

Senate File 409 - Reprinted

SENATE FILE 409
BY COMMITTEE ON NATURAL
RESOURCES AND ENVIRONMENT

(SUCCESSOR TO SSB 1119)

(As Amended and Passed by the Senate April 10, 2019)

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:

DIVISION I

ADMINISTRATIVE APPEALS TIMELINE

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

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

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

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

24 4. For any other person, an appeal must be received by
25 the director within sixty days of issuance to the last known
26 address.

27 5. The director or the department shall provide a copy of
28 the order by ordinary mail or electronic mail to the person's
29 attorney if the attorney has been identified to the department
30 as representing the person.

31 6. a. For the purposes of this section, the date of
32 issuance of an order by the director or the department is the
33 postmarked date that the order is sent by the department to the
34 registered agent or party by certified mail. For the purposes
35 of this section, the date of receipt by the director is the

1 postmarked date that the appeal was sent to the director.

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

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

19 Sec. 3. Section 455B.175, subsection 1, paragraph a, Code
20 2019, is amended to read as follows:

21 a. The director may issue an order directing the person
22 to desist in the practice which constitutes the violation or
23 to take such corrective action as may be necessary to ensure
24 that the violation will cease. The person to whom such order
25 is issued may cause to be commenced a contested case within
26 the meaning of the Iowa administrative procedure Act, chapter
27 17A, by filing with the director ~~within thirty days~~ a notice
28 of appeal to the commission. The applicable timeframes for
29 the issuance and appeal of the order are defined in section
30 455B.110. On appeal the commission may affirm, modify or
31 vacate the order of the director; or

32 Sec. 4. Section 455B.183, Code 2019, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 9. A rural water association organized
35 under chapter 357A or chapter 504 that employs or retains

1 a licensed engineer shall be considered to have met the
2 permitting requirements of this section for the purposes
3 of sewer extensions and water supply distribution system
4 extensions. The department shall not disqualify a rural
5 water system if the system's hydraulic modeling complies with
6 standards for water supply distribution systems adopted by the
7 commission pursuant to this chapter.

8 Sec. 5. Section 455B.279, subsection 1, Code 2019, is
9 amended to read as follows:

10 1. The director may issue any order necessary to secure
11 compliance with or prevent a violation of this part or the
12 rules adopted pursuant to this part. ~~Within thirty days of~~
13 ~~issuance, the~~ The order may be appealed to the commission by
14 filing a notice of appeal with the director. The appeal shall
15 be conducted as a contested case pursuant to [chapter 17A](#) and
16 the commission may affirm, modify, or revoke the order. The
17 department may request legal services as required from the
18 attorney general, including any legal proceeding necessary to
19 obtain compliance with this part and rules and orders issued
20 under this part. The applicable timeframes for the issuance
21 and appeal of an order are defined in section 455B.110.

22 Sec. 6. Section 455B.308, Code 2019, is amended to read as
23 follows:

24 **455B.308 Appeal from order.**

25 Any person aggrieved by an order of the director may appeal
26 the order by filing a written notice of appeal with the
27 director ~~within thirty days of the issuance of the order in~~
28 accordance with section 455B.110. The director shall schedule
29 a hearing for the purpose of hearing the arguments of the
30 aggrieved person within thirty days of the filing of the notice
31 of appeal. The hearing may be held before the commission
32 or its designee. A complete record shall be made of the
33 proceedings. The director shall issue the findings in writing
34 to the aggrieved person within thirty days of the conclusion
35 of the hearing. Judicial review may be sought of actions

1 of the commission in accordance with the terms of the Iowa
2 administrative procedure Act, [chapter 17A](#). Notwithstanding the
3 terms of the Act, petitions for judicial review may be filed
4 in the district court of the county where the acts in issue
5 occurred.

6 Sec. 7. Section 455B.476, subsection 1, Code 2019, is
7 amended to read as follows:

8 1. If there is substantial evidence that a person has
9 violated or is violating a provision of this part or a
10 rule adopted under this part the director may issue an
11 order directing the person to desist in the practice which
12 constitutes the violation, and to take corrective action as
13 necessary to ensure that the violation will cease, and may
14 impose appropriate administrative penalties pursuant to section
15 455B.109. The person to whom the order is issued may appeal
16 the order to the commission as provided in [chapter 17A](#). On
17 appeal, the commission may affirm, modify or vacate the order
18 of the director. The applicable timeframes for the issuance
19 and appeal of the order are defined in section 455B.110.

