

House File 2156 - Introduced

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BY STAED, WILBURN, STECKMAN,
AMOS JR., BROWN-POWERS,
JACOBY, KRESSIG, KURTH, and
LEVIN

A BILL FOR

1 An Act relating to water quality standards, including by
2 providing for the regulation of animal feeding operations,
3 providing penalties, and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 455B.173, subsection 2, Code 2024, is
2 amended to read as follows:

3 2. a. Establish, modify, or repeal water quality standards,
4 pretreatment standards, and effluent standards in accordance
5 with the provisions of this chapter.

6 ~~a.~~ b. The effluent standards may provide for maintaining
7 the existing quality of the water of the state that is a
8 navigable water of the United States under the federal Water
9 Pollution Control Act where the quality thereof exceeds the
10 requirements of the water quality standards.

11 ~~b.~~ c. ~~If the federal environmental protection agency has~~
12 ~~promulgated an effluent standard or pretreatment standard~~
13 ~~pursuant to section 301, 306, or 307 of the federal Water~~
14 ~~Pollution Control Act, a pretreatment or effluent standard~~
15 ~~adopted pursuant to this section shall not be more stringent~~
16 ~~than the federal effluent or pretreatment standard for such~~
17 ~~source. This section may does not preclude the establishment~~
18 ~~of a more restrictive effluent limitation in the permit~~
19 ~~for a particular point source than the federal effluent or~~
20 ~~pretreatment standard for such source if the more restrictive~~
21 ~~effluent limitation is necessary to meet water quality~~
22 ~~standards, or the establishment of an effluent standard for a~~
23 ~~source or class of sources for which the federal environmental~~
24 ~~protection agency has not promulgated standards pursuant to~~
25 ~~section 301, 306, or 307 of the federal Water Pollution Control~~
26 ~~Act. Except as required by federal law or regulation, the~~
27 ~~commission shall not adopt an effluent standard more stringent~~
28 ~~with respect to any pollutant than is necessary to reduce the~~
29 ~~concentration of that pollutant in the effluent to the level~~
30 ~~due to natural causes, including the mineral and chemical~~
31 ~~characteristics of the land, existing in the water of the state~~
32 ~~to which the effluent is discharged. Notwithstanding any other~~
33 ~~provision of this part 1 of subchapter III or chapter 459,~~
34 ~~subchapter III, any new source, the construction of which was~~
35 ~~commenced after October 18, 1972, and which was constructed~~

1 as to meet all applicable standards of performance for the
2 new source or any more stringent effluent limitation required
3 to meet water quality standards, shall not be subject to any
4 more stringent effluent limitations during a ten-year period
5 beginning on the date of completion of construction or during
6 the period of depreciation or amortization of the pollution
7 control equipment for the facility for the purposes of section
8 167 or 169 or both sections of the Internal Revenue Code,
9 whichever period ends first.

10 Sec. 2. Section 459.102, Code 2024, is amended by adding the
11 following new subsections:

12 NEW SUBSECTION. 14A. "*Concentrated animal feeding operation*"
13 means the same as defined in 40 C.F.R. §122.23.

14 NEW SUBSECTION. 28A. "*Effluent*" means water-carried manure.

15 NEW SUBSECTION. 30A. "*Federal Water Pollution Control Act*"
16 means the federal Water Pollution Control Act of 1972, 33
17 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

18 NEW SUBSECTION. 35A. "*Large concentrated animal feeding*
19 *operation*" means the same as defined in 40 C.F.R. §122.23.

20 NEW SUBSECTION. 41A. "*Medium concentrated animal feeding*
21 *operation*" means the same as defined in 40 C.F.R. §122.23.

22 NEW SUBSECTION. 41B. "*NPDES permit*" means a permit issued
23 by the department in administering the NPDES permit program.

24 NEW SUBSECTION. 41C. "*NPDES permit program*" means the
25 national pollutant discharge elimination system (NPDES) permit
26 program pursuant to the federal Water Pollution Control Act.

27 NEW SUBSECTION. 52A. "*Small concentrated animal feeding*
28 *operation*" means the same as defined in 40 C.F.R. §122.23.

