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Timothy Huey
Director

To: C. Ray Wierson, County Administrator

From: Timothy Huey, Planning Director

Date: January 16, 2008

Re: Annual Re-Adoption of Master Matrix for review of Confined Animal Feeding Operations (CAFO)

Five years ago the Board of Supervisors adopted the Master Matrix to allow County participation and input in the application process for new or expanded animal confinement feed operations in Scott County. The IDNR rules require that a county annually adopt a construction evaluation in the month of January and file it with the State in order to continue participation. In order to be able to evaluate proposed sites for large confinement facilities counties must adopt these rules by resolution and notify the DNR by Jan. 31, 2008. This was the fifth year for supervisors to evaluate proposed permits and the Board reviewed one application this past year. There were two applications for expanded CAFOs in Scott County in 2006 and 2005 that were reviewed using the Master Matrix. Scott County also received two other applications in 2005 for expansions that were not large enough to trigger review under the Master Matrix criteria.

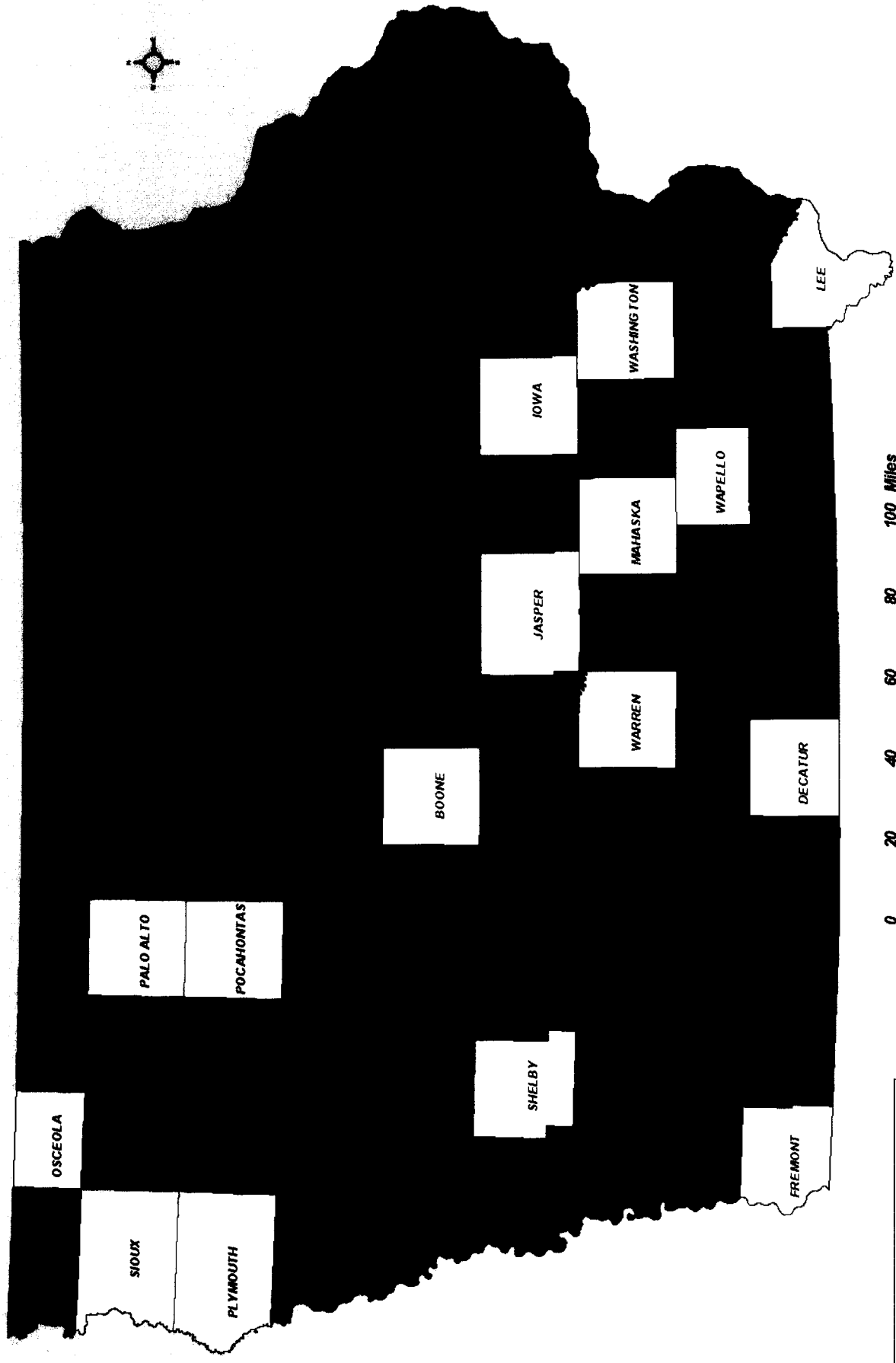
New or expanded confined animal feeding operations in counties that file the resolutions must meet higher standards than other permitted sites. They must earn points on the master matrix by choosing a site and using practices that reduce impacts on the environment and the community. Participating counties must evaluate and make a recommendation on all construction permit applications submitted to the DNR or they forfeit the right to evaluate sites until the next sign-up period.

