

Senate Study Bill 1260

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
ENVIRONMENT AND ENERGY
INDEPENDENCE BILL BY
CHAIRPERSON BLACK)

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

A BILL FOR

1 An Act relating to antidegradation protection for surface waters.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 2137SC 83
4 tm/nh/8

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1 1 Section 1. NEW SECTION. 455B.176B ANTIDEGRADATION.
1 2 1. The department shall establish and administer a
1 3 four-tiered antidegradation policy which is in accordance with
1 4 the federal Water Pollution Control Act and the federal rule
1 5 governing state antidegradation policies in 40 C.F.R. }
1 6 131.12. The department shall not establish an antidegradation
1 7 policy more stringent than that required by 40 C.F.R. }
1 8 131.12.
1 9 2. Tier one review shall protect instream water uses and
1 10 the level of water quality necessary to protect those uses, as
1 11 required by 40 C.F.R. } 131.12.
1 12 3. For purposes of a tier two review and tier two
1 13 requirements compliance, the department shall not require
1 14 consideration or implementation of alternatives with costs
1 15 greater than one hundred ten percent of the base cost of
1 16 pollution control measures for the discharge.
1 17 4. For purposes of a tier three review, the department
1 18 shall comply with the following:
1 19 a. The department shall prohibit permanent degradation of
1 20 water quality in a water designated for a tier three level of
1 21 protection. Any proposed activity that would result in a
1 22 permanent new or expanded direct source of pollutants of
1 23 concern to any segment which has been classified as a tier
1 24 three level protected water is prohibited. Temporary and
1 25 limited degradation of a water receiving tier three protection
1 26 may be allowed by the department on a case-by-case basis. A
1 27 water receiving tier three review shall be assessed against
1 28 the existing water quality data or other appropriate reference
1 29 stream data, accounting for existing permitted discharges.
1 30 b. Any person may nominate a surface water for a tier
1 31 three level of protection by filing a nomination with the
1 32 department. The department shall consider such nominations
1 33 during a triennial review of surface water quality standards.
1 34 (1) The nomination shall include a map and description of
1 35 the surface water, a statement in support of the nomination,
2 1 supporting evidence that the applicable criteria are met, and
2 2 available relevant water quality data for establishing
2 3 existing water quality.
2 4 (2) The nominating party has the burden of establishing
2 5 the basis for classifying a surface water for a tier three
2 6 level of protection.
2 7 (3) The department shall hold at least one public meeting
2 8 in the local area of a surface water nominated for tier three
2 9 level protection to solicit public comment and to educate the
2 10 public on the classification process and potential impacts of
2 11 the designation. The department shall notify the public
2 12 officials in the affected community about the classification
2 13 process and potential impacts of the designation.
2 14 (4) The department may classify a surface water as a tier
2 15 three level protected water based on all of the following
2 16 criteria:
2 17 (a) The surface water is perennial and in a free-flowing
2 18 condition.

2 19 (b) The unique location of the surface water such as on
2 20 federal lands, national parks, or national wildlife refuges.
2 21 (c) The surface water has pristine water quality.
2 22 (d) The surface water is of exceptional recreational or
2 23 ecological significance because of its unique attributes.
2 24 (e) The surface water serves as habitat for threatened or
2 25 endangered species and classification is necessary for the
2 26 protection of the species.
2 27 (5) The department shall consider all of the following
2 28 factors when making a decision as to whether to classify a
2 29 nominated surface water as a tier three level protected water:
2 30 (a) Whether there is an ability to manage the water and
2 31 its watershed to maintain and protect existing water quality.
2 32 (b) The social and economic impact of tier three
2 33 antidegradation protection.
2 34 (c) Public comments in support of or opposition to the
2 35 tier three level classification for the water.
3 1 (d) The consistency of a tier three level classification
3 2 with applicable water quality management plans.
3 3 (e) Whether the nominated surface water is located within
3 4 a national or state park, national monument, national
3 5 recreation area, wilderness area, riparian conservation area,
3 6 wildlife management area, area of critical environmental
3 7 concern, or has another special use or unique attributes.
3 8 5. Tier four review shall apply to thermal discharges, as
3 9 required by 40 C.F.R. } 131.12(a)(4).
3 10 6. In support of antidegradation objectives, the
3 11 department shall promote implementation of best management
3 12 practices for nonpoint sources as necessary to comply with
3 13 federal and state law. Implementation of best management
3 14 practices shall not be a prerequisite to approval of an
3 15 expanded point source discharge.
3 16 7. Rules adopted by the department shall apply to
3 17 regulated activities after July 1, 2009, which result in new
3 18 or expanded discharges of pollutants of concern that will
3 19 degrade water quality in designated stream segments of surface
3 20 waters of the state.
3 21 8. A new discharge into tier two waters that replaces an
3 22 existing septic system is not subject to antidegradation
3 23 review. Such new discharges to tier three waters are only
3 24 allowable if the analysis shows that treatment and discharge
3 25 of existing septic system flows will result in a net
3 26 improvement in water quality for such waters. Combined sewer
3 27 overflow control projects resulting in a net decrease in the
3 28 combined sewer overflow related pollutant loadings to surface
3 29 waters shall be excluded from review requirements when these
3 30 loadings are included in department-approved plans in
3 31 accordance with federal guidance or policies.
3 32 9. A regulated activity shall not be considered to result
3 33 in degradation if activity is occurring within the design
3 34 capacity of the treatment plant as specified in the existing
3 35 construction permit or a permit for an existing facility does
4 1 not propose less stringent permit limits, or when treatment is
4 2 added to a previously unpermitted discharge resulting in
4 3 improvements to the receiving water, or when the activity will
4 4 only result in temporary and limited degradation of water
4 5 quality.
4 6 10. In the approval process for a regulated activity that
4 7 would degrade surface water, the department shall ensure
4 8 appropriate public and interagency participation in the
4 9 process and shall act in accordance with the following:
4 10 a. The applicant shall provide public notice and
4 11 opportunity for public comment on the alternatives analysis
4 12 and the social and economic importance review, before the
4 13 alternatives analysis is finalized by the applicant. If the
4 14 applicant is a municipal facility, rural water association, or
4 15 rural water district, public notice shall conform to notice
4 16 procedures required by section 362.3.
4 17 b. The department shall carry out an intergovernmental
4 18 coordination and review process in tandem with the public
4 19 comment period held by the applicant pursuant to paragraph
4 20 "a", prior to approving a regulated activity that would
4 21 degrade surface water.
4 22 11. For purposes of this section, "pollutants of concern"
4 23 for antidegradation reviews shall include only those
4 24 pollutants for which specific numeric water quality criteria
4 25 are established or where an implementation methodology
4 26 approved by the United States environmental protection agency
4 27 has been developed for narrative criteria application, and
4 28 that are reasonably expected to be present in the discharge at
4 29 a level that could negatively affect the beneficial uses of