29 Sec. 3. Section 459.103, Code 2024, is amended to read as
30 follows:

31 **459.103 General authority — commission and department.**

32 1. The commission shall establish by rule adopted pursuant
33 to [chapter 17A](#), requirements relating to the construction,
34 including expansion, or operation of animal feeding operations,
35 including related animal feeding operation structures. The

1 requirements shall include but are not limited to minimum
2 manure control, the issuance construction of permits, and
3 departmental investigations, inspections, and testing. The
4 commission shall establish by rule adopted pursuant to chapter
5 17A requirements relating to the storage, treatment, and
6 application of manure and other effluent originating from
7 animal feeding operations.

8 2. Any provision referring generally to compliance with
9 the requirements of **this chapter** as applied to animal feeding
10 operations also includes compliance with requirements in
11 rules adopted by the commission pursuant to **this section**,
12 orders issued by the department as authorized under this
13 chapter, and the terms and conditions applicable to licenses,
14 certifications, construction permits, or manure management
15 plans required under **subchapter III**. ~~However, for purposes of~~
16 ~~approving or disapproving an application for a construction~~
17 ~~permit as provided in **section 459.304**, conditions for the~~
18 ~~approval of an application based on results produced by a~~
19 ~~master matrix are not requirements of **this chapter** until the~~
20 ~~department approves or disapproves an application based on~~
21 ~~those results.~~

22 Sec. 4. Section 459.301, Code 2024, is amended by adding the
23 following new subsection:

24 NEW SUBSECTION. 4A. For purposes of determining compliance
25 with the rules adopted by the commission to implement and
26 administer the NPDES permit program, the department shall count
27 all animals according to type as used to determine whether an
28 animal feeding operation is a small concentrated animal feeding
29 operation, medium concentrated animal feeding operation, or
30 large concentrated animal feeding operation.

31 Sec. 5. NEW SECTION. **459.301A Federal law — NPDES permit**
32 **program.**

33 1. This subchapter establishes minimum requirements for
34 managing animal feeding operations to protect water quality.
35 The commission shall establish by rule adopted pursuant to

1 chapter 17A requirements relating to the implementation and
2 administration of the NPDES permit program, including the
3 issuance of NPDES permits in accordance with the requirements
4 of this subchapter and the federal Water Pollution Control Act.

5 2. The commission shall establish permitting requirements
6 under the NPDES permit program by rule adopted pursuant
7 to chapter 17A governing an animal feeding operation that
8 is a medium concentrated animal feeding operation or large
9 concentrated animal feeding operation.

10 3. *a.* NPDES permit conditions adopted by commission rule
11 applying to a medium concentrated animal feeding operation
12 under this section may exceed any applicable federal standard
13 applying to that medium concentrated animal feeding operation,
14 including under the federal Water Pollution Control Act.

15 *b.* NPDES permit conditions adopted by commission rule
16 applying to a large concentrated animal feeding operation
17 under this section may exceed any applicable federal standard
18 applying to that large concentrated animal feeding operation,
19 including under the federal Water Pollution Control Act.

20 4. NPDES permit conditions adopted by commission rule
21 applying to a medium concentrated animal feeding operation or
22 a large concentrated animal feeding operation must require
23 that the owner or operator of such concentrated animal feeding
24 operation do all of the following:

25 *a.* Conduct representative effluent monitoring, including
26 monitoring for pollutants originating from the concentrated
27 animal feeding operation that is discharged to navigable waters
28 through groundwater.

29 *b.* Report data collected from monitoring for pollutants
30 described in paragraph "a" to the department each ninety days.
31 The department shall publish the data on its internet site.

32 Sec. 6. Section 459.311, Code 2024, is amended to read as
33 follows:

34 **459.311 Minimum requirements for manure control.**

35 1. *a.* A confinement feeding operation shall retain all

1 manure produced by the operation between periods of manure
2 disposal.

3 b. For purposes of this section, dry manure may be retained
4 by stockpiling as provided in this subchapter. The stockpiled
5 manure shall be deemed part of the confinement feeding
6 operation where the manure originated.

7 c. A confinement feeding operation shall not discharge
8 manure directly into water of the state or into a tile line
9 that discharges directly into water of the state.

