

Senate File 371 - Introduced

SENATE FILE _____
BY HANCOCK

(COMPANION TO LSB 2222HH
BY THOMAS)

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

A BILL FOR

1 An Act relating to administrative rules for wastewater discharge
2 from well drilling sites.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2222SS 83
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1 1 Section 1. Section 455B.198, subsection 4, Code 2009, is
1 2 amended to read as follows:
1 3 4. The rules shall be adopted no later than July 31, 2009,
1 4 and shall include all of the provisions specified in
1 5 paragraphs "a" through "g":
1 6 a. The rules shall include all of the following relating
1 7 to coverage under permits issued pursuant to this section:
1 8 (1) A permit shall cover all areas of the state and all
1 9 public, private, and municipal wells.
1 10 (2) (a) Except for wastewater discharges identified under
1 11 subparagraph (3) of this paragraph, a permit shall authorize
1 12 the discharge of wastewater associated with well construction,
1 13 well development, and well test pumping.
1 14 (b) A permit shall authorize wastewater discharges
1 15 associated with geothermal drilling activities.
1 16 (3) All of the following wastewater discharges associated
1 17 with well construction activity shall not be regulated by a
1 18 permit:
1 19 (a) Wastewater discharges mixed with sources other than
1 20 well construction activity.
1 21 (b) Wastewater discharges which include hazardous
1 22 materials not generated from the actual well construction.
1 23 (c) Wastewater discharges associated with construction of
1 24 wells in areas contaminated by manmade chemicals.
1 25 (4) All of the following wastewater discharges associated
1 26 with well construction do not require a permit:
1 27 (a) Discharges that do not reach a river, stream, or lake.
1 28 (b) Wells generating less than one hundred gallons per
1 29 minute of anticipated wastewater discharge during construction
1 30 and testing.
1 31 (5) A person discharging wastewater at a water well
1 32 drilling site must submit a notice of intent in accordance
1 33 with the requirements of paragraph "b" in order for wastewater
1 34 discharge associated with water well construction activities
1 35 to be authorized to discharge under a permit.
2 1 (6) Unless notified by the department to the contrary, a
2 2 person discharging wastewater at a water well drilling site
2 3 who submits a notice of intent is authorized to discharge
2 4 wastewater associated with well drilling activities under the
2 5 terms and conditions of the permit on the date the completed
2 6 notice of intent is received by the department.
2 7 b. The rules shall include all of the following regarding
2 8 notice of intent and notice of discontinuation requirements:
2 9 (1) A complete notice of intent shall include all of the
2 10 following:
2 11 (a) The name, address, and location of the well
2 12 construction site for which the notification is submitted.
2 13 (b) The owner's name, address, and telephone number.
2 14 (c) The type of drilling to be conducted, whether or not
2 15 the wastewater discharge is to a municipal separate storm

2 16 sewer system, the date the wastewater discharge is to
2 17 commence, the duration of the discharge, the names of the
2 18 water-bearing formations to be encountered and the expected
2 19 wastewater flows, the permit status of the discharge, and the
2 20 name of the waters receiving the wastewater discharge.

2 21 (d) A brief description of the project.

2 22 (e) The applicable fees.

2 23 (f) A demonstration that the public notice was published
2 24 at least one day, in at least two newspapers in the area in
2 25 which the well is located or the activity will occur.

2 26 (2) Commencement of well construction activities must
2 27 begin within one year of the date of authorization by the
2 28 department.

2 29 (3) Prior to the expiration of an authorization issued
2 30 under the permit, the permit holder is required to resubmit a
2 31 notice of intent with the department for coverage under a new
2 32 permit. Additional public notice is not required for the new
2 33 permit. If a new permit has not been reissued prior to the
2 34 expiration of the current permit, the provisions and coverage
2 35 of the current permit are extended until replaced by the
3 1 adoption of a new permit.

3 2 (4) For wastewater discharge associated with well
3 3 construction activities where the ownership of the well
3 4 changes prior to the filing of a notice of discontinuation,
3 5 the department must be notified within thirty days of the
3 6 title transfer. If a wastewater discharge associated with
3 7 well construction is covered by the permit, the new owner
3 8 shall be subject to all terms and conditions of the permit.

3 9 (5) Within thirty days after final well construction
3 10 completion, the contractor or owner of the facility shall
3 11 submit a notice of discontinuation to the department. The
3 12 notice of discontinuation shall include all of the following
3 13 information:

3 14 (a) The name of the owner or operator to which the permit
3 15 was issued.

