.00
751 feet to 1,000 feet	15	6.00		9.00
1,001 feet to 1,250 feet	20	8.00		12.00
1,251 feet to 1,500 feet	25	10.00		15.00
1,501 feet or more	30	12.00		18.00
<u>Increased separation distance to be determined by the Department</u>	<u>5</u>	<u>2</u>		<u>3</u>
<u>Increased separation distance to be determined by the Department</u>	<u>10</u>	<u>4</u>		<u>6</u>
<u>Increased separation distance to be determined by the Department</u>	<u>15</u>	<u>7</u>		<u>8</u>

3. Eliminate the 3rd criterion.
4. Eliminate the 4th criterion.
5. Revise the 5th criterion as follows:

Separation distance of ~~300~~500 feet or more from the proposed confinement structure to the nearest thoroughfare.

	Score	Air	Water	Community
300 <u>500</u> feet or more	30 <u>5</u>	9.00 <u>2</u>		21.00 <u>3</u>

6. Eliminate the 6th criterion.

7. Revise the 7th criterion as follows:

Applicant has taken measures to protect private and public water wells from the proposed confinement structure.

	Score	Air	Water	Community
<u>Two Three times the minimum separation distance from all private and public water wells and documentation that the confinement structure is not on karst terrain.</u>	30 <u>10</u>		24.00 <u>8</u>	6.00 <u>2</u>

8. Revise the 8th criterion as follows:

Additional separation distance, above the minimum applicable requirement of ~~1,000~~ feet, from proposed confinement structure to the closest designated area, karst terrain, surface tile inlet, terrace tile inlet, or wetlands.:

- ~~Agricultural drainage well,~~
- ~~Known sinkhole, or~~
- ~~Major water source.~~

Replace existing separation distances with new, increased separation distances to be established by the Department. The Department will analyze a statistically significant and geographically representative sample of past Matrix applications and establish three new separation distance ranges that would each have been achieved by approximately 15% of past applicants.

	Score	Air	Water	Community
250 feet to 500 feet	5	0.50	2.50	2.00
501 feet to 750 feet	10	1.00	5.00	4.00
751 feet to 1,000 feet	15	1.50	7.50	6.00
1,001 feet to 1,250 feet	20	2.00	10.00	8.00

1,251 feet to 1,500 feet	25	2.50	12.50	10.00
1,501 feet to 1,750 feet	30	3.00	15.00	12.00
1,751 feet to 2,000 feet	35	3.50	17.50	14.00
2,001 feet to 2,250 feet	40	4.00	20.00	16.00
2,251 feet to 2,500 feet	45	4.50	22.50	18.00
2,501 feet or more	50	5.00	25.00	20.00
<u>Increased separation distance to be determined by the Department</u>	<u>10</u>		<u>8</u>	<u>2</u>
<u>Increased separation distance to be determined by the Department</u>	<u>15</u>		<u>11</u>	<u>4</u>
<u>Increased separation distance to be determined by the Department</u>	<u>20</u>		<u>14</u>	<u>6</u>

(A) The department will award points only for the single item, of the three listed above, that is closest to the proposed confinement feeding operation.

(B) “Agricultural drainage wells”— include surface intakes, cisterns and wellheads of agricultural drainage wells. “Designated area” means a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. “Designated area” does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

(C) “Major water source”— a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state which can support a floating vessel capable of carrying one or more persons during a total of a six month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Tables 1 and 2 in 567— Chapter 65. “Karst terrain” means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves. If a 25-foot vertical separation distance can be maintained between the bottom of an unformed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

(D) “Wetlands” means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.

9. Revise the 9th criterion as follows:

Distance between the proposed confinement structure and the nearest confinement facility that has a submitted department manure management plan.

