

House File 2523

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1 3 AN ACT
1 4 PROVIDING FOR THE REGULATION OF AIR QUALITY, AND MAKING
1 5 PENALTIES APPLICABLE.
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1 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 9 Section 1. Section 455B.133, subsection 3, Code 2003, is
1 10 amended to read as follows:
1 11 3. Adopt, amend, or repeal ambient air quality standards
1 12 for the atmosphere of this state on the basis of providing air
1 13 quality necessary to protect the public health and welfare and
1 14 to reduce emissions contributing to acid rain pursuant to
1 15 Title IV of the federal Clean Air Act Amendments of 1990.
1 16 However, the commission shall not adopt, amend, or repeal an
1 17 ambient standard for which the United States environmental
1 18 protection agency has not promulgated a standard.
1 19 Sec. 2. Section 455B.133, subsection 4, unnumbered
1 20 paragraph 1, Code 2003, is amended to read as follows:
1 21 Adopt, amend, or repeal emission limitations or standards
1 22 relating to the maximum quantities of air contaminants that
1 23 may be emitted from any air contaminant source. The standards
1 24 or limitations adopted under this section shall not exceed the
1 25 standards or limitations promulgated by the administrator of
1 26 the United States environmental protection agency or the
1 27 requirements of the federal Clean Air Act as amended through
1 28 January 1, 1991. This does not prohibit the commission from
1 29 adopting ~~a~~ an emission standard for a source or class of
1 30 sources for which the United States environmental protection
1 31 agency has not promulgated a standard. This ~~also~~ section does
1 32 not prohibit the commission from adopting an emission standard
1 33 or limitation for infectious medical waste treatment or
1 34 disposal facilities which exceeds the standards or limitations
1 35 promulgated by the administrator of the United States
2 1 environmental protection agency or the requirements of the
2 2 federal Clean Air Act as amended through January 1, 1991. The
2 3 commission shall not adopt an emission standard or limitation
2 4 for infectious medical waste treatment or disposal facilities
2 5 prior to January 1, 1995, which exceeds the standards or
2 6 limitations promulgated by the administrator of the United
2 7 States environmental protection agency or the requirements of
2 8 the federal Clean Air Act, as amended through January 1, 1991,
2 9 for a hospital, or a group of hospitals, licensed under
2 10 chapter 135B which has been operating an infectious medical
2 11 waste treatment or disposal facility prior to January 1, 1991.
2 12 The commission shall not adopt or enforce rules under this
2 13 section that apply to an animal feeding operation as provided
2 14 in chapter 459.
2 15 Sec. 3. NEW SECTION. 455B.133A ODOR HEALTH EFFECT
2 16 ADVISORY PANEL.
2 17 Concurrent with the field study conducted pursuant to
2 18 section 459.207, an odor health effect advisory panel shall be
2 19 convened as provided in this section.
2 20 1. a. The director shall request interested organizations
2 21 to appoint voting members to the panel as follows:
2 22 (1) The national research council of the national
2 23 academies, which may appoint up to three members who reside in
2 24 this state or in states contiguous to this state.
2 25 (2) The university of Iowa, which may appoint one member.
2 26 (3) Iowa state university, which may appoint one member.
2 27 (4) The Iowa department of public health, which may
2 28 appoint one member.
2 29 (5) The United States department of agriculture, which may
2 30 appoint one member.
2 31 (6) The department of agriculture and land stewardship,
2 32 which may appoint one member.
2 33 Each organization that appoints a member to the panel may
2 34 also appoint an alternate who shall serve as the
2 35 organization's representative on the panel if the principal
3 1 appointee is unable to attend.
3 2 b. The director shall appoint the following persons who
3 3 shall serve on the panel as ex officio, nonvoting members:
3 4 (1) A person who owns a confinement feeding operation that
3 5 includes a structure which stores liquid manure, other than a