3 16 (b) The permit number and permit authorization number.

3 17 (c) The date the construction site reached final
3 18 completion.

3 19 (d) A signed certification.

3 20 c. The rules shall include all of the following regarding
3 21 special conditions, management practices, and other
3 22 limitations:

3 23 (1) All wastewater discharges authorized by the permit
3 24 shall be composed entirely of well construction discharge.

3 25 (2) Any owner or operator identified in a best management
3 26 practices plan is subject to the spill notification
3 27 requirements as specified in section 455B.386. The best
3 28 management practices plan must be modified within five
3 29 calendar days of knowledge of the release to provide a
3 30 description of the release and the circumstances leading to
3 31 the release and to identify and provide for the implementation
3 32 of steps to prevent the reoccurrence of such releases and to
3 33 respond to such releases.

3 34 d. The rules shall include all of the following regarding
3 35 well water pollution prevention plans:

4 1 (1) A well water pollution prevention plan shall be
4 2 developed for each construction site covered by the permit.
4 3 Well water pollution prevention plans shall be prepared in
4 4 accordance with good engineering practices. The plan shall
4 5 identify the anticipated quantities of pollution which may
4 6 reasonably be expected to affect the quality of the wastewater
4 7 associated with well construction discharge. In addition, the
4 8 plan shall describe and ensure the implementation of controls,
4 9 identified as best management practices, which will be used to
4 10 reduce the pollutants in wastewater associated with well
4 11 construction discharge at the construction site and to assure
4 12 compliance with the terms and conditions of the permit.

4 13 Contractors must implement the provisions of the well water
4 14 pollution prevention plan required under this subparagraph as
4 15 a condition of the permit.

4 16 (2) The well water pollution prevention plan shall be
4 17 completed prior to the submittal of a notice of intent to the
4 18 department to be covered under the permit and shall be updated
4 19 when appropriate. The well water pollution prevention plan
4 20 shall provide for compliance with the terms and schedule of
4 21 the plan prior to the initiation of well construction
4 22 activities.

4 23 (3) The well water pollution prevention plan shall be
4 24 signed and retained at the well construction site from the
4 25 date construction activities begin to the date of final
4 26 completion. The permit holder shall make well water pollution

4 27 prevention plans available to the department upon request or,
4 28 in the case of a discharge associated with well construction
4 29 activities which discharge through a large or medium municipal
4 30 separate storm sewer system with a national pollutant
4 31 discharge elimination system permit, to the municipal operator
4 32 of the system.

4 33 (4) The department may notify the permit holder at any
4 34 time that the well water pollution prevention plan does not
4 35 meet one or more of the minimum requirements of this paragraph
5 1 "d". After such notification from the department, the permit
5 2 holder shall make changes to the plan and shall submit to the
5 3 department a written certification that the requested changes
5 4 have been made. Unless otherwise provided by the department,
5 5 the permit holder shall have seven days after such
5 6 notification to make the necessary changes. All well water
5 7 pollution prevention plans received by the department from the
5 8 permit holder are considered reports that shall be available
5 9 to the public under chapter 22. However, the permit holder
5 10 may claim any portion of a well water pollution prevention
5 11 plan as confidential in accordance with chapter 22.

5 12 (5) The permit holder shall amend the well water pollution
5 13 prevention plan whenever there is a change in design,
5 14 construction, operation, or maintenance that has a significant
5 15 effect on the potential for the discharge of pollutants to a
5 16 river, stream, or lake and which has not been addressed in the
5 17 plan or if the plan proves to be ineffective in significantly
5 18 minimizing pollutants from well construction activity or in
5 19 otherwise achieving the general objectives of controlling
5 20 pollutants in discharge associated with well construction
5 21 activity. In addition, the plan shall be updated to include
5 22 contractors identified after the submittal of the notice of
5 23 intent as co-permit holders, identify any change in ownership
5 24 or transference of the permit and permit responsibilities, or,
5 25 if required, because of the occurrence of a hazardous
5 26 condition. Amendments to the well water pollution prevention
5 27 plan may be reviewed by the department in the same manner as
5 28 the original plan.

5 29 (6) The well water pollution prevention plan shall include
5 30 all of the following:

5 31 (a) Each well water pollution prevention plan shall
5 32 include the following:

5 33 (i) A copy of the notice of intent with authorization
5 34 number.

