

House File 2692 - Introduced

HOUSE FILE _____
BY McCARTHY and RANTS

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to animal feeding operations by regulating
2 livestock markets, open feedlot operations, and the
3 stockpiling of manure, providing for applicability and
4 enforcement, making penalties applicable, and providing
5 effective dates.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 6665YH 82
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1 1 Section 1. Section 459.102, subsection 4, Code 2007, is
1 2 amended to read as follows:
1 3 4. "Animal feeding operation" means a lot, yard, corral,
1 4 building, or other area in which animals are confined and fed
1 5 and maintained for forty-five days or more in any twelve-month
1 6 period, and all structures used for the storage of manure from
1 7 animals in the operation. ~~An Except as required for a~~
1 8 ~~national pollutant discharge elimination system permit~~
1 9 ~~required pursuant to the federal Water Pollution Control Act,~~
1 10 ~~33 U.S.C. ch. 26, as amended, an animal feeding operation does~~
1 11 not include a livestock market.
1 12 Sec. 2. Section 459.102, Code 2007, is amended by adding
1 13 the following new subsections:
1 14 NEW SUBSECTION. 20A. "Designated area" means a known
1 15 sinkhole, a cistern, an abandoned well, an unplugged
1 16 agricultural drainage well, an agricultural drainage well
1 17 surface inlet, a drinking water well, a designated wetland, or
1 18 a water source. However, "designated area" does not include a
1 19 terrace tile inlet or a surface tile inlet other than an
1 20 agricultural drainage well surface tile inlet.
1 21 NEW SUBSECTION. 23A. "Dry manure" means manure which
1 22 meets all of the following conditions:
1 23 a. The manure does not flow perceptibly under pressure.
1 24 b. The manure is not capable of being transported through
1 25 a mechanical pumping device designed to move a liquid.
1 26 c. The constituent molecules of the manure do not flow
1 27 freely among themselves but may show a tendency to separate
1 28 under stress.
1 29 NEW SUBSECTION. 45A. "Stockpile" means to store dry
1 30 manure from a confinement feeding operation outside of a
1 31 confinement feeding operation structure.
1 32 Sec. 3. Section 459.206, subsection 2, paragraph b, Code
1 33 2007, is amended to read as follows:
1 34 b. A qualified confinement feeding operation that stores
1 35 ~~dry manure on a dry matter basis.~~
2 1 Sec. 4. Section 459.307, subsection 1, paragraph b, Code
2 2 2007, is amended to read as follows:
2 3 b. Whether the manure storage structure stores only dry
2 4 ~~manure in an exclusively dry form.~~
2 5 Sec. 5. Section 459.311, subsection 1, Code 2007, is
2 6 amended to read as follows:
2 7 1. a. A confinement feeding operation shall retain all
2 8 manure produced by the operation between periods of manure
2 9 disposal. For purposes of this section, dry manure may be
2 10 retained by stockpiling as provided in section 459.311A.
2 11 b. A confinement feeding operation shall not discharge
2 12 manure directly into water of the state or into a tile line
2 13 that discharges directly into water of the state.
2 14 Sec. 6. NEW SECTION. 459.311A DRY MANURE STOCKPILING.
2 15 A person may stockpile dry manure, subject to the
2 16 provisions of this chapter, including but not limited to
2 17 section 459.311, and all of the following restrictions:

2 18 1. a. The person shall not stockpile dry manure within
2 19 the following distances unless the dry manure is maintained in
2 20 a manner that will not allow precipitation-induced runoff to
2 21 drain from the dry manure to the designated area:

2 22 (1) Four hundred feet from a designated area other than a
2 23 high-quality water resource.

2 24 (2) Eight hundred feet from a high-quality water resource.

2 25 b. The person shall not stockpile dry manure within two
2 26 hundred feet from a terrace tile inlet or surface tile inlet
2 27 unless the dry manure is maintained in a manner that will not
2 28 allow precipitation-induced runoff to drain from the dry
2 29 manure to the terrace tile inlet or surface tile inlet. A
2 30 terrace tile inlet or surface tile inlet does not include a
2 31 tile inlet that is not directly connected to a tile line that
2 32 discharges directly into a water of the state.

2 33 c. The person shall not stockpile dry manure in a grassed
2 34 waterway.