	Score	Air	Water	Community
Three-quarter of a mile or more (3,960 feet) <u>More than one mile</u>	25 <u>10</u>	7.50 <u>3</u>	7.50 <u>2</u>	10.00 <u>5</u>

10. Revise the 10th criterion as follows:

Separation distance from proposed confinement structure to closest:

- High quality (HQ) waters,
- High quality resource (HQR) waters, or
- Protected water areas (PWA), or
- Waters listed on Iowa's most current final 303(d) list due to impairment by pollutants or conditions that may be associated with animal waste

~~is at least two times the minimum required separation distance.~~

	Score	Air	Water	Community
Two times the minimum separation distance <u>Increased separation distance to be determined by the Department</u>	30 <u>15</u>		22.50 <u>12</u>	7.50 <u>3</u>

Replace existing separation distance with new, increased separation distance to be established by the Department. The Department will analyze a statistically significant and geographically representative sample of past Matrix applications and establish a new separation distance that would have been achieved by approximately 45% of past applicants, considering only HQ waters, HQR waters, and PWAs.

11. No change proposed to the 11th criterion.

12. Revise the 12th criterion as follows:

Liquid manure storage structure is covered.

	Score	Air	Water	Community
Covered liquid manure storage	30 <u>5</u>	27.00 <u>4</u>		3.00 <u>1</u>

13. No change proposed to the 13th criterion.

14. Revise the 14th criterion as follows:

Installation and use of a biofilter(s) designed to reduce odors from confinement building(s) exhaust fan(s).

	Score	Air	Water	Community
Installation and use of biofilter(s)	<u>1020</u>	<u>8.0015</u>		<u>2.005</u>

15. Revise the 15th criterion as follows:

Utilization of landscaping around confinement structure.

	Score	Air	Water	Community
Utilization of landscaping	<u>2010</u>	<u>10.005</u>		<u>10.005</u>

16. Revise the 16th criterion as follows:

Enhancement, above minimum requirements, of structures used in stockpiling and composting activities, ~~such as including~~ an impermeable pad and cover.

<u>Stockpile and compost facility enhancements</u>	Score	Air	Water	Community
Stockpile and compost facility enhancements	30	9.00	18.00	3.00
<u>Use of impermeable pad and roof or cover for all stockpiles and compost piles</u>	<u>15</u>	<u>2</u>	<u>10</u>	<u>3</u>

(A) The design, operation and maintenance plan for the stockpile ~~or~~and compost structure enhancements must be in the construction permit application and made a condition in the approved construction permit.

(B) The stockpile ~~or~~and compost structures must be located on land adjacent or contiguous to the confinement building.

17. Revise the 17th criterion as follows:

Proposed manure storage structure is formed.

	Score	Air	Water	Community
Formed manure storage structure	<u>305</u>		<u>27.004</u>	<u>3.001</u>

18. No change proposed to the 18th criterion.

19. Eliminate the 19th criterion.

20. Revise the 20th criterion as follows:

Construction permit applicant's and their contractor's animal feeding operation environmental and worker protection violation history for the last ~~five~~ ten years at all facilities in which the applicant has an interest, facilities with which the applicant has a relationship via membership in a Limited Liability Company, or facilities in which the contractor has a relationship via a production contract.

	Score	Air	Water	Community
No history of Administrative Orders <u>or</u> <u>Notices of Violation in last fiveten</u> years	<u>30</u> 10			<u>30.00</u> 10

(A) "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. Ownership interest is an interest when it is held either directly, indirectly through a spouse or dependant child, or both.

(B) "Contractor" means a person who owns a commodity at the time that the commodity is under the authority of the contract producer as provided in Iowa Code chapter 579B.3 pursuant to a production contract executed pursuant to Iowa Code chapter 579B.2.

(C) "Production contract" means an oral or written agreement executed pursuant to Iowa Code chapter 579B.2 that provides for the production of a commodity by a contract producer.

(D) "Limited Liability Company" means an entity formed under Iowa Code chapter 489.

(E) "Member" means a person that has become a member of a limited liability company under Iowa Code § 489.401 and has not dissociated under Iowa Code § 489.602.

(F) An environmental violation is a Notice of Violation (NOV) or a final Administrative Order (AO) from the department of natural resources or final court ruling against the construction permit applicant or other interest holder for environmental violations related to an animal feeding operation. A Notice of Violation (NOV) does not constitute a violation.

21. Revise the 21st criterion as follows:

Construction permit applicant waives the right to claim a Pollution Control Tax Exemption for the life of the proposed confinement feeding operation structure.

