

House File 2419 - Introduced

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BY CROKEN and LEVIN

A BILL FOR

- 1 An Act regulating animal feeding operations, including rulemaking
- 2 requirements, and making penalties applicable.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 455B.173, subsection 2, Code 2026, is
2 amended to read as follows:

3 2. Establish, modify, or repeal water quality standards,
4 pretreatment standards, and effluent standards in accordance with
5 the provisions of this chapter and chapters 459, 459A, and 459B.

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

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

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

8 (2) Rules adopted to implement subparagraph (1) are not
9 subject to section 17A.7, subsection 2 or 3.

10 ~~c. Rules adopted to implement this subsection are not subject~~
11 ~~to section 17A.7, subsection 2 or 3~~ Paragraph "b" shall not
12 preclude the commission from adopting rules under sections
13 459.311 and 459A.410 that provide more restrictive water quality
14 standards than required by the federal environmental protection
15 agency pursuant to section 301, 306, or 307 of the federal Water
16 Pollution Control Act.

17 Sec. 2. Section 459.103, Code 2026, is amended to read as
18 follows:

19 **459.103 General authority — commission and department.**

20 1. The commission shall establish by rule adopted pursuant
21 to chapter 17A, requirements relating to the construction,
22 including expansion, or operation of animal feeding operations,
23 including related animal feeding operation structures. The
24 requirements shall include but are not limited to minimum
25 manure control, the issuance of permits, and departmental
26 investigations, inspections, and testing. The commission shall
27 establish by rule adopted pursuant to chapter 17A requirements
28 relating to the storage, treatment, and application of manure
29 and other effluent originating from animal feeding operations as
30 necessary to preserve and enhance water quality in this state.

31 2. Any provision referring generally to compliance with
32 the requirements of this chapter as applied to animal feeding
33 operations also includes compliance with requirements in rules
34 adopted by the commission pursuant to this section, orders issued
35 by the department as authorized under this chapter, and the terms

1 and conditions applicable to licenses, certifications, permits,
2 or ~~manure management~~ plans required under subchapter III, chapter
3 459A, and chapter 459B. However, for purposes of approving or
4 disapproving an application for a construction permit as provided
5 in section 459.304, conditions for the approval of an application
6 based on results produced by a master matrix are not requirements
7 of this chapter until the department approves or disapproves an
8 application based on those results.

9 ~~3. Rules adopted to implement this chapter are not subject to~~
10 ~~section 17A.7, subsection 2 or 3.~~

11 Sec. 3. Section 459.311, subsection 2, Code 2026, is amended
12 to read as follows:

13 2. a. Notwithstanding subsection 1, a confinement feeding
14 operation that is a concentrated animal feeding operation
15 as defined in 40 C.F.R. §122.23(b) shall comply with
16 applicable national pollutant discharge elimination system permit
17 requirements as provided in the federal Water Pollution Control
18 Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and
19 412, pursuant to rules that shall be adopted by the commission.
20 ~~Any rules adopted pursuant to this subsection shall be no more~~
21 ~~stringent than requirements under the federal Water Pollution~~
22 ~~Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122~~
23 ~~and 412.~~

24 b. The applicable national pollutant discharge elimination
25 system permit requirements described in paragraph "a" are minimum
26 water quality standards. The commission shall adopt rules that
27 provide more restrictive requirements as necessary to regulate
28 the storage, treatment, and application of manure and other
29 effluent originating from a confinement feeding operation.

30 Sec. 4. Section 459A.104, subsection 4, Code 2026, is amended
31 by striking the subsection.

32 Sec. 5. Section 459A.401, subsection 2, Code 2026, is amended
33 to read as follows:

34 2. a. Notwithstanding subsection 1, an open feedlot
35 operation that is a concentrated animal feeding operation shall

1 comply with applicable NPDES permit requirements as provided in
2 the federal Water Pollution Control Act, pursuant to rules that
3 shall be adopted by the commission. ~~Any rules adopted pursuant~~
4 ~~to this subsection shall be no more stringent than requirements~~
5 ~~under the federal Act.~~

6 b. The applicable NPDES permit requirements described in
7 paragraph "a" are minimum water quality standards. The
8 commission shall adopt rules that provide more restrictive
9 requirements as necessary to regulate the storage, treatment, and
10 application of manure and other effluent originating from an open
11 feedlot operation.

