

Senate Amendment 5149

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1 1 Amend Senate File 2267 as follows:

1 2 #1. By striking everything after the enacting

1 3 clause and inserting the following:

1 4 1 5 unnumbered paragraph 1, Code 2003, is amended to read

1 6 as follows:

1 7 Adopt, amend, or repeal emission limitations or

1 8 standards relating to the maximum quantities of air

1 9 contaminants that may be emitted from any air

1 10 contaminant source. The standards or limitations

1 11 adopted under this section shall not exceed the

1 12 standards or limitations promulgated by the

1 13 administrator of the United States environmental

1 14 protection agency or the requirements of the federal

1 15 Clean Air Act as amended through January 1, 1991.

1 16 ~~This does not prohibit the The commission from~~

1 17 ~~adopting shall not adopt~~ a standard for a source or

1 18 class of sources for which the United States

1 19 environmental protection agency has not promulgated a

1 20 standard. This ~~also section~~ does not prohibit the

1 21 commission from adopting an emission standard or

1 22 limitation for infectious medical waste treatment or

1 23 disposal facilities which exceeds the standards or

1 24 limitations promulgated by the administrator of the

1 25 United States environmental protection agency or the

1 26 requirements of the federal Clean Air Act as amended

1 27 through January 1, 1991. The commission shall not

1 28 adopt an emission standard or limitation for

1 29 infectious medical waste treatment or disposal

1 30 facilities prior to January 1, 1995, which exceeds the

1 31 standards or limitations promulgated by the

1 32 administrator of the United States environmental

1 33 protection agency or the requirements of the federal

1 34 Clean Air Act, as amended through January 1, 1991, for

1 35 a hospital, or a group of hospitals, licensed under

1 36 chapter 135B which has been operating an infectious

1 37 medical waste treatment or disposal facility prior to

1 38 January 1, 1991. The commission shall not adopt or

1 39 enforce rules under this section that apply to an

1 40 animal feeding operation as provided in chapter 459.

1 41 Sec. 2. NEW SECTION. 455B.133A HEALTH EFFECT

1 42 ADVISORY PANEL.

1 43 Concurrent with the field study conducted pursuant

1 44 to section 459.207, a health effect advisory panel

1 45 shall be convened as provided in this section.

1 46 1. a. The director shall request interested

1 47 organizations to appoint voting members to the panel

1 48 as follows:

1 49 (1) The national research council of the national

1 50 academies, which may appoint up to three members who

2 1 reside in this state or in states contiguous to this

2 2 state.

2 3 (2) The university of Iowa, which may appoint one

2 4 member.

2 5 (3) Iowa State university, which may appoint one

2 6 member.

2 7 (4) The Iowa department of public health, which

2 8 may appoint one member.

2 9 (5) The United States department of agriculture,

2 10 which may appoint one member.

2 11 (6) The department of agriculture and land

2 12 stewardship, which may appoint one member.

2 13 Each organization that appoints a member to the

2 14 panel may also appoint an alternate who shall serve as

2 15 the organization's representative on the panel if the

2 16 principal appointee is unable to attend.

2 17 b. The director shall appoint the following

2 18 persons who shall serve on the panel as ex officio,

2 19 nonvoting members:

2 20 (1) A person who owns a confinement feeding

2 21 operation that includes a structure which stores

2 22 liquid manure, other than a small animal feeding

2 23 operation.

2 24 (2) A person who owns a confinement feeding

2 25 operation that includes a structure which stores

2 26 manure exclusively on a dry-matter basis, other than a
2 27 small animal feeding operation.

2 28 (3) A person who resides within one mile of a
2 29 confinement feeding operation, other than a small
2 30 animal feeding operation.

2 31 (4) A person who is actively engaged in a
2 32 manufacturing business, other than the manufacturing
2 33 of anhydrous ammonia.

2 34 (5) A person who is actively engaged in a business
2 35 involved in the manufacturing, storage, or delivery of
2 36 anhydrous ammonia.

2 37 (6) A person who represents a municipality in this
2 38 state and is actively engaged in operating a
2 39 wastewater treatment facility.

2 40 (7) A person who is employed by the department.

2 41 Each ex officio member may appoint an alternate who
2 42 shall serve in place of the principal member appointed
2 43 by the director whenever the principal member is
2 44 unable to attend a meeting.

2 45 2. a. The voting members of the panel shall elect
2 46 a chairperson from the panel's membership. Meetings
2 47 may be called by the chairperson or a majority of the
2 48 voting members. A majority of the panel's voting
2 49 members constitutes a quorum. An affirmative vote of
2 50 a majority of the entire voting membership is
3 1 necessary for the panel to take a substantive action
3 2 other than adjourning a meeting.

