SENATE FILE 409
BY COMMITTEE ON NATURAL
RESOURCES AND ENVIRONMENT

(SUCCESSOR TO SSB 1119)

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

[= New Language by the Senate

A BILL FOR

An Act relating to administrative procedures within the department of natural resources.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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 a person 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 person identified in the permit and the address of the responsible party listed in the permit, if any.

3. For a person 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 person, an appeal must be received by the director within sixty days of issuance to the last known address.

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

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

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

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

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

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

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

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

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

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

455B.308 Appeal from order.

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

of the commission in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Act, petitions for judicial review may be filed in the district court of the county where the acts in issue occurred.

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

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

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

455D.23 Administrative enforcement — compliance orders.

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

are defined in section 455B.110.

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

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

DIVISION II

ADMINISTRATIVE CHANGES FOR WASTE DISPOSAL SYSTEMS AND PUBLIC WATER SUPPLY SYSTEMS

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

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

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

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

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

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

5. Prior to the issuance of a new permit or modification of a permit under this section to a community public water supply, the department shall publish a notice of recommendation to grant a permit. The notice shall include a brief summary of the proposed permit ~~and shall be published in a newspaper of general circulation within the county of the proposed water source as provided in section 618.3. If the newspaper of general circulation is not the newspaper of the nearest locality to the proposed water source that publishes a newspaper, the notice shall also be published in the newspaper of the nearest locality to the proposed water source that publishes a newspaper and the department may charge the applicant for the expenses associated with publishing the notice in the second newspaper~~.

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

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

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

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