12 EXPLANATION

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

15 BACKGROUND. An animal feeding operation (AFO) is regulated
16 under several Code chapters, including Code chapter 455B,
17 subchapter III, governing water quality, and Code chapter 459,
18 subchapter III, governing all AFOs, which includes provisions
19 regulating confinement feeding operations, and Code chapter
20 459A, which includes selected provisions regulating open feedlot
21 operations. The Code chapters are administered and enforced by
22 the department of natural resources under the oversight of the
23 environmental protection commission (EPC) (Code chapter 455A).

24 BACKGROUND — ANIMAL FEEDING OPERATIONS. An AFO is an area in
25 which agricultural animals are confined for 45 days or more in
26 any 12-month period, and all associated structures used for the
27 storage of manure. A confinement feeding operation maintains
28 animals in roofed buildings and stores liquid manure in a formed
29 or unformed structure (see Code section 459.102). An open
30 feedlot operation is an unroofed or partially roofed facility
31 without crop, vegetation, or forage growth or residue cover
32 (Code section 459A.102). Manure from an open feedlot operation
33 includes solids and effluent that are usually not stored in a
34 structure associated with a confinement feeding operation.

35 BACKGROUND — STATE AND FEDERAL LAW. Both Code chapters 459

1 and 459A regulate the application of manure and other effluent
2 originating from an operation, including application close to
3 water sources. AFOs are also regulated under federal law by the
4 United States environmental protection agency, which administers
5 and enforces the national pollutant discharge elimination system
6 program (NPDES program) pursuant to the federal Water Pollution
7 Control Act of 1972 (33 U.S.C. ch. 26, as amended, and 40
8 C.F.R. pts. 122 and 412). EPA contracts with DNR to administer
9 and enforce the NPDES program. Under the NPDES program, AFOs are
10 referred to as concentrated animal feeding operations (CAFOs).
11 The purpose of both state and federal regulation is to prevent
12 manure or effluent from contaminating groundwater and surface
13 water. In compliance with federal law, manure from a CAFO cannot
14 be disposed of or discharged in a manner that will cause surface
15 water or groundwater pollution (Code section 459.311). However,
16 in all cases involving the disposal of manure and effluent
17 originating from an AFO, rules adopted by the EPC can be no more
18 stringent than federal law (Code sections 455B.173, 459.311, and
19 459A.401).

20 BILL'S PROVISIONS. This bill eliminates provisions that
21 prevent EPC rules regulating manure or effluent originating from
22 an AFO from being more stringent than federal law. The bill
23 provides that the NPDES program establishes minimum requirements.
24 The EPC is required to adopt rules that provide more restrictive
25 requirements as necessary to regulate the storage, treatment,
26 and application of manure and other effluent originating from
27 an AFO in a manner that preserves and enhances water quality in
28 the state. The bill also eliminates provisions that exempt EPC
29 rules regulating AFOs from being subject to the ordinary periodic
30 comprehensive administrative review of agency rules (Code section
31 17A.7(2) or (3)).

32 APPLICABLE PENALTIES. A person who is in violation of the
33 bill's provisions is subject to a civil penalty under Code
34 chapter 459 or 459A. A person who violates Code chapter 459,
35 subchapter III, is subject to the administrative assessment of

1 a civil penalty of up to \$10,000 for each day of a violation
2 (Code section 459.603 referring to Code section 455B.109) or
3 the judicial assessment of a civil penalty of up to \$5,000 for
4 each day of a violation (Code section 459.603 referring to Code
5 section 455B.191). A person who violates Code chapter 459A is
6 subject to the same judicial assessment (Code section 459A.502
7 referring to Code section 455B.191).

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