3 3 b. The voting members shall serve without per
3 4 diem, but shall be reimbursed by the department for
3 5 actual and necessary expenses. The ex officio members
3 6 shall serve without per diem expenses.

3 7 3. Upon request by the panel, the department shall
3 8 provide clerical and technical staffing, materials,
3 9 and meeting rooms necessary for the panel's
3 10 operations.

3 11 4. The panel shall consult with the agency for
3 12 toxic substances and disease registry as to the health
3 13 effect levels as defined in section 459.207, if any,
3 14 for odor.

3 15 5. The panel is a government body for purposes of
3 16 chapters 21 and 22.

3 17 6. a. The panel shall submit interim reports and
3 18 a final report to the general assembly regarding
3 19 health effect levels as defined in section 459.207, if
3 20 any, for odor. The report shall include a
3 21 determination whether a health effect level for odor
3 22 is determinable based on a reasonable degree of
3 23 scientific certainty. If the panel finds that it is
3 24 determinable, the report shall contain findings and
3 25 recommendations regarding the health effect levels of
3 26 odor.

3 27 b. The panel shall submit an interim report to the
3 28 general assembly on or before January 15 of each year.
3 29 The panel's final report shall be submitted no later
3 30 than December 31, 2006. The final report shall
3 31 contain findings and, if appropriate, recommendations.

3 32 c. The commission shall not adopt a rule providing
3 33 a health effect level for odor until after the panel
3 34 submits its final report to the general assembly and a
3 35 statute that provides for the health effect level for
3 36 odor is enacted.

3 37 Sec. 3. Section 459.207, Code 2003, is amended by
3 38 striking the section and inserting in lieu thereof the
3 39 following:

3 40 459.207 ANIMAL FEEDING OPERATIONS == AIRBORNE
3 41 POLLUTANTS CONTROL.

3 42 1. As used in this section:

3 43 a. "Airborne pollutant" means hydrogen sulfide,
3 44 ammonia, or odor.

3 45 b. "Health effect level" means a level and
3 46 duration of exposure to odor that causes a material
3 47 and verifiable physical disease when humans are
3 48 exposed to an airborne pollutant for periods
3 49 consistent with the average exposure periods and
3 50 levels recorded at a separated location.

4 1 c. "Minimal risk level" means the concentration
4 2 dose and duration of exposure to hydrogen sulfide or
4 3 ammonia as provided in subsection 4 as recorded at a
4 4 separated location.

4 5 d. "Separated location" means a location or object
4 6 from which a separation distance is required under

4 7 section 455B.134, subsection 3, paragraph "f", section
4 8 459.202, or section 459.204, other than a public
4 9 thoroughfare.

4 10 2. The department shall conduct a comprehensive
4 11 field study to monitor the level of airborne
4 12 pollutants from animal feeding operations in this
4 13 state, including but not limited to each type of
4 14 confinement feeding operation structure. The field
4 15 study as to each airborne pollutant shall be conducted
4 16 and shall continue for a period of not less than three
4 17 years. The monitoring period for an airborne
4 18 pollutant shall begin with the start of collection of
4 19 valid data for such airborne pollutant, including but
4 20 not limited to the collection of valid data prior to
4 21 the effective date of this Act. The field study shall
4 22 include monitoring data from at least five confinement
4 23 feeding operations for each type or phase of animal
4 24 production system commonly used in this state and for
4 25 each type of manure storage or treatment system
4 26 commonly used at such animal production systems. The
4 27 confinement feeding operations monitored shall, to
4 28 every extent practicable, be located in different
4 29 geographic locations in the state.

4 30 3. The department shall collect monitoring data
4 31 only from separated locations as provided in this
4 32 subsection. Monitoring data collected at locations
4 33 other than as provided in this subsection shall be
4 34 invalid.

4 35 a. For purposes of measuring hydrogen sulfide and
4 36 ammonia, monitoring data is considered to be taken at
4 37 a separated location if the monitor is located within
4 38 three hundred feet of the following:

4 39 (1) A structure that constitutes the separated
4 40 location.

4 41 (2) The boundaries of a public use area.

4 42 However, in no event shall monitoring data be
4 43 collected at a distance closer than the required
4 44 minimum separation distance that applies to the manure
4 45 application or confinement feeding operation
4 46 structure.

4 47 b. For purposes of measuring odor, monitoring data
4 48 is considered to be taken at a separated location if
4 49 the monitoring data is collected at a location that is
4 50 not closer than the required minimum separation
5 1 distance that applies to the manure application or
5 2 confinement feeding operation structure.

