

House Study Bill 81 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

A BILL FOR

1 An Act relating to administrative procedures within the
2 department of natural resources.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

ADMINISTRATIVE APPEALS TIMELINE

Section 1. NEW SECTION. 455B.110 **Administrative appeal orders — deadline.**

1. An order issued by the director or the department pursuant to authority granted in this chapter may be appealed, resulting in the scheduling of a contested case hearing as provided for in chapter 17A. The appeal must be received by the director within the applicable timeframe established in this section. If the appeal is not received within the applicable timeframe, the appeal is not timely and the order is final agency action.

2. For an entity that holds a permit issued by the department, an appeal must be received by the director within sixty days of the issuance of the order to the address of the entity identified in the permit and the address of the responsible party listed in the permit, if any.

3. For an entity that is required to maintain a registered agent or a registered office in the state and does not hold a permit issued by the department, an appeal must be received by the director within sixty days of the issuance of the order to the official registered agent address on file with the secretary of state.

4. For any other entity or party, an appeal must be received by the director within sixty days of issuance to the last known address.

5. For the purposes of this section, the date of issuance of an order by the director or the department is the postmarked date that the order is sent by the department to the registered agent or party by certified mail. For the purposes of this section, the date of receipt by the director is the postmarked date that the appeal was sent to the director.

Sec. 2. Section 455B.138, subsection 1, Code 2019, is amended to read as follows:

1. When the director has evidence that a violation of

1 any provision of **division II of this chapter** or chapter 459,
2 subchapter II, or rule, standard or permit established or
3 issued under **division II** or **chapter 459, subchapter II**, has
4 occurred, the director shall notify the alleged violator and,
5 by informal negotiation, attempt to resolve the problem.
6 If the negotiations fail to resolve the problem within a
7 reasonable period of time, the director shall issue an order
8 directing the violator to prevent, abate or control the
9 emissions or air pollution involved. The order shall prescribe
10 the date by which the violation shall cease and may prescribe
11 timetables for necessary action to prevent, abate or control
12 the emissions of air pollution. The order may be appealed to
13 the commission. The applicable timeframes for the issuance and
14 appeal of the order are defined in section 455B.110.

15 Sec. 3. Section 455B.175, subsection 1, paragraph a, Code
16 2019, is amended to read as follows:

17 a. The director may issue an order directing the person
18 to desist in the practice which constitutes the violation or
19 to take such corrective action as may be necessary to ensure
20 that the violation will cease. The person to whom such order
21 is issued may cause to be commenced a contested case within
22 the meaning of the Iowa administrative procedure Act, chapter
23 17A, by filing with the director ~~within thirty days~~ a notice
24 of appeal to the commission. The applicable timeframes for
25 the issuance and appeal of the order are defined in section
26 455B.110. On appeal the commission may affirm, modify or
27 vacate the order of the director; or

28 Sec. 4. Section 455B.279, subsection 1, Code 2019, is
29 amended to read as follows:

30 1. The director may issue any order necessary to secure
31 compliance with or prevent a violation of this part or the
32 rules adopted pursuant to this part. ~~Within thirty days of~~
33 ~~issuance, the~~ The order may be appealed to the commission by
34 filing a notice of appeal with the director. The appeal shall
35 be conducted as a contested case pursuant to **chapter 17A** and

1 the commission may affirm, modify, or revoke the order. The
2 department may request legal services as required from the
3 attorney general, including any legal proceeding necessary to
4 obtain compliance with this part and rules and orders issued
5 under this part. The applicable timeframes for the issuance
6 and appeal of an order are defined in section 455B.110.

7 Sec. 5. Section 455B.308, Code 2019, is amended to read as
8 follows:

9 **455B.308 Appeal from order.**

10 Any person aggrieved by an order of the director may appeal
11 the order by filing a written notice of appeal with the
12 director ~~within thirty days of the issuance of the order in~~
13 accordance with section 455B.110. The director shall schedule
14 a hearing for the purpose of hearing the arguments of the
15 aggrieved person within thirty days of the filing of the notice
16 of appeal. The hearing may be held before the commission
17 or its designee. A complete record shall be made of the
18 proceedings. The director shall issue the findings in writing
19 to the aggrieved person within thirty days of the conclusion
20 of the hearing. Judicial review may be sought of actions
21 of the commission in accordance with the terms of the Iowa
22 administrative procedure Act, [chapter 17A](#). Notwithstanding the
23 terms of the Act, petitions for judicial review may be filed
24 in the district court of the county where the acts in issue
25 occurred.

26 Sec. 6. Section 455B.476, subsection 1, Code 2019, is
27 amended to read as follows:

28 1. If there is substantial evidence that a person has
29 violated or is violating a provision of this part or a
30 rule adopted under this part the director may issue an
31 order directing the person to desist in the practice which
32 constitutes the violation, and to take corrective action as
33 necessary to ensure that the violation will cease, and may
34 impose appropriate administrative penalties pursuant to section
35 455B.109. The person to whom the order is issued may appeal

1 the order to the commission as provided in [chapter 17A](#). On
2 appeal, the commission may affirm, modify or vacate the order
3 of the director. The applicable timeframes for the issuance
4 and appeal of the order are defined in section 455B.110.