	Score	Air	Water	Community
Permanent waiver of Pollution Control	<u>5</u> 15			<u>5.00</u> 15

Tax Exemption				
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22. Revise the 22nd criterion as follows:

Construction permit applicant can lawfully claim a Homestead Tax Exemption on the site where the proposed confinement structure is to be constructed

- OR -

the construction permit applicant is the closest resident to the proposed confinement structure.

	Score	Air	Water	Community
Site qualifies for Homestead Tax Exemption or permit applicant is closest resident to proposed structure, <u>and applicant is not in a production contract with a contractor</u>	<u>2515</u>			<u>25.0015</u>

(A) Proof of Homestead Tax Exemption is required as part of the construction permit application.

(B) Applicant includes persons who have ownership interests. "Interests" – 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. Ownership interest is an interest when it is held either directly, indirectly through a spouse or dependant child, or both.

(C) "Contractor" means a person who owns a commodity at the time that the commodity is under the authority of the contract producer as provided in Iowa Code chapter 579B.3 pursuant to a production contract executed pursuant to Iowa Code chapter 579B.2.

(D) "Production contract" means an oral or written agreement executed pursuant to Iowa Code chapter 579B.2 that provides for the production of a commodity by a contract producer.

23. Revise the 23rd criterion as follows:

Construction permit applicant can lawfully claim a Family Farm Tax Credit for agricultural land where the proposed confinement feeding operation is to be located pursuant to Iowa Code chapter 425A and is not in a production contract with a contractor.

	Score	Air	Water	Community
Family Farm Tax Credit qualification	<u>2515</u>			<u>25.0015</u>

Applicant includes persons who have ownership interests. “Interest,” “contractor,” and “production contract” have the same meanings as in criteria 20 and 22.

24. Eliminate the 24th criterion.

25. Revise the 25th criterion as follows:

Construction permit application includes livestock feeding and watering systems ~~that significantly reduce~~ shown to reduce manure volume by at least 25%, as well as documentation demonstrating the system’s effectiveness.

	Score	Air	Water	Community
Wet/dry feeders or other feeding and watering systems that significantly reduce <u>shown to reduce manure volume by at least 25%, and documentation demonstrating the system’s effectiveness</u>	25 <u>15</u>		12.50 <u>10</u>	12.50 <u>5</u>

26. Revise the 26th criterion as follows:

Liquid or dry manure (choose only one subsection from subsections “a” – “e” and mark one score in that subsection).

		Score	Air	Water	Community
a.	Bulk dry manure is sold under Iowa Code Chapter 200A and surface-applied	15 <u>5</u>		15.00 <u>5</u>	
	Bulk dry manure is sold under Iowa Code Chapter 200A and incorporated on the same date it is land-applied	30 <u>15</u>	12.00 <u>4</u>	12.00 <u>8</u>	6.00 <u>3</u>
b.	Dry manure is composted and land-applied under the requirements of an approved department manure management plan	10	4	4	2
	Dry manure is composted and sold so that no manure is applied under the requirements of an approved department manure management plan	30 <u>15</u>	12.00 <u>6</u>	12.00 <u>6</u>	6.00 <u>3</u>

c.	Methane digester is used to generate energy from manure and remaining manure is surface-applied under the requirements of an approved department manure management plan	10	3.00	3.00	4.00
	<u>Methane digester is used, and A</u> after methane digestion is complete, manure is injected or incorporated on the same date it is land-applied under the requirements of an approved department manure management plan	<u>3010</u>	<u>12.004</u>	<u>12.004</u>	<u>6.002</u>
d.	Dry manure is completely burned to generate energy and no remaining manure is applied under the requirements of an approved department manure management plan	308	9.00	9.008	12.00
	<u>Some dry manure is burned to generate energy, but remaining manure is land-applied and incorporated on the same date it is land-applied</u>	<u>3010</u>	<u>12.004</u>	<u>12.004</u>	<u>6.002</u>
e.	Injection or incorporation of manure on the same date it is land-applied	3015	12.006	12.006	6.003

27. Revise the 27th criterion as follows:

Land application of manure is based on a two-year crop rotation phosphorus uptake level.