5 3 4. a. For an airborne pollutant that is hydrogen
5 4 sulfide, the minimal risk levels are as follows:

5 5 (1) The acute minimal risk level is a
5 6 concentration dose exceeding seventy parts per billion
5 7 for the duration of fourteen consecutive days. The
5 8 sum of the hourly averages for fourteen consecutive
5 9 days shall not exceed twenty-three and fifty-two
5 10 hundredths parts per million-hour.

5 11 (2) The intermediate minimal risk level is a
5 12 concentration dose exceeding thirty parts per billion
5 13 for the duration of three hundred sixty-four
5 14 consecutive days. The sum of the hourly averages for
5 15 three hundred sixty-four consecutive days shall not
5 16 exceed two hundred sixty-two parts per million-hour.

5 17 b. For an airborne pollutant that is ammonia, the
5 18 minimal risk levels are as follows:

5 19 (1) The minimal risk level is a concentration dose
5 20 exceeding one thousand seven hundred parts per billion
5 21 for the duration of fourteen consecutive days. The
5 22 sum of the hourly averages for fourteen consecutive
5 23 days shall not exceed five hundred seventy-one parts
5 24 per million-hour.

5 25 (2) The chronic minimal risk level is a
5 26 concentration dose exceeding three hundred parts per
5 27 billion for the duration of three hundred sixty-five
5 28 or more consecutive days. The sum of the hourly
5 29 averages for three hundred sixty-five consecutive days
5 30 shall not exceed two thousand six hundred twenty-eight
5 31 parts per million-hour.

5 32 c. A consecutive day for purposes of this
5 33 subsection shall be determined as provided in this
5 34 paragraph. Hourly averages must first be computed by
5 35 averaging all valid five-minute averages recorded by
5 36 the data acquisition system in that hour. An hourly
5 37 average is considered valid if at least forty-five

5 38 minutes of valid five-minute averages are recorded by
5 39 the date acquisition system. A sampling day consists
5 40 of twenty-four nonoverlapping hours beginning from
5 41 midnight on a given day to midnight on the following
5 42 day. A day of continuous monitoring data is valid if
5 43 at least eighteen hours of valid hourly averages have
5 44 been recorded at the monitoring location. To
5 45 determine the daily average, each of the valid hourly
5 46 concentrations associated with a sampling day shall be
5 47 averaged and truncated to one part per billion. The
5 48 daily average shall be used to compare with the
5 49 appropriate minimal risk level or health effect level
5 50 to determine whether the requisite number of
6 1 consecutive daily averages exceeds the applicable
6 2 concentration dose.

6 3 5. After completion of the field study, the
6 4 commission may adopt rules pursuant to chapter 17A,
6 5 except section 17A.4, subsection 2, and section 17A.5,
6 6 subsection 2, paragraph "b", to do any of the
6 7 following:

6 8 a. Establish recommended best management
6 9 practices, mechanisms, processes, or infrastructure
6 10 designed to reduce airborne pollutants from animal
6 11 feeding operations in accordance with this section.
6 12 The recommended best management practices, mechanisms,
6 13 processes, or infrastructure may be developed for a
6 14 particular air pollutant and for a specific type of
6 15 confinement feeding operating structure if the data
6 16 from the field study demonstrates to a reasonable
6 17 degree of scientific certainty that a particular
6 18 airborne pollutant from that type of confinement
6 19 feeding operation structure is present at the
6 20 separated location at a level exceeding a minimal risk
6 21 level for hydrogen sulfide or ammonia, or as
6 22 applicable a health effect level for odor. The
6 23 department shall consult with the department of
6 24 agriculture and land stewardship, Iowa state
6 25 university college of agriculture, and livestock
6 26 producers who may be impacted before establishing
6 27 recommended best management practices, mechanisms,
6 28 processes, or infrastructure. The department shall
6 29 provide a procedure for the approval of alternative or
6 30 experimental best management practices, mechanisms,
6 31 processes, or infrastructure designed to reduce an
6 32 airborne pollutant from an animal feeding operation.

6 33 b. Establish rules for the enforcement of a
6 34 minimal risk level or health effect level only in
6 35 accordance with this subsection. The commission may
6 36 adopt rules providing for the enforcement of a minimal
6 37 risk level for hydrogen sulfide or ammonia, or as
6 38 applicable a health effect level for odor for a
6 39 particular airborne pollutant, for a specific type of
6 40 confinement feeding operation structure if all of the
6 41 following apply:

6 42 (1) The data from the field study demonstrates to
6 43 a reasonable degree of scientific certainty that the
6 44 airborne pollutant from that type of confinement
6 45 feeding operation structure is present at separated
6 46 locations at levels exceeding the minimal risk level
6 47 for hydrogen sulfide or ammonia, or as applicable a
6 48 health effect level for odor.