3 6 small animal feeding operation.
3 7 (2) A person who owns a confinement feeding operation that
3 8 includes a structure which stores manure exclusively on a dry=
3 9 matter basis, other than a small animal feeding operation.
3 10 (3) A person who resides within one mile of a confinement
3 11 feeding operation, other than a small animal feeding
3 12 operation.
3 13 (4) A person who is actively engaged in a manufacturing
3 14 business.
3 15 (5) A person who represents a municipality in this state
3 16 and is actively engaged in operating a wastewater treatment
3 17 facility.
3 18 (6) A person who is employed by the department.
3 19 Each ex officio member may appoint an alternate who shall
3 20 serve in place of the principal member appointed by the
3 21 director whenever the principal member is unable to attend a
3 22 meeting.
3 23 2. a. The voting members of the panel shall elect a
3 24 chairperson from the panel's membership. Meetings may be
3 25 called by the chairperson or a majority of the voting members.
3 26 A majority of the panel's voting members constitutes a quorum.
3 27 An affirmative vote of a majority of the entire voting
3 28 membership is necessary for the panel to take a substantive
3 29 action other than adjourning a meeting.
3 30 b. The voting members shall serve without per diem, but
3 31 shall be reimbursed by the department for actual and necessary
3 32 expenses. The ex officio members shall serve without per diem
3 33 expenses.
3 34 3. Upon request by the panel, the department shall provide
3 35 clerical and technical staffing, materials, and meeting rooms
4 1 necessary for the panel's operations.
4 2 4. The panel shall consult with the agency for toxic
4 3 substances and disease registry as to the health effect levels
4 4 as defined in section 459.207, if any, for odor.
4 5 5. The panel is a government body for purposes of chapters
4 6 21 and 22.
4 7 6. a. The panel shall submit interim reports and a final
4 8 report to the general assembly and the commission regarding
4 9 health effect levels as defined in section 459.207, if any,
4 10 for odor. The report shall include a determination whether a
4 11 health effect level for odor is determinable based on a
4 12 reasonable degree of scientific certainty. If the panel finds
4 13 that it is determinable, the report shall contain findings and
4 14 recommendations regarding the health effect levels of odor.
4 15 b. The panel shall submit an interim report to the general
4 16 assembly and the commission on or before January 15 of each
4 17 year. The panel's final report shall be submitted no later
4 18 than December 31, 2006. The final report shall contain
4 19 findings and, if appropriate, recommendations.
4 20 c. The commission shall not adopt a rule providing a
4 21 health effect level for odor until after the panel submits its
4 22 final report, and a statute that provides for the health
4 23 effect level for odor is enacted.
4 24 Sec. 4. Section 459.207, Code 2003, is amended by striking
4 25 the section and inserting in lieu thereof the following:
4 26 459.207 ANIMAL FEEDING OPERATIONS == AIRBORNE POLLUTANTS
4 27 CONTROL.
4 28 1. As used in this section:
4 29 a. "Airborne pollutant" means hydrogen sulfide, ammonia,
4 30 or odor.
4 31 b. "Health effect level" means a level and duration of
4 32 exposure to odor that causes a material and verifiable
4 33 physical disease when humans are exposed to an airborne
4 34 pollutant for periods consistent with the average exposure
4 35 periods and levels recorded at a separated location.
5 1 c. "Minimal risk level" means the concentration dose and
5 2 duration of exposure to hydrogen sulfide or ammonia as
5 3 provided in subsection 4 as recorded at a separated location.
5 4 d. "Separated location" means a location or object from
5 5 which a separation distance is required under section
5 6 455B.134, subsection 3, paragraph "f", section 459.202, or
5 7 section 459.204, other than a public thoroughfare.
5 8 2. The department shall conduct a comprehensive field
5 9 study to monitor the level of airborne pollutants from animal
5 10 feeding operations in this state, including but not limited to
5 11 each type of confinement feeding operation structure. The
5 12 field study as to each airborne pollutant shall be conducted
5 13 and shall continue for a period of not less than three years.
5 14 The monitoring period for an airborne pollutant shall begin
5 15 with the start of collection of valid data for such airborne
5 16 pollutant, including but not limited to the collection of

5 17 valid data prior to the effective date of this Act. The field
5 18 study shall include monitoring data from at least five
5 19 confinement feeding operations for each type or phase of
5 20 animal production system commonly used in this state and for
5 21 each type of manure storage or treatment system commonly used
5 22 at such animal production systems. The confinement feeding
5 23 operations monitored shall, to every extent practicable, be
5 24 located in different geographic locations in the state.