	Score	Air	Water	Community
Two-year phosphorus crop uptake application rate	<u>1020</u>		<u>10.0020</u>	

28. Revise the 28th criterion as follows:

Land application of manure to farmland that has USDA Natural Resources Conservation Service (NRCS) approved buffer strips contiguous to all water sources traversing or adjacent to the fields listed in the manure management plan.

	Score	Air	Water	Community
Manure application on farmland with buffer strips	<u>1015</u>		<u>8.0013</u>	2

29. Revise the 29th criterion as follows:

Land application of manure does not occur on highly erodible land (HEL), as classified by the USDA NRCS.

	Score	Air	Water	Community
No manure application on HEL farmland	<u>10</u> 15		<u>10.00</u> 15	

30. Revise the 30th criterion as follows:

Additional separation distance, above minimum requirements (0 or 750 feet, see below), for the land application of manure to the closest:

- Residence not owned by the owner of the confinement feeding operation,
- Hospital,
- Nursing home, ~~or~~
- Licensed child care center or registered child care facility/development home,
- Educational institution,
- Religious institution, or
- Commercial enterprise.

	Score	Air	Water	Community
Additional separation distance of 200 <u>500</u> feet	<u>5</u> 10	<u>3.25</u> 7		<u>1.75</u> 3
Additional separation distance of 500 <u>1000</u> feet	<u>10</u> 15	<u>6.50</u> 10		<u>3.50</u> 5

(A) The department will award points only for the single building, of the ~~four~~seven listed above, closest to the proposed confinement feeding operation.

(B) Minimum separation distance for land application of manure injected or incorporated on the same date as application: 0 feet.

(C) Minimum separation distance for land application of manure broadcast on soil surface: 750 feet.

(D) The additional separation distances must be in the construction permit application and made a condition in the approved construction permit.

(E) “Licensed child care center” – a facility licensed by the department of human services providing child care or preschool services for seven or more children, except when the facility is registered as a child care home.

(F) “Registered child development homes” – child care providers certify that they comply with rules adopted by the department of human services. This process is voluntary for

providers caring for five or fewer children and mandatory for providers caring for six or more children.

(G) A full listing of licensed and registered child care facilities is available at county offices of the Department of Human Services

(H) “Educational institution” – 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, accredited or approved nonpublic schools, area educational agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

(I) “Religious institution” – a building in which an active congregation is devoted to worship.

(J) “Commercial enterprise” – a building which is used as a part of a business that manufactures goods, delivers services, or sells goods and 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.

31. Revise the 31st criterion as follows:

Additional separation distance, above minimum requirements (0 to 750 feet, see below), for land application of manure to closest public use area.

	Score	Air	Water	Community
Additional separation distance of 200 500 feet	<u>5</u> 10	2.00 5		3.00 5

32. Eliminate the 32nd criterion.

33. Revise the 33rd criterion as follows:

Additional separation of ~~50~~100 feet, above minimum requirements (0 or 200 feet, see below), for the land application of manure to the closest private drinking water well or public drinking water well – OR well is properly closed under supervision of county health officials.

	Score	Air	Water	Community
Additional separation distance of 50 100 feet or well is properly closed	10		8	2

34. Revise the 34th criterion as follows:

Additional separation distance, above minimum requirements, for the land application of manure to the closest: designated area, karst terrain, surface tile inlet, terrace tile inlet, or wetlands.

- ~~Agricultural drainage well,~~
- ~~Known sinkhole,~~
- ~~Major water source, or~~
- ~~Water source~~

	Score	Air	Water	Community
Additional separation distance of 200 feet	5	0.50	2.50	2.00
Additional separation distance of 400 feet	10	1.00	5.00	4.00

(A) “Designated area” means a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. “Designated area” does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

(B) “Karst terrain” means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves. If a 25-foot vertical separation distance can be maintained between the bottom of an unformed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

(C) “Wetlands” means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.