Attached is a map from the IDNR showing all the counties in Iowa that adopted a resolution last year. The Iowa DNR website <http://www.iowadnr.com/afo/matrix.html> also has detailed information on the Master Matrix.

There have been no changes to the requirements of the Master Matrix so I have also attached the information provided five years ago regarding the initial adoption of the Construction Evaluation Resolution by Scott County.

Status of Construction Evaluation Resolutions by County

September 21, 2007



Counties which have passed a Construction Evaluation Resolution

| | |
|-------------------------------------|-----|
| <input type="checkbox"/> | no |
| <input checked="" type="checkbox"/> | yes |

0 20 40 60 80 100 Miles
1:2200000



Guidance for the County Board of Supervisors When receiving construction applications

All counties: Must publish a public notice in a newspaper with general circulation in the county, (regardless of whether the county has adopted a construction evaluation resolution pursuant to Iowa Code 2003 Section 459.304) that they have received a construction application for a confinement feeding operation. The notice must be published as soon as possible but not later than 14 days after the county has received the construction application. The notice must include all of the following:

1. Name of the person applying for a construction permit.
2. Name of the Township where the confinement feeding operation applying for a construction permit is located (for expansions) or will be located (for new facilities).
3. Type of confinement feeding operation structure being proposed (e.g. confinement building with below the floor concrete pit, earthen manure storage basin, anaerobic lagoon, slurry tank, outside concrete tank, etc.)
4. The animal unit capacity in animal units (AU) if a construction permit is issued.
5. The time when and place where the construction permit application may be examined.
6. Procedures and deadline for providing public comments.

Within 30 days after receiving a construction application, the county must provide the DNR with a proof of publication. A construction permit will not be issued without a proof of a public notice that meets the requirements of the Iowa Code 459.304 (summarized above), even if the other legal requirements have been met. The Board may forward to the DNR comments received from the public or comments by the board regarding the construction permit application. A public hearing is optional.

Counties using the Master Matrix: If the county has adopted a construction evaluation resolution, the board must submit to the DNR the result of their adopted recommendation to approve or disapprove an application. Within 30 days following the DNR's receipt of the construction application, the board shall provide to DNR the following: a copy of the completed Master Matrix, calculations and scoring of the application. The board shall use the master matrix to evaluate construction permit applications for the following:

1. Confinement feeding operations constructed on or after April 1, 2002, including the expansion of these operations that are applying for a construction permit and regardless of their animal unit capacity.
2. Existing confinement feeding operations constructed prior to April 1, 2002 that are expanding to an AUC of 1,667 animal units or more.

If you need additional information or have any questions please call an engineer of the DNR - Animal Feeding Operations Section at (515) 281-8941.

Understanding the Master Matrix

1. What is the county's first decision?

Counties must notify the DNR between February 1, 2003 and February 28, 2003 if they want to begin using the master matrix as of March 1, 2003. There is an enrollment period. For evaluation of construction permit applications filed between March 1, 2003 and January 31, 2004, the county board of supervisors must file an adopted construction evaluation resolution with the DNR between February 1, 2003 and February 28, 2003. Subrule 65.103(a)(1).

2. Are there some things that will remain the same regardless of whether a county submits a resolution?

Regardless of whether a county has adopted the matrix resolution, every county is required to publish a notice every time it receives an application. Publication must be in one newspaper "having a general circulation in the county." 455B.200E(2)(a)(1).

Regardless of whether a county has adopted the matrix resolution, a county may submit comments and/or hold a public hearing on any or all applications it receives. It is discretionary. "The board may hold a public hearing to receive public comments regarding the application." 455B.200E(2)(b).