6 49 (2) A statute that provides for the health effect
6 50 level is enacted.

7 1 The commission shall not adopt rules if the data
7 2 does not demonstrate to a reasonable degree of
7 3 scientific certainty that the airborne pollutant from
7 4 a specific type of confinement feeding operation
7 5 structure is present at separated locations at levels
7 6 that exceed the minimal risk level for hydrogen
7 7 sulfide or ammonia, or as applicable the health effect
7 8 level for odor.

7 9 6. If the commission adopts rules under subsection
7 10 5, the department may monitor the level of airborne
7 11 pollutants at a separated location in accordance with
7 12 subsection 3. However, the department shall not
7 13 monitor the level of airborne pollutants unless a
7 14 written complaint is received from the owner or
7 15 occupant of the separated location. The department
7 16 shall monitor the level of airborne pollutants by
7 17 collecting data at the separated location owned or
7 18 occupied by the person making the complaint. In

7 19 providing for the enforcement of the minimal risk
7 20 level for hydrogen sulfide or ammonia, or as
7 21 applicable the health effect level for odor, the
7 22 department shall take all measurements at the
7 23 separated location in accordance with subsection 3.
7 24 a. In using monitoring equipment to collect data
7 25 for hydrogen sulfide, equipment shall incorporate a
7 26 thermal oxidizer and a reference method for the
7 27 measurement of ambient concentrations of sulfur
7 28 dioxide that meet all calibrations, standards, and
7 29 testing requirements established by the United States
7 30 environmental protection agency. In using monitoring
7 31 equipment to collect data for ammonia, the equipment
7 32 shall incorporate a thermal oxidizer and a reference
7 33 method for the measurement of ambient concentrations
7 34 of nitrogen dioxide that meet all calibrations,
7 35 standards, and testing requirements established by the
7 36 United States environmental protection agency.
7 37 b. The department shall not enforce a rule adopted
7 38 pursuant to this section based on data, if any of the
7 39 following apply to the collection of such data:
7 40 (1) The data is collected from a site other than a
7 41 separated location as provided in this section.
7 42 (2) The data collected exceeds the minimal risk
7 43 level or health effect level but is within the
7 44 monitoring equipment's margin of error as established
7 45 pursuant to rules which shall be adopted by the
7 46 commission.
7 47 (3) The monitoring equipment used to collect data
7 48 for hydrogen sulfide or ammonia does not meet the
7 49 specifications for such equipment as required by this
7 50 section or rules adopted by the commission.
8 1 c. If the department determines that a violation
8 2 of a minimal risk level or health effect level exists,
8 3 the department shall conduct an investigation to trace
8 4 the source of the airborne pollutant after the
8 5 department has collected data measuring an airborne
8 6 pollutant from a separated location. The department
8 7 may enter the premises of a confinement feeding
8 8 operation in compliance with section 455B.103. The
8 9 department shall comply with standard biosecurity
8 10 requirements customarily required by the confinement
8 11 feeding operation that are necessary to control the
8 12 spread of disease among an animal population.
8 13 d. If the department determines that a violation
8 14 of a minimal risk level or health effect level is
8 15 caused by an airborne pollutant from a confinement
8 16 feeding operation structure, the department shall
8 17 issue a written notice to the owner of the confinement
8 18 feeding operation. The notice shall require that the
8 19 owner reduce the emission of the airborne pollutant to
8 20 meet the minimal risk level or health effect level.
8 21 The notice shall expire one year from the date of its
8 22 issuance. The owner shall not be in violation of
8 23 state law for failing to comply with the notice during
8 24 its effective period. If the department determines
8 25 that a violation of a minimal risk level or health
8 26 effect level is caused by an airborne pollutant from
8 27 the confinement feeding operation structure after the
8 28 notice has expired, the department may commence an
8 29 enforcement action as provided in this chapter.
8 30 However, the owner shall not be subject to an
8 31 enforcement action for the period that the
8 32 department's notice is in effect, and shall not be
8 33 subject to the imposition of penalties based on a
8 34 violation during that period.
8 35 7. The commission's rules providing for a minimal
8 36 risk level or health effect level shall not exceed a
8 37 standard or limitation applying to the same minimal
8 38 risk level or health effect level pursuant to the
8 39 requirements of the federal Clean Air Act as amended
8 40 through January 1, 1991, or regulations promulgated by
8 41 the United States environmental protection agency.
8 42 This section shall supersede the commission's
8 43 authority under section 455B.133.>