35. Revise the 35th criterion as follows:

Additional separation distance above the minimum requirements for high quality waters, for the land application of manure, to the closest:

- High quality (HQ) waters,
- High quality resource (HQR) waters, ~~or~~
- Protected water areas (PWA), or
- Waters listed on Iowa’s 303(d) list due to impairment by pollutants or conditions that may be associated with animal waste

	Score	Air	Water	Community
Additional separation distance of 200 feet	5		3.75	1.25

Additional separation distance of 400 feet	10		7.508	2.502
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36. No change proposed to the 36th criterion.

37. Revise the 37th criterion as follows:

Worker safety and protection plan is submitted with the construction permit application.

	Score	Air	Water	Community
Submission of worker safety and protection plan	1015			1015

38. Revise the 38th criterion as follows:

Applicant signs a waiver of confidentiality allowing public to view confidential manure management plan land application records and provides the county with an up-to-date manure management plan. Applicant provides any and all plan updates to the county, to be made available to the public, if changes are made during the plan year.

	Score	Air	Water	Community
Manure management plan confidentiality waiver	510			510

39. Revise the 39th criterion as follows:

Added economic value based on quality job development (number of full time equivalent (FTE) positions), and salary equal to or above Iowa department of workforce development median (45-2093)

~~ORAND-~~

the proposed structure increases commercial property tax base in the county.

	Score	Air	Water	Community
Economic value to local community	1015			1015

40. No change proposed to the 40th criterion.

41. No change proposed to the 41st criterion.

42. No change proposed to the 42nd criterion.

43. No change proposed to the 43rd criterion.

44. Revise the 44th criterion as follows:

Groundwater monitoring wells installed near manure storage structure, and applicant agrees to conduct representative up-gradient and down-gradient monitoring at least quarterly for the duration the waste storage structure is in use and provide data to the department and the public.

	Score	Air	Water	Community
Groundwater monitoring	15		<u>10</u>	<u>5</u>

(A) Monitoring well location, sampling and data submission must meet department requirements.

(B) The design, operation and maintenance plan for the groundwater monitoring wells, and data transfer to the department, must be in the construction permit application and made a condition in the approved construction permit.

(C) Sampling results will be reported to the department at least quarterly and within 5 business days of obtaining the sample analysis results.

45. Add a criterion as follows:

Applicant offers by mailed notification to provide funding for baseline residential well quality testing for CFO pollutants of concern to any residents within a one mile radius of the confinement feeding operation structure prior to beginning operation.

	Score	Air	Water	Community
Baseline well monitoring	<u>10</u>		<u>5</u>	<u>5</u>

46. Add a criterion as follows:

Applicant will conduct representative, quarterly surface water monitoring at all points of potential discharge from the production area, as determined by a certified nutrient management planner, and provide the data to the department and the public.

	Score	Air	Water	Community
Surface water monitoring	<u>15</u>		<u>10</u>	<u>5</u>

(A) Monitoring locations, sampling and data submission must meet department requirements.

(B) The monitoring locations and plan, and the plan for data transfer to the department, must be in the construction permit application and made a condition in the approved construction permit.

(C) Sampling results will be reported to the department at least quarterly and within 5 business days of obtaining the sample analysis results.

47. Add a criterion as follows:

Applicant will not apply manure in winter or on frozen or snow-covered ground.

	<u>Score</u>	<u>Air</u>	<u>Water</u>	<u>Community</u>
<u>No manure application, including by incorporation or injection, between December 21 and April 1 or on snow-covered or frozen ground.</u>	<u>15</u>		<u>15</u>	

48. Add a criterion as follows:

Applicant is in compliance with, or has applied for, a national pollutant discharge elimination system (NPDES) permit for the facility.

	<u>Score</u>	<u>Air</u>	<u>Water</u>	<u>Community</u>
<u>Facility will have and comply with a NPDES permit</u>	<u>15</u>		<u>15</u>	

49. Add a criterion as follows:

Applicant will post a bond sufficient to remediate a manure spill of full waste storage capacity or other contamination event and to ensure proper closure of the CFO facilities, as determined by the board of supervisors.

