

Sec. 9. Section 455B.137, subsection 1, unnumbered paragraph 1, Code 1981, is amended to read as follows:

If the executive director has ~~conclusive~~ substantial evidence that a person has violated or is violating a provision of sections 455B.130 to 455B.140, or of a rule or standard established or permit issued pursuant to sections 455B.130 to 455B.140 ~~and-if-subsection-4-of-this-section-does-not apply:~~

Sec. 10. Section 455B.137, subsection 1, paragraph a, Code 1981, is amended to read as follows:

a. The executive director may issue an order directing the person to desist in the practice that constitutes the violation or to take corrective action as necessary to ensure that the violation will cease. ~~Before-issuing the-order-the-executive-director-shall-notify-the-person-of-the-violation-and-that-if-compliance-is-not-achieved-within-thirty-days-following--the--receipt-of-the-notice-the-order-may-be-issued.~~ The person to whom the order is issued may commence a contested case within the meaning of chapter 17A by filing with the executive director within thirty days of receipt of the order a notice of appeal to the commission. On appeal, the commission may affirm, modify or vacate the order of the executive director.

Sec. 11. Section 455B.137, subsection 4, Code 1981, is amended by striking the subsection.

Sec. 12. Section 455B.139, Code 1981, is amended to read as follows:

455B.139 RULES. Rules adopted by the commission under sections 455B.130 to 455B.140 shall be consistent with and shall not exceed the requirements of 42 U.S.C. ~~6921--6931--(1979)~~ secs. 6921-6934 as amended to ~~March--15--1979~~ January 1, 1981 and rules and regulations ~~promulgated~~ adopted pursuant to those sections.

Approved May 14, 1981

CHAPTER 152
HAZARDOUS WASTES
S. F. 420

AN ACT relating to the siting of hazardous waste treatment, storage and disposal facilities, providing penalties and imposing a surcharge on the fee for land burial of hazardous waste.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. PURPOSE AND GUIDELINES. The purpose of this Act is to protect the public health and the environment by providing a procedure for establishing appropriate sites and properly designed facilities for the treatment, storage and disposal of hazardous waste. It is the intent of the general assembly that in the implementation of this Act the department of

environmental quality shall emphasize alternatives to land burial of hazardous waste whenever possible with emphasis on the following management methods in the following order: source reduction, reuse, resource recovery, incineration, and detoxification.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. a. "Facility" means land and structures, other appurtenances, and improvements on the land used for the treatment, storage, or disposal of a hazardous waste required to have a permit under section 455B.134.

b. "Facility" does not include land, structures, other appurtenances and improvements contiguous to the source of generation and owned and operated by and exclusively for the treatment, storage, or disposal of hazardous waste of the generator.

c. As used in this subsection property is contiguous if it is divided only by a public or private way.

2. "Hazardous waste" means a hazardous waste as defined in section 455B.130, subsection 2 and listed by the environmental quality commission under section 455B.131, subsection 2.

3. "Commission" means the environmental quality commission.

4. "Executive director" means the executive director of the department of environmental quality.

5. "Regulatory agency" means a state or local agency that issues a license or permit required for the construction, operation, or maintenance of a facility pursuant to state statute or rule or local ordinance or resolution in effect on the date the application for a site license is submitted to the commission.

6. "Construct" means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility. "Construct" includes alteration to existing structures or a land disposal facility to initially accommodate hazardous waste but does not include any alteration to increase the capacity or change the ability to accommodate hazardous waste. However, any alteration to increase or change the ability to accommodate hazardous waste is subject to section 455B.132.

Sec. 3. NEW SECTION. LICENSE REQUIRED.

1. A person shall not construct a facility until the person obtains a site license issued under this Act by the commission. A person planning to construct a facility shall give notice of the intent to construct the facility as provided in this section. The notice shall be served on the executive director and on the city council and board of supervisors of each city and county in which the facility is located and shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks. The notice shall contain the following:

a. A description of the proposed location of the facility.

b. A description of the treatment, storage, or disposal method to be used and the types of wastes to be handled, including estimated volumes.

c. The names and addresses of the owners and the operators of the facility.