5 Sec. 7. Section 455D.23, Code 2019, is amended to read as
6 follows:

7 **455D.23 Administrative enforcement — compliance orders.**

8 The director may issue any order necessary to secure
9 compliance with or prevent a violation of the provisions of
10 this chapter or any rule adopted or permit or order issued
11 pursuant to [this chapter](#). Any order issued to enforce section
12 455D.4A may include a requirement to remove and properly
13 dispose of materials being accumulated speculatively from a
14 property and impose costs and penalties as determined by the
15 department by rule. The person to whom such compliance order
16 is issued may cause to be commenced a contested case within the
17 meaning of [chapter 17A](#) by filing ~~within thirty days~~ a notice
18 of appeal to the commission. On appeal, the commission may
19 affirm, modify, or vacate the order of the director. The
20 applicable timeframes for the issuance and appeal of the order
21 are defined in section 455B.110.

22 Sec. 8. Section 458A.11, subsection 2, Code 2019, is amended
23 to read as follows:

24 2. An order or amendment of an order, except in an
25 emergency, shall not be made by the department without a
26 public hearing upon at least ten days' notice. The public
27 hearing shall be held at the time and place prescribed by the
28 department, and any interested person is entitled to be heard.
29 The applicable timeframes for the issuance and appeal of the
30 order are defined in section 455B.110.

31 DIVISION II

32 ADMINISTRATIVE CHANGES FOR WASTE DISPOSAL SYSTEMS AND PUBLIC
33 WATER SUPPLY SYSTEMS

34 Sec. 9. Section 455B.183, subsection 1, paragraph c, Code
35 2019, is amended to read as follows:

1 c. The operation of any waste disposal system or public
2 water supply system or any part of or extension or addition
3 to the system. This ~~provision~~ paragraph does not apply
4 to a pretreatment system, the effluent of which is to be
5 discharged directly to another disposal system for final
6 treatment and disposal; a semipublic sewage disposal system,
7 the construction of which has been approved by the department
8 and ~~which~~ that does not discharge into a water of the state;
9 or a private sewage disposal system ~~which~~ that does not
10 discharge into a water of the state. The commission may adopt
11 additional exemptions for a class of disposal systems that do
12 not discharge into a water of the state or waive the permit
13 requirement for an individual system that does not discharge
14 into a water of the state. The commission shall consider
15 the volume, location, frequency, and nature of disposal
16 from a system or class of systems before granting a waiver
17 or exemption. Sludge from a semipublic or private sewage
18 disposal system shall be disposed of in accordance with the
19 rules adopted by the department pursuant to [chapter 17A](#). The
20 ~~exemption of this paragraph shall not apply to any industrial~~
21 ~~waste discharges.~~

22 Sec. 10. Section 455B.265, subsection 5, Code 2019, is
23 amended to read as follows:

24 5. Prior to the issuance of a new permit or modification
25 of a permit under [this section](#) to a community public water
26 supply, the department shall publish a notice of recommendation
27 to grant a permit. The notice shall include a brief summary
28 of the proposed permit and ~~shall be published in a newspaper~~
29 ~~of general circulation within the county of the proposed~~
30 ~~water source as provided in [section 618.3](#).~~ If the newspaper
31 ~~of general circulation is not the newspaper of the nearest~~
32 ~~locality to the proposed water source that publishes a~~
33 ~~newspaper, the notice shall also be published in the newspaper~~
34 ~~of the nearest locality to the proposed water source that~~
35 ~~publishes a newspaper and the department may charge the~~

1 ~~applicant for the expenses associated with publishing the~~
2 ~~notice in the second newspaper.~~

3 Sec. 11. Section 455B.265, subsection 6, paragraphs a and c,
4 Code 2019, are amended to read as follows:

5 a. The amount of a fee shall be based on the department's
6 reasonable cost of reviewing applications, issuing permits,
7 ensuring compliance with the terms of the permits, and
8 resolving water interference complaints. The commission shall
9 calculate the fees to produce total revenues of not more than
10 five hundred thousand dollars for each fiscal year, ~~commencing~~
11 ~~with the fiscal year beginning July 1, 2009, and ending June~~
12 ~~30, 2010.~~

13 c. The commission shall annually review the amount of moneys
14 generated by the fees, the balance in the water use permit
15 fund, and the anticipated expenses for ~~the succeeding fiscal~~
16 ~~year~~ years.

17 EXPLANATION

18 The inclusion of this explanation does not constitute agreement with
19 the explanation's substance by the members of the general assembly.

20 This bill affects administrative procedures within the
21 department of natural resources.

22 Division I of the bill creates a 60-day period during which
23 an entity may appeal an order issued by the director or the
24 department pursuant to the department's authority in Iowa Code
25 chapter 455B. The start of the 60-day period is contingent
26 on what type of entity seeks an appeal. Division I makes
27 conforming changes throughout Iowa Code chapter 455B. The
28 issuance and appeal of an order pursuant to Iowa Code chapters
29 455D (waste volume reduction and recycling) and 458A (oil, gas,
30 and other minerals) also conform to the new 60-day period.

31 Division II of the bill allows the department to exempt
32 from permit requirements a class of waste disposal systems
33 that do not discharge into water of the state and are not
34 currently exempt. Division II also allows the department to
35 waive the permit requirement of an individual system that does

1 not discharge into a water of the state. To issue such an
2 exemption or waiver, the department must first consider the
3 volume, location, frequency, and nature of the system or class
4 of systems. Finally, division II eliminates the requirement
5 that notice of a recommendation to grant a permit to a
6 community public water supply be published in a newspaper of
7 general circulation within the county and removes out-of-date
8 language.