3. So what are counties giving up if they don't pass a resolution?

Counties cannot submit a formal recommendation to DNR to approve or deny a construction permit application if it has not officially agreed to use the master matrix. A county can submit comments, but not a formal recommendation. 455B.200E(3).

The only counties that can appeal the DNR's decision to the EPC regarding a specific application are those that have filed a construction evaluation resolution with the DNR. 455B.200E(8)(b)(2).

Only counties are using the master matrix and complying with can send county employees to accompany DNR on an inspection of an applicant's site. Counties that are using the master matrix have the right to send an inspector. Other counties do not. 455B.200E(6). Counties not only need to adopt a resolution, but also need to submit a recommendation on every application in order to go on site surveys.

4. If we do adopt the resolution, what exactly are we agreeing to?

If a county agrees to use the master matrix to review applications in 2003, that agreement is in effect for one year. But a county can rescind its resolution at any time. For 2003 and 2004, the proposed administrative rule says an agreement to use the matrix is binding on the county for one year. Subrule 65.10(3)(a)(1).

A county cannot pick and choose which applications it will evaluate. According to the proposed administrative rules, failure to evaluate any permit application will result in DNR rescinding the county's construction evaluation resolution. Subrule 65.10(3)(a)(6)

Counties that use the master matrix are required to review the application of all confinement structures with an earthen manure storage basin, regardless of animal unit capacity. 455B.200A(1)(a)(2).

Otherwise, counties only use the master matrix process if the confinement structure has an animal unit capacity of over 1,000 animal units. 455B.200A(1)(a)(1)

The master matrix process applies to new confinement structures, and also to expansions of existing operations. If a unit was constructed prior to April 1, 2002, the board is required to evaluate any expansion if after the expansion the structure will have an animal unit capacity of more than 1,666 animal units. 455B.200E(3)(a).

A county must complete its master matrix process within 30 days of the time the application is submitted to the DNR by the applicant. The county's comments or evaluations must be received by the DNR "not later than 30 days following the applicant's delivery of the application" to the DNR. 455B.200E(4).

Counties cannot charge applicants for the staff time spent reviewing applications, or for incidental expenses. There is no provision in the law for collecting any such fees.

5. How does the matrix process work?

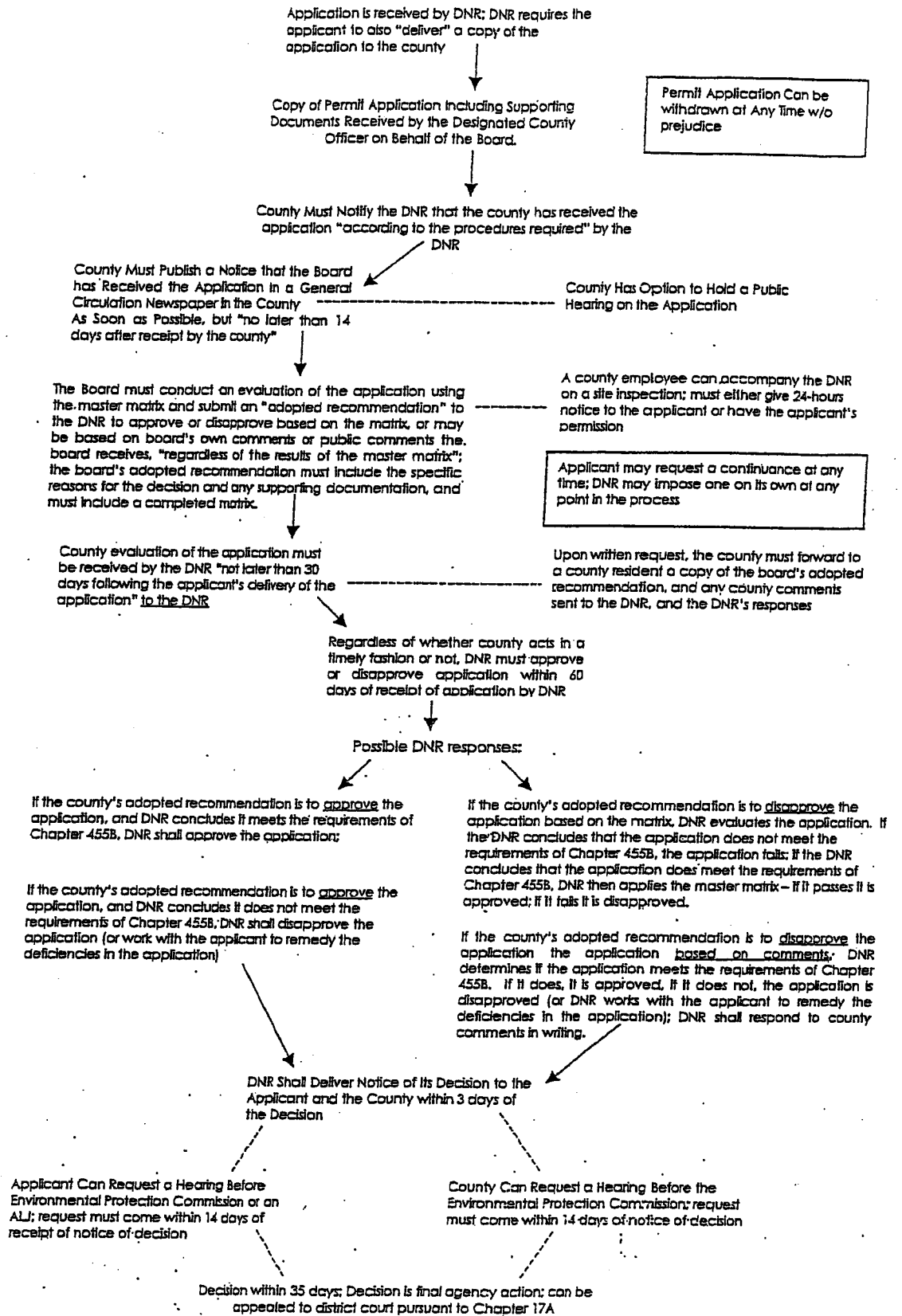
When counties use the master matrix to review applications, it is up to the applicant to supply all supporting documentation. The construction permit application that is filed by an applicant must contain a completed master matrix, and it is up to the applicant to supply all supporting documentation.