2. Within fifteen days of the date the notice is last published, the owners and operators of the facility shall submit an application to the executive director requesting that a site license be issued under this Act. The application for a site license shall contain the name and residence of the applicant, and the following additional information:

a. The location of the proposed facility and a plat of the proposed location.

b. A description of the design and capacity of the proposed facility.

c. The expected sources of hazardous wastes for the facility, the proposed methods and routes of transporting the wastes to and from the facility.

d. The qualifications of the operator.

e. Other relevant information as the commission requires by rule.

The application shall be accompanied by a nonrefundable application fee determined by a schedule established by the commission by rule, but which shall not exceed one thousand dollars.

3. Within thirty days of the receipt of the application, the executive director shall determine whether the application is in substantial compliance with the information requirements, and shall either accept the application or notify the applicant of any deficiencies. An applicant who receives notification of deficiencies in the application has ninety days from the receipt of notice to remedy the deficiencies and resubmit the application for consideration. The executive director shall notify the applicant within thirty days of receipt of a resubmitted application whether the application is accepted. An application rejected under this subsection may be resubmitted only once. If a resubmitted application is rejected the applicant may reapply for a license by giving notice and resubmitting an application as provided in subsections 1 and 2, including payment of the nonrefundable application fee.

4. This Act does not apply to a facility that is subject to subsection 2 of section 455B.134 and that has obtained applicable local zoning permits and for which contracts have been signed prior to January 1, 1982.

Sec. 4. NEW SECTION. TEMPORARY MEMBERS APPOINTED. Immediately upon receipt of an application for a site license the executive director shall notify the city council of the city closest to the proposed facility and the county board of supervisors of the county in which the facility is proposed to be located that the application has been received. Within thirty days of the receipt of notification the city council or the county board of supervisors may make the following appointments to the commission for purposes of consideration of the site license application and if the city council or the county board of supervisors chooses to make the temporary appointments the executive director shall be notified of the names of those persons appointed as follows:

1. The county board may appoint two temporary members who are residents of the county.

2. The city council may appoint two temporary members who are residents of the city.

Temporary members who may be appointed under this section shall serve on the commission only during discussion and proceedings relating to the application for a site license which the temporary members were appointed to consider and shall vote only on questions relating to the issuance of that site license. Temporary members shall serve on the commission until final action is taken on the application for the site license which the temporary members were appointed to consider. Temporary members who are not public employees shall receive forty dollars per diem and actual and necessary expenses incurred in performance of their official duties. Temporary employees who are public employees shall receive reimbursement for expenses only. Per diem and expenses under this section shall be paid by the state.

Sec. 5. NEW SECTION. NOTIFICATION REQUIREMENTS. Upon acceptance of a site license application under section 3 of this Act the executive director shall mail copies of the application to regulatory agencies. A regulatory agency receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and for compliance with the regulatory agency's permit or licensing requirements.

Sec. 6. NEW SECTION. PROCEEDING.

1. Within thirty days after the acceptance of the application for a site license, the commission shall establish a timetable for consideration of the application. The timetable for final action by the commission shall not exceed one hundred eighty days after the date the application is accepted.

2. The proceeding for the issuance of a site license is a contested case under chapter 17A.

3. The commission shall establish a date for the hearing on the application and shall serve notice of the hearing on interested agencies, as determined by the commission, and regulatory agencies.

The commission shall notify all owners of record of real property located within one mile from the boundaries of the proposed site of the time and place of the hearing.

4. Notice of the hearing in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing.

Sec. 7. NEW SECTION. PROCEEDING--ROLE OF REGULATORY AGENCIES.