20 Sec. 8. Section 455D.23, Code 2019, is amended to read as
21 follows:

22 **455D.23 Administrative enforcement — compliance orders.**

23 The director may issue any order necessary to secure
24 compliance with or prevent a violation of the provisions of
25 this chapter or any rule adopted or permit or order issued
26 pursuant to [this chapter](#). Any order issued to enforce section
27 455D.4A may include a requirement to remove and properly
28 dispose of materials being accumulated speculatively from a
29 property and impose costs and penalties as determined by the
30 department by rule. The person to whom such compliance order
31 is issued may cause to be commenced a contested case within the
32 meaning of [chapter 17A](#) by filing ~~within thirty days~~ a notice
33 of appeal to the commission. On appeal, the commission may
34 affirm, modify, or vacate the order of the director. The
35 applicable timeframes for the issuance and appeal of the order

1 are defined in section 455B.110.

2 Sec. 9. Section 458A.11, subsection 2, Code 2019, is amended
3 to read as follows:

4 2. An order or amendment of an order, except in an
5 emergency, shall not be made by the department without a
6 public hearing upon at least ten days' notice. The public
7 hearing shall be held at the time and place prescribed by the
8 department, and any interested person is entitled to be heard.
9 The applicable timeframes for the issuance and appeal of the
10 order are defined in section 455B.110.

11 DIVISION II

12 ADMINISTRATIVE CHANGES FOR WASTE DISPOSAL SYSTEMS AND PUBLIC
13 WATER SUPPLY SYSTEMS

14 Sec. 10. Section 455B.103A, subsection 1, paragraph b, Code
15 2019, is amended to read as follows:

16 b. Following the effective date of a general permit, a
17 person proposing to conduct activities covered by the general
18 permit shall provide a notice of intent to conduct a covered
19 activity on a form provided by the department. ~~A person shall~~
20 ~~also provide public notice of intent to conduct activities~~
21 ~~covered under the general permit by publishing notice in one~~
22 ~~newspaper with the largest circulation in the area in which the~~
23 ~~facility is located.~~ Notice of intent to conduct activities
24 covered under the general permit shall also be provided by
25 the department electronically. Notice of the discontinuation
26 of a permitted activity other than storm water and allowable
27 nonstorm water discharges shall be provided in the same manner.

28 Sec. 11. Section 455B.183, subsection 1, paragraph c, Code
29 2019, is amended to read as follows:

30 c. The operation of any waste disposal system or public
31 water supply system or any part of or extension or addition
32 to the system. This ~~provision~~ paragraph does not apply to a
33 pretreatment system, the effluent of which is to be discharged
34 directly to another disposal system for final treatment and
35 disposal; a semipublic sewage disposal system, the construction

1 of which has been approved by the department and ~~which that~~
2 does not discharge into a water of the state; or a private
3 sewage disposal system ~~which that~~ does not discharge into
4 a water of the state. The commission may adopt additional
5 exemptions for a class of disposal systems that do not
6 discharge into a water of the state or the director may waive
7 the permit requirement for an individual system that does
8 not discharge into a water of the state. The commission or
9 director shall consider the volume, location, frequency, and
10 nature of disposal from a system or class of systems before
11 granting a waiver or exemption. Sludge from a semipublic
12 or private sewage disposal system shall be disposed of in
13 accordance with the rules adopted by the department pursuant to
14 chapter 17A. ~~The exemption of this paragraph shall not apply~~
15 ~~to any industrial waste discharges.~~

16 Sec. 12. Section 455B.265, subsection 5, Code 2019, is
17 amended to read as follows:

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

32 Sec. 13. Section 455B.265, subsection 6, paragraphs a and c,
33 Code 2019, are amended to read as follows:

34 a. The amount of a fee shall be based on the department's
35 reasonable cost of reviewing applications, issuing permits,

1 ensuring compliance with the terms of the permits, and
2 resolving water interference complaints. The commission shall
3 calculate the fees to produce total revenues of not more than
4 five hundred thousand dollars for each fiscal year, ~~commencing~~
5 ~~with the fiscal year beginning July 1, 2009, and ending June~~
6 ~~30, 2010.~~

7 c. The commission shall annually review the amount of moneys
8 generated by the fees, the balance in the water use permit
9 fund, and the anticipated expenses for ~~the~~ succeeding fiscal
10 ~~year~~ years.