

House File 2354 - Introduced

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A BILL FOR

1 An Act relating to water quality, including by providing for
2 the permitting and monitoring 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, subsection 9, Code 2024, is amended
11 to read as follows:

12 9. "*Animal weight capacity*" means the product of multiplying
13 the maximum number of animals which the owner ~~or operator~~
14 confines in an animal feeding operation at any one time by the
15 average weight during a production cycle.

16 Sec. 3. Section 459.102, Code 2024, is amended by adding the
17 following new subsections:

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

20 NEW SUBSECTION. 28A. "*Effluent*" means a water-carried
21 pollutant, including but not limited to manure, litter, and
22 process wastewater.

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

26 NEW SUBSECTION. 35A. "*Large concentrated animal feeding*
27 *operation*" means the same as defined in 40 C.F.R. §122.23(b)(4).

28 NEW SUBSECTION. 41A. "*Medium concentrated animal feeding*
29 *operation*" means an animal feeding operation that meets the size
30 threshold for medium concentrated animal feeding operation in
31 40 C.F.R. §122.23(b)(6)(i).

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

34 NEW SUBSECTION. 41C. "*NPDES permit program*" means the
35 national pollutant discharge elimination system (NPDES) permit

1 program pursuant to the federal Water Pollution Control Act.

2 NEW SUBSECTION. 42A. "Owner" includes a person who owns or
3 operates an animal feeding operation.

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

6 Sec. 4. Section 459.103, Code 2024, is amended to read as
7 follows:

8 **459.103 General authority — commission and department.**

9 1. The commission shall establish by rule adopted pursuant
10 to [chapter 17A](#), requirements relating to the construction,
11 including expansion, or operation of animal feeding operations,
12 including related animal feeding operation structures. The
13 requirements shall include but are not limited to minimum
14 manure control, the issuance of construction permits, and
15 departmental investigations, inspections, and testing. The
16 commission shall establish by rule adopted pursuant to chapter
17 17A requirements relating to the storage, treatment, and
18 application of manure and other effluent originating from
19 animal feeding operations.

20 2. Any provision referring generally to compliance with
21 the requirements of [this chapter](#) as applied to animal feeding
22 operations also includes compliance with requirements in
23 rules adopted by the commission pursuant to [this section](#),
24 orders issued by the department as authorized under this
25 chapter, and the terms and conditions applicable to licenses,
26 certifications, construction permits, or manure management
27 plans required under [subchapter III](#). ~~However, for purposes of~~
28 ~~approving or disapproving an application for a construction~~
29 ~~permit as provided in [section 459.304](#), conditions for the~~
30 ~~approval of an application based on results produced by a~~
31 ~~master matrix are not requirements of [this chapter](#) until the~~
32 ~~department approves or disapproves an application based on~~
33 ~~those results.~~

34 Sec. 5. Section 459.301, Code 2024, is amended by adding the
35 following new subsection:

1 NEW SUBSECTION. 4A. For purposes of determining compliance
2 with the rules adopted by the commission to implement and
3 administer the NPDES permit program, the department shall count
4 all animals according to type as used to determine whether an
5 animal feeding operation is a small concentrated animal feeding
6 operation, medium concentrated animal feeding operation, or
7 large concentrated animal feeding operation.

8 Sec. 6. NEW SECTION. 459.301A Federal law — NPDES permit
9 program.

10 1. This subchapter establishes minimum requirements for
11 managing animal feeding operations to protect water quality.
12 The commission shall establish by rule adopted pursuant to
13 chapter 17A requirements relating to the implementation and
14 administration of the NPDES permit program, including the
15 issuance of NPDES permits in accordance with the requirements
16 of this subchapter and the federal Water Pollution Control Act.

17 2. The commission shall establish by rule adopted pursuant
18 to chapter 17A permitting requirements under the NPDES permit
19 program for medium concentrated animal feeding operations and
20 large concentrated animal feeding operations. At minimum, the
21 rules shall require that medium concentrated animal feeding
22 operations and large concentrated animal feeding operations are
23 subject to an NPDES permit.

24 3. *a.* NPDES permit conditions issued by the department
25 under this chapter applying to a medium concentrated animal
26 feeding operation under this section may exceed any applicable
27 federal standard applying to that medium concentrated animal
28 feeding operation, including under the federal Water Pollution
29 Control Act.

30 *b.* NPDES permit conditions issued by the department under
31 this chapter applying to a large concentrated animal feeding
32 operation under this section may exceed any applicable federal
33 standard applying to that large concentrated animal feeding
34 operation, including under the federal Water Pollution Control
35 Act.