2 35 d. The person shall not stockpile dry manure on land
3 1 having a slope of more than three percent unless methods,
3 2 structures, or practices are implemented to contain the
3 3 stockpiled dry manure, including but not limited to using silt
3 4 fences, temporary earthen berms, or other effective measures,
3 5 and to prevent or diminish precipitation-induced runoff from
3 6 the stockpiled dry manure.

3 7 2. The person shall remove the stockpiled manure and apply
3 8 it in accordance with the provisions of this chapter,
3 9 including but not limited to section 459.311, within six
3 10 months after the manure is stockpiled.

3 11 Sec. 7. Section 459.314, unnumbered paragraph 1, Code
3 12 2007, is amended by striking the paragraph.

3 13 Sec. 8. Section 459A.103, subsection 3, Code 2007, is
3 14 amended to read as follows:

3 15 3. a. In calculating the animal unit capacity of an open
3 16 feedlot operation, the animal unit capacity shall not include
3 17 the animal unit capacity of any confinement feeding operation
3 18 building as defined in section 459.102, which is part of the
3 19 open feedlot operation.

3 20 b. Notwithstanding paragraph "a", only for purposes of
3 21 determining whether an open feedlot operation must obtain an
3 22 operating permit, the animal unit capacity of the animal
3 23 feeding operation includes the animal unit capacities of both
3 24 the open feedlot operation and the confinement feeding
3 25 operation if the animals in the open feedlot operation and the
3 26 confinement feeding operation are all in the same category or
3 27 type of animals as used in the definitions of large and medium
3 28 concentrated animal feeding operations in 40 C.F.R. pt. 122.

3 29 In all other respects the confinement feeding operation shall
3 30 be governed by chapter 459 and the open feedlot operation
3 31 shall be governed by this chapter.

3 32 Sec. 9. Section 459A.401, subsection 2, paragraph a,
3 33 unnumbered paragraph 1, Code Supplement 2007, is amended to
3 34 read as follows:

3 35 An open feedlot operation in compliance with the inspection
4 1 and recordkeeping requirements of 40 C.F.R. pt. 122 and 40
4 2 C.F.R. pt. 412 applicable to the operation may discharge open

4 3 feedlot effluent into any waters of the United States due to a
4 4 precipitation event, if any of the following apply:

4 5 Sec. 10. COMPLIANCE EDUCATION EFFORT. The department of
4 6 natural resources shall provide for a compliance education
4 7 effort. In administering the effort, the department, in
4 8 cooperation with associations that represent livestock
4 9 producers and organizations that represent farmers generally,
4 10 shall provide information on a statewide basis to persons
4 11 involved with maintaining animals in a confinement feeding
4 12 operation or open feedlot operation regarding methods and
4 13 practices to ensure compliance with this Act.

4 14 Sec. 11. APPLICABILITY AND ENFORCEMENT.

4 15 1. A person required to obtain an operating permit for an
4 16 open feedlot operation by the department of natural resources
4 17 pursuant to 567 IAC ch. 65, and section 459.102, subsection 4,
4 18 as amended by this Act, or section 459A.103, subsection 3, as
4 19 amended by this Act, shall submit an application for the
4 20 operating permit to the department of natural resources on or
4 21 before December 31, 2008.

4 22 2. a. The state shall not take an enforcement action
4 23 against a person arising from the person's failure to obtain
4 24 an operating permit by the department of natural resources as
4 25 required pursuant to this Act if the person's application for
4 26 the operating permit application is pending in accordance with
4 27 subsection 1.

4 28 b. The state shall not take an enforcement action against

4 29 a person arising from the person's failure to obtain an
4 30 operating permit as required pursuant to this Act for the
4 31 period beginning on the day when the department of natural
4 32 resources denies the person's application for the operation
4 33 permit and ending on the thirtieth day after the person
4 34 receives written notice that such application has been denied.

4 35 Sec. 12. SPECIAL EFFECTIVE DATES.

5 1 1. The section of this Act establishing a compliance
5 2 education effort takes effect upon enactment.

5 3 2. The sections of this Act amending the following take
5 4 effect on December 31, 2008:

5 5 a. Section 459.102, subsection 4.

5 6 b. Section 459A.103, subsection 3.