5 25 3. The department shall collect monitoring data only from
5 26 separated locations as provided in this subsection.
5 27 Monitoring data collected at locations other than as provided
5 28 in this subsection shall be invalid.

5 29 a. For purposes of measuring hydrogen sulfide and ammonia,
5 30 monitoring data is considered to be taken at a separated
5 31 location if the monitor is located within three hundred feet
5 32 of the following:

5 33 (1) A structure that constitutes the separated location.

5 34 (2) The boundaries of a public use area.

5 35 However, in no event shall monitoring data be collected at
6 1 a distance closer than the required minimum separation
6 2 distance that applies to the manure application or confinement
6 3 feeding operation structure.

6 4 b. For purposes of measuring odor, monitoring data is
6 5 considered to be taken at a separated location if the
6 6 monitoring data is collected at a location that is not closer
6 7 than the required minimum separation distance that applies to
6 8 the manure application or confinement feeding operation
6 9 structure.

6 10 4. a. The minimal risk levels for an airborne pollutant
6 11 that is hydrogen sulfide are as follows:

6 12 (1) The short-term minimal risk level is one of the
6 13 following:

6 14 (a) A concentration dose exceeding seventy parts per
6 15 billion for the duration of two consecutive valid sampling
6 16 weeks.

6 17 (b) A sum of the hourly average concentration doses
6 18 exceeding twenty-three and fifty-two hundredths parts per
6 19 million-hour for two consecutive valid sampling weeks, reduced
6 20 by seven hundredths parts per million-hour for each hour for
6 21 which there is no valid hourly average.

6 22 (2) The long-term minimal risk level is one of the
6 23 following:

6 24 (a) A concentration dose exceeding thirty parts per
6 25 billion for the duration of twelve consecutive valid sampling
6 26 months.

6 27 (b) A sum of the hourly average concentration doses
6 28 exceeding two hundred sixty-two and eight hundredths parts per
6 29 million-hour for twelve consecutive valid sampling months,
6 30 reduced by three hundredths parts per million-hour for each
6 31 hour for which there is no valid hourly average.

6 32 b. The minimal risk levels for an airborne pollutant that
6 33 is ammonia are as follows:

6 34 (1) The short-term minimal risk level is one of the
6 35 following:

7 1 (a) A concentration dose exceeding one thousand seven
7 2 hundred parts per billion for the duration of two consecutive
7 3 valid sampling weeks.

7 4 (b) A sum of the hourly average concentration doses
7 5 exceeding five hundred seventy-one and two-tenths parts per
7 6 million-hour for two consecutive valid sampling weeks, reduced
7 7 by one and seven-tenths parts per million-hour for each hour
7 8 for which there is no valid hourly average.

7 9 (2) The long-term minimal risk level is one of the
7 10 following:

7 11 (a) A concentration dose exceeding three hundred parts per
7 12 billion for the duration of twelve consecutive valid sampling
7 13 months.

7 14 (b) A sum of the hourly average concentration doses
7 15 exceeding two thousand six hundred twenty-eight parts per
7 16 million-hour for each hour for which there is no valid hourly
7 17 average.