5 35 (ii) Estimates of the total amount of wastewater to be
6 1 discharged.

6 2 (iii) A site map indicating drainage patterns and
6 3 approximate slopes, the location of structural and
6 4 nonstructural controls identified in the well water pollution
6 5 prevention plan, surface waters including wetlands, and
6 6 locations where well construction wastewater is discharged to
6 7 a surface water.

6 8 (iv) The name of the receiving waters and the ultimate
6 9 receiving waters.

6 10 (b) Each well water pollution prevention plan shall
6 11 include a description of best management practices that will
6 12 be implemented at the well construction site. The plan will
6 13 clearly describe the appropriate best management practices and
6 14 the timing during the well construction process that the
6 15 measures will be implemented. The description of best
6 16 management practices shall address, at a minimum, all of the
6 17 following components:

6 18 (i) (A) A description of temporary and permanent
6 19 stabilization practices, including site-specific scheduling of
6 20 the implementation of the practices. Site plans should ensure
6 21 that existing vegetation is preserved where attainable and
6 22 that disturbed areas are stabilized. Stabilization practices
6 23 may include temporary seeding, permanent seeding, mulching,
6 24 geotextiles, sod stabilization, vegetative buffer strips,
6 25 protection of trees, preservation of mature vegetation, and
6 26 other appropriate measures.

6 27 (B) A description of structural practices, to the degree
6 28 attainable, to divert flows from exposed soils and store flows
6 29 or to otherwise limit runoff from exposed areas of the site.
6 30 Such practices may include silt fences, earth dikes, brush
6 31 barriers, drainage swales, sediment traps, check dams,
6 32 subsurface drains, pipe slope drains, level spreaders, storm
6 33 drain inlet protection, rock outlet protection, reinforced
6 34 soil retaining systems, gabions, and temporary or permanent
6 35 sediment basins.

7 1 (ii) All wastes composed of building materials or other
7 2 solid or hazardous waste must be removed from the site for

7 3 disposal in permitted disposal facilities. No such wastes or
7 4 unused building materials shall be buried, dumped, or
7 5 discharged at the site. Off-site vehicle tracking of
7 6 sediments shall be minimized. The plan shall ensure and
7 7 demonstrate compliance with applicable state or local waste
7 8 disposal, sanitary sewer system, or septic system regulations.
7 9 (iii) Qualified personnel shall inspect all control
7 10 measures at least once every six hours during drilling
7 11 activity. Based on the results of an inspection, the
7 12 description of potential pollutant sources identified in the
7 13 plan and pollution prevention measures identified in the plan
7 14 shall be revised as appropriate as soon as practicable after
7 15 such inspection. A report summarizing the scope of the
7 16 inspection, name and qualifications of personnel making the
7 17 inspection, the date of the inspection, the time of
7 18 inspection, major observations relating to the implementation
7 19 of the best management practices, and actions taken shall be
7 20 made and retained as part of the well water pollution
7 21 prevention plan. The report shall be signed by the preparer
7 22 of the report.

7 23 (iv) The well water pollution prevention plan must clearly
7 24 identify for each measure in the plan, the contractor,
7 25 engineer, or subcontractor that will implement the measure.
7 26 All contractors, engineers, and subcontractors identified in
7 27 the plan must sign a copy of the certification statement.
7 28 Upon signing the certification, the contractor, engineer, or
7 29 subcontractor is a co-permit holder with the owner and other
7 30 co-permit holders. All certifications must be included in the
7 31 well water pollution prevention plan.

7 32 e. The rules shall include all of the following regarding
7 33 the retention of records:

7 34 (1) The permit holder shall retain copies of the well
7 35 water pollution prevention plan and all reports required by
8 1 the permit and records of all data used to complete the notice
8 2 of intent to be covered by the permit, for a period of at
8 3 least six months from the date that the site is completed and
8 4 a notice of discontinuation has been submitted to the
8 5 department.

8 6 (2) If there is a construction trailer, shed, or other
8 7 covered structure located on the property, the permit holder
8 8 shall retain a copy of the well water pollution prevention
8 9 plan required by the permit at the construction site from the
8 10 date of project initiation to the date of completion. If
8 11 there is no construction trailer, shed, or other covered
8 12 structure located on the property, the permit holder shall
8 13 retain a copy of the plan at a readily available alternative
8 14 site approved by the department and provide the copy for
8 15 inspection upon request. If the plan is maintained at an
8 16 off-site location, the plan shall be provided for inspection
8 17 no later than three hours after being requested.