4 30 the receiving water.

4 31 EXPLANATION

4 32 This bill relates to antidegradation of surface waters.

4 33 The bill requires the department of natural resources to
4 34 establish and administer a four-tiered antidegradation
4 35 procedure which is in accordance with the federal Water
5 1 Pollution Control Act and federal rules on antidegradation.

5 2 The bill provides that for purposes of a tier two review
5 3 and tier two requirements compliance, the department shall not
5 4 require consideration or implementation of alternatives with
5 5 costs greater than 110 percent of the base cost of pollution
5 6 control measures for the discharge.

5 7 The bill provides that for purposes of a tier three review,
5 8 the department shall prohibit permanent degradation of water
5 9 quality in a water designated for a tier three level of
5 10 protection. Any proposed activity that would result in a
5 11 permanent new or expanded direct source of pollutants of
5 12 concern to any segment which has been classified as a tier
5 13 three level protected water is prohibited. Temporary and
5 14 limited degradation of a water receiving tier three protection
5 15 may be allowed by the department on a case-by-case basis. A
5 16 water receiving tier three review shall be assessed against
5 17 the existing water quality data or other appropriate reference
5 18 stream data, accounting for existing permitted discharges.
5 19 The bill allows any person to nominate a surface water for a
5 20 tier three level of protection by filing a nomination with the
5 21 department. The bill provides a nomination and approval
5 22 process for a tier three level protection including factors
5 23 and criteria for approval.

5 24 The bill provides that tier four review shall apply to
5 25 thermal discharges.

5 26 The bill provides that the department shall promote
5 27 implementation of best management practices for nonpoint
5 28 sources as necessary to comply with federal and state law and
5 29 that implementation of best management practices shall not be
5 30 a prerequisite to approval of an expanded point source
5 31 discharge.

5 32 The bill provides that rules adopted by the department
5 33 shall apply to regulated activities after July 1, 2009, which
5 34 result in new or expanded discharges of pollutants of concern
5 35 that will degrade water quality in designated stream segments
6 1 of surface waters of the state.

6 2 The bill provides that a new discharge into tier two waters
6 3 that replaces an existing septic system is not subject to
6 4 antidegradation review. Such new discharges to tier three
6 5 waters are only allowable if the analysis shows that treatment
6 6 and discharge of existing septic system flows will result in a
6 7 net improvement in water quality for such waters.

6 8 The bill provides that a regulated activity shall not be
6 9 considered to result in degradation if activity is occurring
6 10 within the design capacity of the treatment plant as specified
6 11 in the existing construction permit or a permit for an
6 12 existing facility does not propose less stringent permit
6 13 limits, or when treatment is added to a previously unpermitted
6 14 discharge resulting in improvements to the receiving water, or
6 15 when the activity will only result in temporary and limited
6 16 degradation of water quality.

6 17 The bill provides public notice and comment requirements as
6 18 part of the approval process for a regulated activity that
6 19 would degrade surface water.

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