5 7 EXPLANATION

5 8 GENERAL. Two principal Code chapters regulate animal
5 9 feeding operations. Code chapter 459 generally regulates
5 10 animal feeding operations, with the majority of its provisions
5 11 concerning confinement feeding operations where animals are
5 12 confined in totally roofed areas. Code chapter 459A regulates
5 13 open feedlot operations where animals are otherwise confined
5 14 to areas where there is no vegetation or forage materials.
5 15 Both Code chapters are regulated by the department of natural
5 16 resources which has adopted rules under 567 IAC ch. 65.

5 17 Division I of the rules governs confinement feeding operations
5 18 and Division II of the rules governs open feedlot operations.

5 19 STOCKPILING. Stockpiling refers to a practice of keeping
5 20 manure outside a manure storage structure associated with an
5 21 animal feeding operation. Currently Code chapter 459 does not
5 22 address stockpiling. For stockpiling manure solids from an
5 23 open feedlot, see Code section 459A.403. Code section 459.311
5 24 currently requires that a confinement feeding operation retain
5 25 all manure produced by the operation between periods of manure
5 26 disposal and prohibits a confinement feeding operation from
5 27 discharging manure directly into the water of the state.

5 28 BILL PROVISIONS. The bill provides for stockpiling dry
5 29 manure from a confinement feeding operation. The bill defines
5 30 dry manure as manure which does not flow perceptibly under
5 31 pressure, is not capable of being transported through a
5 32 mechanical pumping device designed to move a liquid, and its
5 33 constituent molecules do not flow freely among themselves but
5 34 may show a tendency to separate under stress. The bill
5 35 provides that manure from a confinement feeding operation may

6 1 be retained by stockpiling, subject to certain limitations.

6 2 A person is prohibited from stockpiling dry manure within
6 3 certain distances from certain areas involving surface water
6 4 or groundwater, including the following:

6 5 1. A designated area. The definition of designated area
6 6 is taken from current law (Code section 459.314) and includes
6 7 a known sinkhole, a cistern, an abandoned well, an unplugged
6 8 agricultural drainage well, an agricultural drainage well
6 9 surface inlet, a drinking water well, a designated wetland, or
6 10 a water source. It does not include a terrace tile inlet.

6 11 The bill provides that a designated area also does not include
6 12 a surface tile inlet, other than an agricultural drainage well
6 13 surface tile inlet, which is consistent with Code chapter 459A
6 14 governing open feedlot operations.

6 15 2. A high-quality water resource as provided by rules
6 16 adopted by the department.

6 17 3. A terrace tile inlet or surface tile inlet unless the
6 18 dry manure is maintained in a manner that will not allow
6 19 precipitation-induced runoff to drain from the dry manure to
6 20 the terrace tile inlet or surface tile inlet.

6 21 In addition, a person cannot stockpile dry manure in a
6 22 grassed waterway or on a slope of more than 3 percent unless
6 23 means are provided to contain the stockpiled dry manure.

6 24 A person must remove the stockpiled manure and apply it in
6 25 accordance with the provisions of Code chapter 459, including
6 26 but not limited to Code section 459.311, within six months
6 27 after the manure is stockpiled.

6 28 NPDES PERMIT PROGRAM. Code section 455B.197 authorizes the
6 29 department of natural resources to administer the national
6 30 pollutant discharge elimination system (NPDES) permit program
6 31 pursuant to the federal Water Pollution Control Act, 33 U.S.C.
6 32 ch. 26. The NPDES permit program controls water pollution by
6 33 regulating point sources that discharge pollutants into waters
6 34 of the United States, including "concentrated animal feeding
6 35 operations" which may include confinement feeding operations
7 1 and open feedlot operations. See 40 C.F.R. pt. 122. The
7 2 department of natural resources rules provide for conditions
7 3 for the issuance of NPDES permits in compliance with federal
7 4 requirements, including provisions for inspections and

7 5 recordkeeping. The department of natural resources rules
7 6 governing open feedlot operations, 567 IAC ch. 65, Division
7 7 II, were first effective September 14, 2005, (see IAB Vol.
7 8 XXVIII, No.6. p. 395, ARC 4506B and IAB Vol. XXVIII, No.6. p.
7 9 453, ARC 4507B). The definition of an "animal feeding
7 10 operation" includes a statement that a livestock market can
7 11 satisfy the definition of a concentrated animal feeding
7 12 operation and be subject to NPDES permit requirements (see 567
7 13 IAC 65.100).