8 18 f. The rules shall include all of the following regarding
8 19 standard permit conditions:

8 20 (1) The permit holder must comply with all conditions of
8 21 the permit. Any permit noncompliance is grounds for
8 22 enforcement action, for termination of coverage under the
8 23 permit, or for denial of a request for coverage under a
8 24 reissued permit.

8 25 (2) The permit shall state an expiration date. An expired
8 26 permit continues in force until replaced by adoption of a new
8 27 permit.

8 28 (3) It is not to be a defense for a permit holder in an
8 29 enforcement action that it would have been necessary to halt
8 30 or reduce the permitted activity in order to maintain
8 31 compliance with the conditions of this permit.

8 32 (4) The permit holder shall take all reasonable steps to
8 33 minimize or prevent any discharge in violation of the permit
8 34 which has a reasonable likelihood of adversely affecting human
8 35 health or the environment.

9 1 (5) The permit holder shall furnish to the department,
9 2 within a reasonable time, any information which the department
9 3 may request to determine compliance with the permit. The
9 4 permit holder shall also furnish to the department upon
9 5 request copies of records required to be kept by the permit.

9 6 (6) When the permit holder becomes aware of the failure to
9 7 submit any relevant facts, or becomes aware that incorrect
9 8 information was submitted, in the notice of intent or in any
9 9 other report to the department, the permit holder shall
9 10 promptly submit or correct such facts or information.

9 11 (7) All notices of intent, well water pollution prevention
9 12 plans, reports, certifications, or information either
9 13 submitted to the department or that the permit requires be

9 14 maintained by the permit holder, shall be signed by the
9 15 preparer.

9 16 (8) Any person signing documents shall make a
9 17 certification required by the department.

9 18 (9) Nothing in this subsection shall be construed to
9 19 preclude institution of any legal action or relieve the
9 20 permittee from any responsibilities, liabilities, or penalties
9 21 to which the permittee is or may be subject under section 311
9 22 of the federal Clean Water Act.

9 23 (10) The issuance of a permit does not convey any property
9 24 rights of any sort or any exclusive privileges. The issuance
9 25 of a permit does not authorize any injury to private property
9 26 nor any invasion of personal rights nor any infringement of
9 27 federal, state, or local laws or regulations.

9 28 (11) The provisions of the permit are severable, and if
9 29 any provision of the permit, or the application of any
9 30 provision of the permit to any circumstance, is held invalid,
9 31 the remainder of the permit, and the application of such
9 32 provision to other circumstances, shall not be affected.

9 33 (12) The permit is not transferable to any person except
9 34 after notice to the department.

9 35 (13) The permittee shall at all times properly operate and
10 1 maintain all facilities and systems of treatment and control
10 2 and related appurtenances which are installed or used by the
10 3 permittee to achieve compliance with the conditions of the
10 4 permit and with the requirements of well water pollution
10 5 prevention plans. Proper operation and maintenance also
10 6 includes adequate laboratory controls and appropriate quality
10 7 assurance procedures. Proper operation and maintenance
10 8 requires the operation of backup or auxiliary facilities or
10 9 similar systems, to be installed by a permittee only when
10 10 necessary to achieve compliance with the conditions or the
10 11 permit.

10 12 (14) The permittee shall allow the department or an
10 13 authorized representative of the United States environmental
10 14 protection agency, the state, or, in the case of a facility
10 15 which discharges through a municipal separate storm sewer, an
10 16 authorized representative of the municipal operator or the
10 17 separate storm sewer receiving the discharge, upon the
10 18 presentation of credentials and other documents as may be
10 19 required by law to enter upon the permittee's premises where a
10 20 regulated facility or activity is located or conducted or
10 21 where records must be kept under the conditions of the permit;
10 22 to have access to and copy at reasonable times, any records
10 23 that must be kept under the conditions of the permit; and to
10 24 inspect at reasonable times any facilities or equipment
10 25 including monitoring and control equipment.

10 26 (15) Coverage under the permit may be terminated for
10 27 cause. The filing of a request by the permittee for a permit
10 28 discontinuance, or a notification of planned changes or
10 29 anticipated noncompliance, does not stay any permit condition.