7 18 c. A valid sampling day, valid sampling week, and valid
7 19 sampling month for purposes of this subsection shall be
7 20 determined as provided in this paragraph. Hourly averages
7 21 must first be computed by averaging all valid five-minute
7 22 averages recorded by the data acquisition system in that hour.
7 23 An hourly average is considered valid if at least forty-five
7 24 minutes of valid five-minute averages are recorded by the data
7 25 acquisition system. A sampling day consists of twenty-four
7 26 nonoverlapping hours beginning from midnight on a given day to
7 27 midnight on the following day. A sampling day is considered

7 28 valid if at least eighteen hours of valid hourly averages have
7 29 been recorded at the monitoring location. To determine the
7 30 daily average, each of the valid hourly concentrations
7 31 associated with a sampling day shall be averaged and truncated
7 32 to one part per billion. A valid sampling day shall be
7 33 computed by averaging all valid hourly averages recorded by
7 34 the data acquisition system in that sampling day. A valid
7 35 sampling week consists of at least six valid sampling days in
8 1 a period of seven consecutive days. A valid sampling month is
8 2 a calendar month in which at least seventy-five percent of the
8 3 days of the month are valid sampling days.

8 4 5. After completion of the field study, the commission may
8 5 adopt rules pursuant to chapter 17A, except section 17A.4,
8 6 subsection 2, and section 17A.5, subsection 2, paragraph "b",
8 7 to do any of the following:

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

8 30 b. Establish rules for the enforcement of a minimal risk
8 31 level or health effect level only in accordance with this
8 32 subsection. The commission may adopt rules providing for the
8 33 enforcement of a minimal risk level for hydrogen sulfide or
8 34 ammonia, or as applicable a health effect level for odor for a
8 35 particular airborne pollutant, for a specific type or phase of
9 1 animal production system commonly used in this state and for a
9 2 specific type of manure storage or treatment system commonly
9 3 used at such animal production systems if all of the following
9 4 apply:

9 5 (1) The data from the field study demonstrates to a
9 6 reasonable degree of scientific certainty that the airborne
9 7 pollutant from that type or phase of animal production system
9 8 commonly used in this state and that type of manure storage or
9 9 treatment system commonly used at such animal production
9 10 systems is present at separated locations at levels exceeding
9 11 the minimal risk level for hydrogen sulfide or ammonia, or as
9 12 applicable a health effect level for odor.

9 13 (2) A statute that provides for the health effect level is
9 14 enacted.

9 15 The commission shall not adopt rules if the data does not
9 16 demonstrate to a reasonable degree of scientific certainty
9 17 that the airborne pollutant from a specific type or phase of
9 18 animal production system commonly used in this state and a
9 19 specific type of manure storage or treatment system commonly
9 20 used at such animal production systems is present at separated
9 21 locations at levels that exceed the minimal risk level for
9 22 hydrogen sulfide or ammonia, or as applicable the health
9 23 effect level for odor.

9 24 6. If the commission adopts rules under subsection 5, the
9 25 department may monitor the level of airborne pollutants at a
9 26 separated location in accordance with subsection 3. However,
9 27 the department shall not monitor the level of airborne
9 28 pollutants unless a written complaint is received from the
9 29 owner or occupant of the separated location. The department
9 30 shall monitor the level of airborne pollutants by collecting
9 31 data at the separated location owned or occupied by the person
9 32 making the complaint. In providing for the enforcement of the
9 33 minimal risk level for hydrogen sulfide or ammonia, or as
9 34 applicable the health effect level for odor, the department
9 35 shall take all measurements at the separated location in
10 1 accordance with subsection 3.

10 2 a. In using monitoring equipment to collect data for
10 3 hydrogen sulfide, equipment shall incorporate a thermal

10 4 oxidizer and a reference method for the measurement of ambient
10 5 concentrations of sulfur dioxide that meet all calibrations,
10 6 standards, and testing requirements established by the United
10 7 States environmental protection agency. In using monitoring
10 8 equipment to collect data for ammonia, the equipment shall
10 9 incorporate a thermal oxidizer and a reference method for the
10 10 measurement of ambient concentrations of nitrogen dioxide that
10 11 meet all calibrations, standards, and testing requirements
10 12 established by the United States environmental protection
10 13 agency.

10 14 b. The department shall not enforce a rule adopted
10 15 pursuant to this section based on data, if any of the
10 16 following apply to the collection of such data:

10 17 (1) The data is collected from a site other than a
10 18 separated location as provided in this section.