10 2. ~~Notwithstanding subsection 1, a~~ A confinement feeding
11 operation that is a concentrated animal feeding operation ~~as~~
12 ~~defined in 40 C.F.R. §122.23(b)~~ shall comply with applicable
13 rules adopted by the commission to implement and administer the
14 national pollutant discharge elimination system permit program
15 requirements as provided in the federal Water Pollution Control
16 Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and
17 412, pursuant to rules that shall be adopted by the commission.
18 ~~Any rules adopted pursuant to this subsection shall be no more~~
19 ~~stringent than requirements under the federal Water Pollution~~
20 ~~Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts.~~
21 ~~122 and 412~~ section 459.301A. The commission shall adopt
22 separate requirements for confinement feeding operations,
23 open feedlot operations, and animal truck wash facilities as
24 provided in chapter 459A.

25 3. Manure from an animal feeding operation shall be
26 disposed of in a manner ~~which will~~ that does not cause surface
27 water or groundwater pollution. Disposal in accordance with
28 the provisions of state law, including this chapter, rules
29 adopted pursuant to the provisions of state law, including
30 this chapter, guidelines adopted pursuant to this chapter,
31 and section 459.314, shall be deemed as compliance with this
32 requirement.

33 4. ~~The department may require that the owner of a~~
34 confinement feeding operation shall install and operate a water
35 pollution monitoring system as part of an unformed manure

1 ~~storage structure~~ the confinement feeding operation. The
2 monitoring system shall record data regarding the type and
3 quantity of effluent originating from a confinement feeding
4 operation that is discharged to the groundwater or a surface
5 water source. The owner or operator of the confinement feeding
6 operation shall report the data to the department each ninety
7 days. The department shall publish the data on its internet
8 site.

9 5. The owner of the confinement feeding operation ~~which~~
10 that discontinues the use of the operation shall remove all
11 manure from related confinement feeding operation structures
12 used to store manure, by a date specified in an order issued to
13 the operation by the department, or six months following the
14 date that the confinement feeding operation is discontinued,
15 whichever is earlier.

16 Sec. 7. Section 459A.102, subsections 11 and 24, Code 2024,
17 are amended to read as follows:

18 11. "*Concentrated animal feeding operation*" means the same as
19 defined in ~~40 C.F.R. §122.23~~ section 459.102.

20 24. "*NPDES permit*" means ~~a permit issued by the department~~
21 ~~under the national pollutant discharge elimination system~~
22 ~~pursuant to the federal Water Pollution Control Act of 1972, 33~~
23 ~~U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412~~ the
24 same as defined in section 459.102.

25 Sec. 8. Section 459A.401, subsection 2, Code 2024, is
26 amended to read as follows:

27 2. Notwithstanding subsection 1, an open feedlot operation
28 that is a concentrated animal feeding operation shall comply
29 with applicable rules adopted by the commission implementing
30 and administering the NPDES permit requirements program as
31 provided in the federal Water Pollution Control Act, pursuant
32 to rules that shall be adopted by the commission. Any rules
33 adopted pursuant to ~~this subsection~~ shall be no more stringent
34 than requirements under the federal Act section 459.301A.

35 Sec. 9. Section 459A.502, Code 2024, is amended to read as

1 follows:

2 **459A.502 Violations — civil penalty.**

3 1. a. A Except as provided in paragraph "b", a person
4 who violates this chapter shall be subject to a civil penalty
5 which shall be established, assessed, and collected in the same
6 manner as provided in section 455B.191.

7 b. A person who violates a provision regulating an open
8 feedlot operation is subject to a civil penalty which shall
9 be established, assessed, and collected in the same manner as
10 provided in section 455B.109 or 455B.191.

11 2. Any collected civil penalty and interest on a civil
12 penalty collected under this section shall be credited to the
13 Iowa nutrient research fund created in section 466B.46.

14 3. A person shall not be subject to a penalty under this
15 section and a penalty under section 459.603 for the same
16 violation.

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 BACKGROUND — STATE LAW. This bill amends provisions
21 regulating animal feeding operations (AFOs) in which
22 agricultural animals are confined and fed and maintained
23 for 45 days or more in any 12-month period, and includes
24 all structures used for the storage of manure from animals
25 in the operation and the discharge of manure or effluent
26 originating from the AFO (Code chapters 459 and 459A). The
27 regulations are administered and enforced by the department of
28 natural resources (DNR) including the environmental protection
29 commission (EPC). State law recognizes several types of
30 AFOs, including confinement feeding operations (CFOs) in
31 which animals are housed (confined) under roof (Code chapter
32 459). Special provisions govern open feedlots where animals
33 are kept in unroofed or partially roofed structures (Code
34 chapter 459A). In both cases, natural vegetation is not
35 available to the animals. In Iowa, a CFO is subject to both