10 30 (16) No condition of the permit shall release the
10 31 permittee from any responsibility or requirements under other
10 32 environmental statutes or regulations.

10 33 g. The rules shall include a best practices guide for
10 34 water well drilling. The guide shall include all of the
10 35 following best management practices:

11 1 (1) Best management practices for open areas. The guide
11 2 shall include instructions requiring a determination of the
11 3 reason for best management practices, a determination of the
11 4 slope of the ground, a determination of the actual maximum
11 5 flow encountered, and calculations for determining the amount
11 6 of best management practices that must be in place for
11 7 drilling.

11 8 (2) Best management practices for the use of silt fences.
11 9 The guide shall include instructions regarding calculations
11 10 for determining the proper installation and maintenance of
11 11 silt fences.

11 12 (3) Best management practices for water detention.

11 13 (4) Best management practices for filter socks, silt
11 14 sacks, and the use of polymer flocculants.

11 15 (5) Best management practices for containment on a
11 16 landowner's parcel and for discharge to a sanitary sewer.

11 17 h. As used in this subsection, unless the context
11 18 otherwise requires:

11 19 (1) "Best management practices" means schedules of
11 20 activities, prohibitions of practices, maintenance procedures,
11 21 and other management practices to prevent or reduce the
11 22 pollution of waters of the United States. Best management
11 23 practices also include treatment requirements, operating
11 24 procedures, and practices to control plant site runoff.

11 25 spillage or leaks, sludge or waste disposal, or drainage from
11 26 raw material storage.

11 27 (2) "Hazardous condition" means the same as defined in
11 28 section 455B.381.

11 29 (3) "Hazardous substance" means the same as defined in
11 30 section 455B.381.

11 31 EXPLANATION

11 32 This bill relates to administrative rules for wastewater
11 33 discharge from well drilling sites.

11 34 The bill includes rule requirements for the types of
11 35 wastewater discharges for which a permit is required and the
12 1 necessity for a permit holder to submit a notice of intent
12 2 with the department of natural resources for an intended
12 3 wastewater discharge at a water well drilling site.

12 4 The bill includes rule requirements for notices of intent
12 5 and notices of discontinuation in terms of required elements
12 6 in the notice, when well construction activities must
12 7 commence, resubmission requirements for a notice of intent,
12 8 notification requirements when the ownership of the well is
12 9 transferred, and required elements for a notice of
12 10 discontinuation.

12 11 The bill includes rule requirements relating to the
12 12 composition of wastewater discharge and spill notification
12 13 requirements.

12 14 The bill includes rule requirements relating to well water
12 15 pollution prevention plans. The bill requires a well water
12 16 pollution prevention plan to be developed for each
12 17 construction site covered by a permit which must be completed
12 18 prior to the submittal of a notice of intent. The bill
12 19 includes requirements for submission of the plans, the
12 20 retention and availability of the plans, and the modification
12 21 of the plans. The bill includes separate requirements for the
12 22 amendments to the plans due to the request by the department
12 23 of natural resources and upon the permit holder's own
12 24 initiative. The bill contains required elements of a well
12 25 water pollution prevention plan including a description of
12 26 best management practices. The best management practices must
12 27 include a description of temporary and permanent stabilization
12 28 practices, structural practices, procedures for removing
12 29 wastes composed of building materials or other solid or
12 30 hazardous waste from the site, inspection of control measures,
12 31 and identification of responsible contractors, engineers, or
12 32 subcontractors.

12 33 The bill includes rule requirements for retention of
12 34 records.

12 35 The bill includes rule requirements for standard permit
13 1 conditions, including compliance conditions, the statement of
13 2 an expiration date, permissible defenses by a permit holder,
13 3 the duty to minimize or prevent permit violations, document
13 4 production requirements, document error corrections, signature
13 5 and certification requirements, legal duties of the permit
13 6 holder, severability provisions, transferability requirements,
13 7 operation and maintenance requirements, inspection
13 8 requirements, termination conditions, and applicability of
13 9 other environmental laws and rules.

13 10 The bill requires the rules to include a best practices
13 11 guide for water well drilling, including best management
13 12 practices for open areas; the use of silt fences; water
13 13 detention; filter socks, silt sacks, and the use of polymer
13 14 flocculants; and for containment on a landowner's parcel and
13 15 for discharge to a sanitary sewer.

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13 17 tm/sc/5.1