7 14 Generally, the department of natural resources rules
7 15 implementing the NPDES permit program regulates medium and
7 16 large concentrated animal feeding operations based on the
7 17 number of animals of the same category, e.g., beef cattle, and
7 18 animal units of animals of different categories, e.g., beef
7 19 cattle and dairy cattle. The department of natural resources
7 20 rules provide that a large or medium concentrated animal
7 21 feeding operation may include an animal feeding operation
7 22 maintaining either of the following: (1) the same category of
7 23 animals in one or more types of animal feeding operations,
7 24 e.g., beef cattle kept as part of a confinement feeding
7 25 operation and of an open feedlot operation; or (2) different
7 26 categories of animals kept at one type of animal feeding
7 27 operation, e.g., beef cattle and dairy cattle kept as part of
7 28 an open feedlot operation. See 567 IAC 65.100.

7 29 BILL PROVISIONS == LIVESTOCK MARKETS. The bill amends Code
7 30 section 459.102 which currently defines an animal feeding
7 31 operation for purposes of both confinement feeding operations
7 32 and open feedlot operations, to exclude a livestock market
7 33 where animals are assembled for public auction, private sale,
7 34 or sale by commission. The bill provides that an animal
7 35 feeding operation includes a livestock market if required for
8 1 an NPDES permit.

8 2 BILL PROVISIONS == OPEN FEEDLOT OPERATIONS. The bill
8 3 amends Code section 459A.103 which currently provides that the
8 4 size of an open feedlot operation as calculated using its
8 5 animal unit capacity (see Code section 459.102) does not
8 6 include the animal unit capacity of any confinement feeding
8 7 operation building. Notwithstanding that provision, the bill
8 8 provides that for purposes of the NPDES program the animal
8 9 unit capacity of a confinement feeding operation and open
8 10 feedlot operation are to be calculated together when
8 11 determining the animal unit capacity of the animal feeding
8 12 operation if the same category of animals is maintained in the
8 13 two types of operations. It also provides that for all other
8 14 purposes, the confinement feeding operation is to be governed
8 15 by Code chapter 459 and the open feedlot operation is to be
8 16 governed by Code chapter 459A.

8 17 The bill also amends Code section 459A.401 which currently
8 18 provides that an open feedlot operation required to be issued
8 19 an operating permit may discharge open feedlot effluent into
8 20 the waters of the United States due to a precipitation event
8 21 if certain design requirements are met. The bill provides
8 22 that the open feedlot operation must also be in compliance
8 23 with NPDES inspection and recordkeeping requirements.

8 24 BILL PROVISIONS == COMPLIANCE EDUCATION EFFORT. The bill
8 25 requires the department of natural resources to provide for a
8 26 compliance education effort in cooperation with associations
8 27 that represent livestock producers and organizations that
8 28 represent farmers generally in order to ensure compliance with
8 29 the bill's provisions.

8 30 BILL PROVISIONS == APPLICABILITY AND ENFORCEMENT. The bill
8 31 provides that a person required to obtain an operating permit
8 32 for an open feedlot operation because of the bill's provisions
8 33 is required to submit a permit application on or before
8 34 December 31, 2008.

8 35 The bill also provides that the state is prevented from
9 1 taking an enforcement action against a person arising from the
9 2 person's failure to obtain an operating permit because the
9 3 application is pending or if the application has been denied
9 4 for the period beginning on the day of denial until 30 days
9 5 after the person receives written notice of the denial.

9 6 PENALTIES APPLICABLE. Code chapters 459 and 459A both
9 7 include penalty provisions. Code sections 459.603 and
9 8 459A.502A refer to judicial actions brought by the attorney
9 9 general under Code section 455B.191. Under that Code section
9 10 the general civil penalty applicable for a violation cannot
9 11 exceed \$5,000. Code section 459.603 also refers to Code
9 12 section 455B.109, which allows the department of natural
9 13 resources to establish a range of civil penalties based on a
9 14 number of criteria and which cannot exceed \$10,000. All civil
9 15 penalties are deposited in the animal agriculture compliance

9 16 fund created in Code section 459.401.

9 17 EFFECTIVE DATES. The bill's provisions regarding

9 18 stockpiling take effect on July 1, 2008. The bill's

9 19 provisions regarding the NPDES program take effect on December

9 20 31, 2008, except for the establishment of the compliance

9 21 program, which takes effect upon enactment, and compliance

9 22 with recordkeeping and inspection requirements which take

9 23 effect on July 1, 2008.

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