The Reason CAFOs Need to Hold a Surety Bond

The Iowa Chapter supports legislation requiring that a person submit surety bond with a manure management plan associated with a concentrated animal feeding operation (CAFO).

Between 2012 through 2018, an average of 19 discharges of manure entered Iowa’s rivers, streams, and lakes every year.¹

When concentrated animal feeding operations discharge manure into a water body or onto land, an expensive clean-up process is sometimes involved. Once a discharge occurs, dealing with the discharge might involve building a dam on the landowner’s property, on a neighbor’s property, or on public land (ditches, park land, stream bank). Damages to the water body might incur, including fish kills, contamination of private drinking water wells, or contamination of public drinking water sources.

Public employees get involved in advising the landowner concerning damage control and the clean-up process. In the case of public lands or water bodies being contaminated, the government agency is directly involved in the repair process, restoration of wildlife, and restoration of native habitat.

Paying for the damage can become very expensive. Sometimes the CAFO owner and operator is struggling financially, is not solvent, or has inadequate farm liability insurance. A bond could be used to ensure that there is money to cover damages. The money would be used to:

- reimburse the state or a political subdivision, or an agent of the state or political subdivision, for costs associated with containment or cleanup;
- fund the restoration of wild animal populations or habitat; and
- support the payment of a judgment award recovered by a plaintiff in a civil action.

¹ Iowa Department of Natural Resources, “What is the status of the Concentrated Animal Feeding Operation (CAFO) Work Plan Agreement between EPA and DNR?” June, 2018
The text of the bill, as proposed in the 2018 legislation session as HF 2134 (LSB 5552YH (4) 87), follows.

HOUSE FILE 2134
BY STAED, MASCHER, GAINES, MEYER, ABDUL-SAMAD, and BENNETT

A BILL FOR

An Act requiring that a person submit a bond with a manure management plan associated with a confinement feeding operation, and including effective date provisions.

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

Section 1. Section 459.303, subsection 3, paragraph b, Code 2018, is amended to read as follows:

b. A manure management plan as provided in section 459.312 and a manure management plan filing fee as provided in section 459.400, and evidence that a surety bond has been furnished to the department as provided in section 459.312.

Sec. 2. Section 459.303, subsection 7, Code 2018, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. The department shall not issue a permit to a person under this section if a surety bond furnished to the department under section 459.312 has expired, been canceled, been suspended, or been revoked. This paragraph applies to a permit for the construction of a confinement feeding operation structure regardless of whether the confinement feeding operation structure is part of a confinement feeding operation described in the bond.

Sec. 3. Section 459.312, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. The department shall not approve an original manure management plan or an updated manure management plan, unless it is accompanied with evidence that a surety bond has been furnished to the department by a surety. However, the department may approve an original manure management plan on the condition that the bond be furnished prior to the date that manure is stored in the manure storage structure described in the manure management plan.

a. The surety must be a business entity organized or formed in this state or otherwise authorized to do business in this state as a surety company and be approved by the department according to criteria established by the department. The bond shall be in the amount of ten million dollars.

b. The bond shall run to the state, and guarantee payment to the state of costs directly attributable to a violation of section 459.311 that causes a discharge of manure from a manure storage structure as described in the manure management plan. The costs shall be limited to any of the following:

1. The reimbursement of moneys expended by the state, a political subdivision, or an agent of the state or a political subdivision, for reasonable costs of providing for containment or cleanup. The reimbursement may cover costs associated with cleaning up the confinement feeding operation and remediating contamination which originates from the confinement feeding operation, pursuant to sections 455B.381 through 455B.399.

2. The restoration of wild animal populations or habitat, to the extent that any payment received under the bond is not duplicative of a restitution payment received by the state under section 481A.151.

3. Payment of a judgment award recovered by a person in a civil action for actual property damages, including reasonable attorney’s fees. The bond shall be open to successive judgment awards caused by the same violation.

c. The total and aggregate liability of the surety for all claims by the state arising from the violation shall be limited to the face of the bond.

d. The bond shall not expire until sixty days after expiration of the manure management plan. The surety shall not cancel the bond without providing for at least forty-five days’ notice by certified mail to the department and the owner required to submit the manure management plan. When the department receives a notice of cancellation, and a bond is still required, the department shall automatically suspend the manure management plan if the department does not receive a replacement bond within thirty days of
the delivery of the notice of cancellation. If a replacement bond is not furnished to the department within ten days following the suspension, the department shall automatically revoke the manure management plan. In addition, the department shall disapprove all pending permit applications for the construction of a confinement feeding operation structure filed with the department by the owner as provided in section 459.303.

Sec. 4. Section 481A.151, subsection 1, Code 2018, is amended to read as follows:

1. a. A person who is liable for polluting a water of this state in violation of state law, including this chapter, shall also be liable to pay restitution to the department for injury caused to a wild animal by the pollution. The amount of the restitution shall also include the department’s administrative costs for investigating the incident.

b. The administration of this section shall not result in a duplication of damages collected by the department under section 455B.392, subsection 1, paragraph “a”, subparagraph (3) or section 459.312, subsection 6A.

Sec. 5. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

EXPLANATION

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

GENERAL. This bill amends Code chapter 459, referred to as the “Animal Agriculture Compliance Act”, which is administered and enforced by the department of natural resources (DNR). The Code chapter in part regulates the housing of animals in a building and the storage and application of animal manure originating from a confinement feeding operation (operation), including a manure storage structure (structure). The bill addresses two documents filed by the owner of an operation with DNR when it administers water quality regulations: (1) an application for a construction permit (permit) issued by DNR that authorizes the construction, including expansion, of a structure (Code section 459.303) and a manure management plan (MMP) governing the storage and application of manure originating from the operation (Code section 459.312).

BILL’S PROVISIONS. The bill provides that DNR cannot approve an MMP unless the owner furnishes a surety bond for $10 million for the purpose of paying costs resulting from the discharge of manure from the owner’s operation. Moneys payable under the bond must be used in cases in which the discharge has caused property damage. The moneys must be used to: (1) reimburse the state or a political subdivision, or an agent of the state or political subdivision, for costs associated with containment or cleanup; (2) the restoration of wild animal populations or habitat; and (3) the payment of a judgment award recovered by a plaintiff in a civil action. The bill provides for the expiration or cancellation of the bond. DNR is authorized to suspend or revoke an MMP if a replacement bond is not filed. The bill also provides that DNR is prohibited from issuing a permit to the owner authorizing the construction of any structure if a bond covering an operation has expired, been canceled, been suspended, or been revoked.

BACKGROUND —— OPERATIONS AND MMPS. An operation is a location in which certain confined agricultural animals are housed in one or more buildings for at least 45 days during any 12-month period (Code section 459.102). Generally, an operation must retain manure that is produced at the location until the manure is transported and used according to water quality requirements (e.g., via application on farmland) (see Code section 459.311). An MMP refers to both an original document and a document which updates the original plan. An updated plan must be filed with DNR on an annual basis (Code section 459.312). A permit is required to construct a structure including a confinement building or associated manure storage structure (either formed or unformed) (Code section 459.102). As part of the application for a permit, the owner must have filed an MMP.

EFFECTIVE DATE. The bill, if enacted, would take effect upon enactment.