1 4. NPDES permits developed by the department in accordance
2 with this chapter applying to a medium concentrated animal
3 feeding operation or a large concentrated animal feeding
4 operation must include conditions requiring that the owner or
5 operator of such concentrated animal feeding operation do all
6 of the following:

7 a. Conduct representative effluent monitoring, including
8 monitoring for pollutants discharged to waters of the state
9 through groundwater.

10 b. Report data collected from monitoring for pollutants
11 described in paragraph "a" to the department each ninety days.
12 The department shall publish the data on its internet site, and
13 regularly report such data to the United States environmental
14 protection agency office of enforcement compliance assurance,
15 to be part of its integrated compliance information system.

16 Sec. 7. Section 459.311, Code 2024, is amended to read as
17 follows:

18 **459.311 Minimum requirements for manure control.**

19 1. a. A confinement feeding operation shall retain all
20 manure produced by the operation between periods of manure
21 disposal.

22 b. For purposes of [this section](#), dry manure may be retained
23 by stockpiling as provided in [this subchapter](#).

24 c. A confinement feeding operation shall not discharge
25 manure directly into water of the state or into a tile line
26 that discharges directly into water of the state.

27 2. ~~Notwithstanding [subsection 1](#), a~~ A confinement feeding
28 operation that is a concentrated animal feeding operation as
29 ~~defined in [40 C.F.R. §122.23\(b\)](#)~~ shall comply with applicable
30 rules adopted by the commission to implement and administer the
31 national pollutant discharge elimination system permit program
32 requirements as provided in the federal Water Pollution Control
33 Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and
34 412, pursuant to rules that shall be adopted by the commission.
35 ~~Any rules adopted pursuant to this subsection shall be no more~~

1 ~~stringent than requirements under the federal Water Pollution~~
2 ~~Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts.~~
3 ~~122 and 412~~ section 459.301A. The commission shall adopt
4 separate requirements for confinement feeding operations,
5 open feedlot operations, and animal truck wash facilities as
6 provided in chapter 459A.

7 3. Manure from an animal feeding operation shall be
8 disposed of in a manner ~~which will~~ that does not cause surface
9 water or groundwater pollution. Disposal in accordance with
10 the provisions of state law, including this chapter, rules
11 adopted pursuant to the provisions of state law, including
12 this chapter, guidelines adopted pursuant to this chapter,
13 and section 459.314, shall be deemed as compliance with this
14 requirement.

15 4. ~~The department may require that the owner of a~~
16 ~~confinement feeding operation shall~~ install and operate a water
17 ~~pollution monitoring system as part of an unformed manure~~
18 ~~storage structure~~ the confinement feeding operation. The
19 monitoring system shall collect and record data regarding the
20 type and quantity of pollutant originating from a confinement
21 feeding operation that is discharged to the groundwater or a
22 surface water source. The owner or operator of the confinement
23 feeding operation shall report the data to the department each
24 ninety days. The department shall publish the data on its
25 internet site, and regularly report such data to the United
26 States environmental protection agency office of enforcement
27 compliance assurance, to be part of its integrated compliance
28 information system.

29 5. The owner of the confinement feeding operation ~~which~~
30 that discontinues the use of the operation shall remove all
31 manure from related confinement feeding operation structures
32 used to store manure, by a date specified in an order issued to
33 the operation by the department, or six months following the
34 date that the confinement feeding operation is discontinued,
35 whichever is earlier.

1 Sec. 8. Section 459A.102, subsections 11 and 24, Code 2024,
2 are amended to read as follows:

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

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

10 Sec. 9. Section 459A.401, subsection 2, Code 2024, is
11 amended to read as follows:

12 2. Notwithstanding subsection 1, an open feedlot operation
13 that is a concentrated animal feeding operation shall comply
14 with applicable rules adopted by the commission implementing
15 and administering the NPDES permit requirements program as
16 ~~provided in the federal Water Pollution Control Act, pursuant~~
17 ~~to rules that shall be adopted by the commission. Any rules~~
18 ~~adopted pursuant to this subsection shall be no more stringent~~
19 ~~than requirements under the federal Act section 459.301A.~~

20 Sec. 10. Section 459A.502, Code 2024, is amended to read as
21 follows:

22 **459A.502 Violations — civil penalty.**

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

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

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

34 3. A person shall not be subject to a penalty under this
35 section and a penalty under section 459.603 for the same

1 violation.