	<u>Score</u>	<u>Air</u>	<u>Water</u>	<u>Community</u>
<u>Applicant posts a bond</u>	<u>15</u>			<u>15</u>

50. Add a criterion as follows:

Applicant uses no federal or state funds or loan guarantees in the construction, maintenance, or operation of the confinement structure.

	<u>Score</u>	<u>Air</u>	<u>Water</u>	<u>Community</u>

<u>Applicant uses no federal or state funds</u>	<u>15</u>			<u>15</u>
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51. Add a criterion as follows:

Applicant mails notification to residents within a 3-mile radius prior to submitting construction permit application to the department.

	<u>Score</u>	<u>Air</u>	<u>Water</u>	<u>Community</u>
<u>Applicant mails notification to neighbors</u>	<u>10</u>			<u>10</u>

Notification must include: a description of the proposed CFO or expansion, including the size, animal unit capacity, location of CFO structures by street address or latitude and longitude, proposed waste management practices and technologies, and all owner(s) and operator(s) name(s) and contact information, including phone number and email address; contact information for all county supervisors, including phone number and email address; and a statement detailing the option for a public hearing on the permit application.

52. Add a criterion as follows:

Applicant's manure management plan contains no fields with "soil loss for conservation plan" RUSLE2 output values that exceed 75% of the USDA "T" erosion loss value for the applicable soil type.

	<u>Score</u>	<u>Air</u>	<u>Water</u>	<u>Community</u>
<u>Manure management plan fields have low calculated erosion loss</u>	<u>15</u>		<u>15</u>	

53. Revise the introductory paragraph of the Appendix C master matrix document to read:

The following scoring criteria apply to the site of the proposed confinement feeding operation. Mark one score under each criterion selected by the applicant. The proposed site must obtain a minimum overall score of 440522 and a score of ~~53.3874~~ in the "air" subcategory, a score of ~~67.75180~~ in the "water" subcategory and a score of ~~101.13206~~ in the "community impacts" subcategory.

54. Revise summary of total score and score to pass as follows:

	Total Score	Air	Water	Community
	<u>880614</u>	<u>213.5098.5</u>	<u>271.00240.5</u>	<u>404.50275</u>
Score to pass	<u>440522</u>	<u>53.3874</u>	<u>67.75180</u>	<u>101.13206</u>

V. Affected Class of Persons

All Iowans who are interested in or rely on Iowa’s water resources and air quality will be affected by the proposed rules. All Iowans who live in, visit, travel through, and recreate near agricultural areas with CFOs will also be affected by the proposed rules.

VI. Enclosures

- Enclosure A: Brief in Support of Petition for Rule Making
- Enclosure B: DNR Master Matrix Analyses
- Enclosure C: Iowa Work Plan 2016 Annual Report
- Enclosure D: Iowa’s 2016 draft 303(d) list
- Enclosure E: Letters from County Boards of Supervisors
- Enclosure F: Iowa Statewide Rural Well Water Survey
- Enclosure G: 2015 Groundwater Quality Monitoring Summary
- Enclosure H: 2016 Groundwater Quality Monitoring Summary
- Enclosure I: DNR Manure Discharge Chart
- Enclosure J: Permitting Pigs, Iowa Policy Project

The Petitioners respectfully request a meeting with the Department regarding this petition as provided in Iowa Admin. Code 11-5.4(1) (incorporated by reference in Iowa Admin. Code 561-5 and 567-5.1. At this meeting Petitioners are willing to discuss an extension of time for DNR’s consideration of the Petition, pursuant to Iowa Admin. Code 11-5.4(2) (incorporated by reference in Iowa Admin. Code 561-5 and 567-5.1).

Communication regarding this petition should be directed to Erica Blair of Iowa Citizens for Community Improvement at (515) 282-0484 or ericab@iowacci.org, or Tarah Heinzen of Food & Water Watch at (202) 683-2457 or theinzen@fwwatch.org.

Submitted by:

James Larew
Larew Law Office
504 E. Bloomington St., Iowa City, IA 52245

(319) 337-7079

james.larew@larewlawoffice.com

Tarah Heinzen

Staff Attorney

Food & Water Watch

Hugh Espey

Executive Director

Iowa Citizens for Community Improvement