1 air and water protection statutes and rules. Under water
2 quality regulations, the owner or operator of an AFO may be
3 required to obtain authorization from DNR to do business. The
4 authorization takes the form of a construction permit for
5 a CFO (Code section 459.304) or an open feedlot operation
6 (Code section 459A.205) or a manure management plan for a CFO
7 (Code section 459.312) or nutrient management plan for an open
8 feedlot operation (Code section 459A.208). The EPC may by
9 rule require the owner or operator of a CFO to install a water
10 pollution monitoring system as part of an unformed (dirt or
11 clay) manure storage structure (Code section 459.311). The
12 level of regulation sometimes depends upon a formula that
13 calculates the degree to which the AFO presents a threat to
14 water quality measured by: (1) the type of animals maintained
15 and (2) the number of animals maintained. For example, a
16 construction permit is required for a CFO that has an animal
17 unit capacity (AUC) of 1,000 animal units (AUs) (Code section
18 459.303) and each head of butcher or breeding swine weighing
19 more than 55 pounds is assigned a special equivalency factor of
20 0.4 animal units (Code section 459.102) (0.4 AU x 1,000 AUC =
21 400 head).

22 BACKGROUND — FEDERAL LAW. AFOs are also regulated under
23 federal law by the environmental protection agency (EPA) that
24 administers and enforces the national pollutant discharge
25 elimination system (NPDES) program pursuant to the federal
26 Water Pollution Control Act of 1972 (33 U.S.C. ch. 26, as
27 amended, and 40 C.F.R. pts. 122 and 412). EPA contracts with
28 DNR to administer and enforce the NPDES program. Under the
29 NPDES program, AFOs are referred to as concentrated animal
30 feeding operations (CAFOs). A CAFO is classified by its own
31 formula that also factors the type and number of animals kept.
32 The regulations apply to large, medium, and small CAFOs. For
33 example, a small CAFO includes less than 750 head of swine
34 weighing 55 or more pounds, a medium CAFO includes between 750
35 and 2,499 head, and a large CAFO includes 2,500 or more head.

1 BACKGROUND — STATE AND FEDERAL REGULATION. The purpose
2 of both state and federal regulation is to prevent manure or
3 effluent from contaminating groundwater and surface water.
4 In compliance with federal law, manure from a CAFO cannot be
5 disposed (discharged) in a manner that will cause surface
6 water or groundwater pollution (Code section 459.311). A CAFO
7 must retain all manure between periods of disposal (i.e., land
8 application). An open feedlot must install structures that
9 filter manure and effluent runoff (Code section 459A.401).
10 However, in all cases involving the treatment of wastewater,
11 and the discharge of manure and effluent originating from an
12 AFO, rules adopted by the EPC can be no more stringent than
13 federal law (Code sections 455B.173, 459.311, and 459A.401).

14 BILL'S PROVISIONS. The bill eliminates the provision that
15 prevent EPC rules regulating wastewater, or manure or effluent
16 originating from an AFO, from being more stringent than federal
17 law. The bill provides that statutes regulating AFOs are
18 minimum requirements, and that the EPC is to adopt permitting
19 requirements by rule under the NPDES program, including for
20 those AFOs classified as medium and large under federal law.
21 The EPC rules may exceed applicable federal standards applying
22 to a medium or large CAFO. In addition, the owner or operator
23 of a medium or large CAFO must conduct effluent monitoring
24 of pollutants discharged to navigable waters through the
25 groundwater. The owner or operator must report the collected
26 data to DNR which must publish it on its internet site.

27 CIVIL PENALTIES. Compliance with a statutory regulation
28 includes compliance with a rule adopted by DNR (Code section
29 459.103). A person violating a water quality regulation under
30 Code chapter 459 is subject to the administrative assessment
31 of a civil penalty by DNR of not more than \$10,000 or a
32 judicial assessment of a civil penalty of \$5,000 (Code sections
33 455B.109, 455B.191 and 459.603). Currently, a person violating
34 a water quality regulation applying to an open feedlot is
35 subject to the judicially assessed civil penalty (Code section

1 459A.502). The bill also provides that the person is subject
2 to the administratively assessed civil penalty.