2

EXPLANATION

3

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

4

5 BACKGROUND — STATE LAW. This bill amends provisions
6 regulating animal feeding operations (AFOs) in which
7 agricultural animals are confined and fed and maintained
8 for 45 days or more in any 12-month period, and includes
9 all structures used for the storage of manure from animals
10 in the operation and the discharge of manure or effluent
11 originating from the AFO (Code chapters 459 and 459A). The
12 regulations are administered and enforced by the department of
13 natural resources (DNR) including the environmental protection
14 commission (EPC). State law recognizes several types of
15 AFOs, including confinement feeding operations (CFOs) in
16 which animals are housed (confined) under roof (Code chapter
17 459). Special provisions govern open feedlots where animals
18 are kept in unroofed or partially roofed structures (Code
19 chapter 459A). In both cases, natural vegetation is not
20 available to the animals. In Iowa, a CFO is subject to both
21 air and water protection statutes and rules. Under water
22 quality regulations, the owner or operator of an AFO may be
23 required to obtain authorization from DNR to do business. The
24 authorization takes the form of a construction permit for
25 a CFO (Code section 459.304) or an open feedlot operation
26 (Code section 459A.205) or a manure management plan for a CFO
27 (Code section 459.312) or nutrient management plan for an open
28 feedlot operation (Code section 459A.208). The EPC may by
29 rule require the owner or operator of a CFO to install a water
30 pollution monitoring system as part of an unformed (dirt or
31 clay) manure storage structure (Code section 459.311). The
32 level of regulation sometimes depends upon a formula that
33 calculates the degree to which the AFO presents a threat to
34 water quality measured by: (1) the type of animals maintained
35 and (2) the number of animals maintained. For example, a

1 construction permit is required for a CFO that has an animal
2 unit capacity (AUC) of 1,000 animal units (AUs) (Code section
3 459.303) and each head of butcher or breeding swine weighing
4 more than 55 pounds is assigned a special equivalency factor of
5 0.4 animal units (Code section 459.102) (0.4 AU x 1,000 AUC =
6 400 head).

7 BACKGROUND — FEDERAL LAW. AFOs are also regulated under
8 federal law by the environmental protection agency (EPA) that
9 administers and enforces the national pollutant discharge
10 elimination system (NPDES) program pursuant to the federal
11 Water Pollution Control Act of 1972 (33 U.S.C. ch. 26, as
12 amended, and 40 C.F.R. pts. 122 and 412). EPA contracts with
13 DNR to administer and enforce the NPDES program. Under the
14 NPDES program, AFOs are referred to as concentrated animal
15 feeding operations (CAFOs). A CAFO is classified by its own
16 formula that also factors the type and number of animals kept.
17 The regulations apply to large, medium, and small CAFOs. For
18 example, a small CAFO includes less than 750 head of swine
19 weighing 55 or more pounds, a medium CAFO includes between 750
20 and 2,499 head, and a large CAFO includes 2,500 or more head.

21 BACKGROUND — STATE AND FEDERAL REGULATION. The purpose
22 of both state and federal regulation is to prevent manure or
23 effluent from contaminating groundwater and surface water.
24 In compliance with federal law, manure from a CAFO cannot be
25 disposed (discharged) in a manner that will cause surface
26 water or groundwater pollution (Code section 459.311). A CAFO
27 must retain all manure between periods of disposal (i.e., land
28 application). An open feedlot must install structures that
29 filter manure and effluent runoff (Code section 459A.401).
30 However, in all cases involving the treatment of wastewater,
31 and the discharge of manure and effluent originating from an
32 AFO, rules adopted by the EPC can be no more stringent than
33 federal law (Code sections 455B.173, 459.311, and 459A.401).

34 BILL'S PROVISIONS. The bill eliminates the provision that
35 prevent EPC rules regulating wastewater, or manure or effluent

1 originating from an AFO, from being more stringent than federal
2 law. The bill provides that statutes regulating AFOs are
3 minimum requirements, and that the EPC is to adopt permitting
4 requirements by rule under the NPDES program, including for
5 those AFOs classified as medium and large under federal law.
6 The EPC rules may exceed applicable federal standards applying
7 to a medium or large CAFO. In addition, the owner or operator
8 of a medium or large CAFO must conduct effluent monitoring
9 of pollutants discharged to navigable waters through the
10 groundwater. The owner or operator must report the collected
11 data to DNR which must publish it on its internet site and
12 report it to the EPA.

13 CIVIL PENALTIES. Compliance with a statutory regulation
14 includes compliance with a rule adopted by DNR (Code section
15 459.103). A person violating a water quality regulation under
16 Code chapter 459 is subject to the administrative assessment
17 of a civil penalty by DNR of not more than \$10,000 or a
18 judicial assessment of a civil penalty of \$5,000 (Code sections
19 455B.109, 455B.191 and 459.603). Currently, a person violating
20 a water quality regulation applying to an open feedlot is
21 subject to the judicially assessed civil penalty (Code section
22 459A.502). The bill also provides that the person is subject
23 to the administratively assessed civil penalty.