10 19 (2) The data collected exceeds the minimal risk level or
10 20 health effect level but is within the monitoring equipment's
10 21 margin of error as established pursuant to rules which shall
10 22 be adopted by the commission.

10 23 (3) The monitoring equipment used to collect data for
10 24 hydrogen sulfide or ammonia does not meet the specifications
10 25 for such equipment as required by this section or rules
10 26 adopted by the commission.

10 27 c. If the department determines that a violation of a
10 28 minimal risk level or health effect level exists, the
10 29 department shall conduct an investigation to trace the source
10 30 of the airborne pollutant after the department has collected
10 31 data measuring an airborne pollutant from a separated
10 32 location. The department may enter the premises of a
10 33 confinement feeding operation in compliance with section
10 34 455B.103. The department shall comply with standard
10 35 biosecurity requirements customarily required by the
11 1 confinement feeding operation that are necessary to control
11 2 the spread of disease among an animal population.

11 3 d. If the department determines that a violation of a
11 4 minimal risk level or health effect level is caused by an
11 5 airborne pollutant from a confinement feeding operation
11 6 structure, the department shall issue a written notice to the
11 7 owner of the confinement feeding operation. The notice shall
11 8 require that the owner reduce the emission of the airborne
11 9 pollutant to meet the minimal risk level or health effect
11 10 level. If the notice is for a violation of the short-term
11 11 minimal risk level for an airborne pollutant that is hydrogen
11 12 sulfide or ammonia, the notice shall expire one hundred eighty
11 13 days from the date of its issuance. If the notice is for any
11 14 other violation of a minimal risk level or health effect level
11 15 for odor, the notice shall expire one year from the date of
11 16 its issuance. The owner shall not be in violation of state
11 17 law for failing to comply with the notice during its effective
11 18 period. If the department determines that a violation of a
11 19 minimal risk level or health effect level is caused by an
11 20 airborne pollutant from the confinement feeding operation
11 21 structure after the notice has expired, the department may
11 22 commence an enforcement action as provided in this chapter.
11 23 However, the owner shall not be subject to an enforcement
11 24 action for the period that the department's notice is in
11 25 effect, and shall not be subject to the imposition of
11 26 penalties based on a violation during that period.

11 27 7. The commission's rules providing for a minimal risk
11 28 level or health effect level shall not exceed a standard or
11 29 limitation applying to the same minimal risk level or health
11 30 effect level pursuant to the requirements of the federal Clean
11 31 Air Act as amended through January 1, 1991, or regulations
11 32 promulgated by the United States environmental protection
11 33 agency. This section shall supersede the commission's
11 34 authority under section 455B.133.

11 35 8. The governor shall appoint members to a monitoring
12 1 advisory committee to advise the department on the monitoring
12 2 of airborne pollutants that are hydrogen sulfide, ammonia, and
12 3 odor as required by this Act. Members shall not be
12 4 representatives of the department and must have expertise in
12 5 data collection and in the operation of equipment used for
12 6 data collection as required by this Act. The department shall
12 7 consult with members in a meeting which shall be chaired by a
12 8 person appointed by the governor. The committee shall consult
12 9 with the department regarding monitoring as required by this
12 10 section or rules adopted pursuant to this section. The
12 11 committee shall evaluate and assess protocols for data
12 12 collection, data processing, and data retention as required by
12 13 this section. The committee shall also evaluate instrument
12 14 calibration procedures and instrument siting procedures for

12 15 objective data collection, and oversee instrumentation
12 16 evaluation for selection of equipment.

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CHRISTOPHER C. RANTS
Speaker of the House

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JEFFREY M. LAMBERTI
President of the Senate

12 28 I hereby certify that this bill originated in the House and
12 29 is known as House File 2523, Eightieth General Assembly.

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MARGARET THOMSON
Chief Clerk of the House

12 35 Approved _____, 2004

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THOMAS J. VILSACK
Governor