An application cannot pass even if it has a high enough overall score unless it has enough points in each of the three subcategories (air, water, community). According to the proposed administrative rules, in addition to the minimum overall score, an applicant must receive a minimum score in each of the three subcategories

A county can recommend that an application be denied even if the application passes the matrix. The board's recommendation may be based on the master matrix "or may be based on comments under this section regardless of the results of the master matrix." 455B.200E(3)(b)

Even if a county finds that an application passes the master matrix, and votes for approval of the construction permit application, the application is independently reviewed by the DNR. Regardless of the county's recommendation, the deciding factor in every case is going to be whether the DNR thinks the application meets the requirements of Chapter 455B.

Master Matrix Flowchart



Master Matrix Flowchart For Counties Without a Construction Evaluation Resolution

Application is received by DNR; DNR requires the applicant to also "deliver" a copy of the application to the county

Applicant may request a continuance at any time; DNR can impose one at any time

Copy of Permit Application Including Supporting Documents Received by the Designated County Officer on Behalf of the Board.

Permit Application Can be Withdrawn at Any Time w/o prejudice

County Must Notify the DNR that the county has received the application "according to the procedures required" by the DNR

County Must Publish a Notice that the Board has Received the Application in a General Circulation Newspaper in the County As Soon as Possible, but "no later than 14 days after receipt by the county"

County Has Option to Hold a Public Hearing on the Application

The Board may submit comments by the board and the public to the DNR. County comments regarding the application must be received by the DNR "not later than 30 days following the applicant's delivery of the application" to the DNR

County has no right to send county employee along on DNR site inspection Application

Any county resident may request a copy of any county comments sent to the DNR, and the DNR's responses

Regardless of whether county acts in a timely fashion or not, DNR must approve or disapprove application within 60 days of receipt of application by DNR

If the Board submits comments, but has not filed a construction evaluation resolution, then the only test that the DNR applies is whether the application meets the requirements of Chapter 455B. If it does, then the DNR shall approve the application. If the DNR concludes it does not meet the requirements of Chapter 455B, then the DNR shall disapprove the application (or work with the applicant to remedy the deficiencies in the application); The DNR "shall consider any timely filed comments" made by the board in analyzing whether the application meets the requirements of Chapter 455B

DNR Shall Deliver Notice of Its Decision to the Applicant within 3 days of the Decision; the statute does not require that the county be notified.

Applicant Can Request a Hearing Before Environmental Protection Commission or an ALJ; request must come within 14 days of receipt of notice of decision

County Has No Right to Request a Hearing Before the Environmental Protection Commission or an ALJ

Decision within 35 days; Decision is final agency action; can be appealed to district court pursuant to Chapter 17A