1. Regulatory agencies that appear on record at the proceeding shall state whether the application meets their permit or licensing requirements. If the application does not meet the requirements of a regulatory agency, the regulatory agency shall state why the application is not in compliance.

2. Any person may present oral or written comments to the commission at the hearing.

Sec. 8. NEW SECTION. DECISION BY COMMISSION.

1. The commission shall grant or deny the site license. In making its decision, the commission shall consider the following:

- a. The need for the services to be offered by the facility.
 - b. The impact of the proposed facility on the area in which it is to be located.
 - c. The zoning classification of the proposed site and the extent to which a proposed site is by present or projected use dedicated to industrial development.
 - d. The land uses and the density of population in areas near the facility.
 - e. The density of population in areas adjacent to probable transportation routes to the facility.
 - f. The risk and effect of accidents during the transportation of hazardous wastes to the site.
 - g. The geology of the site, where relevant, with reference to factors which include, but are not limited to, the presence of fault zones and the risk of contamination of ground and surface waters by leaching and runoff from the facility.
 - h. The risk and effect of fires or explosions from improper storage and disposal methods.
 - i. The impact of the facility on the operations and responsibilities of the city and county in which the facility is proposed to be located and on cities and counties near the proposed site.
 - j. Local ordinances, permits, or other requirements and their relationship to the proposed facility.
 - k. Other criteria adopted by rule which the commission finds relevant to the siting of a facility which are consistent with this Act.
2. The commission shall grant the license if it finds that the facility will meet the requirements imposed by rules adopted by the commission under section 455B.131, subsection 3, and the permit requirement of section 455B.134, that operation of the facility at the proposed location will be in the public interest and that the public health and welfare and the environment will be adequately protected. The failure of the proposed facility to meet zoning requirements established under chapters 329, 358A, and 414, and the licensing requirements of regulatory agencies except the requirements imposed by sections 455B.131, subsection 3 and 455B.134 shall not preclude the commission from issuing the license and to that extent this subsection supersedes the licensing requirements of regulatory agencies and the requirements of chapters 329, 358A and 414.
 3. A municipality as defined in section 613A.1(1), is not liable in an action for damages arising out of the construction, operation, or maintenance of a hazardous waste facility which is licensed by the commission under this Act unless the municipality is responsible for or in control of the facility. However, a municipality may be subject to liability for damages caused by hazardous waste in connection with an act or omission which would otherwise subject the municipality to liability. A municipality shall not be required to pay any portion of the costs associated with the response to a release or threatened release of a hazardous waste from a facility into the land, air, or water that threatens or may threaten human health or the environment unless the municipality is responsible for or in control of the facility or

unless the municipality is otherwise subject to liability under this subsection.

Sec. 9. NEW SECTION. ISSUANCE OF LICENSE--EFFECT. Issuance of a license by the commission authorizes construction of the facility on the site designated in the license according to the terms and conditions stated in the license. A license may be transferred, subject to the rules and approval of the commission, to a person who agrees and is able to comply with the terms of the license.

Sec. 10. NEW SECTION. COST OF PROCEEDINGS. The cost of the proceeding for the issuance of a license shall be paid by the applicant for the license until the cost exceeds nine thousand dollars. The executive director shall notify the applicant upon the issuance or denial of the license or upon termination of the proceeding at any point during the process of the cost of the proceeding to the applicant. These costs include the costs of providing notices, holding the hearing and the per diem of the commissioners in the proceeding for the license. Moneys collected shall be deposited in the general fund of the state.

Sec. 11. NEW SECTION. FURTHER APPROVALS PROHIBITED--EXCEPTION. Upon the issuance of a license under this Act, notwithstanding any provision of law or ordinance except statutory requirements relating to the protection of employees engaged in the construction of the facility, no further approval, permit, or license for the construction, operation, or maintenance of the facility as stated in the license shall be required. The commission may incorporate in the license the licensing requirements of a regulatory agency to the extent that those requirements are consistent with the construction and operation of the facility according to the requirements of the commission. However, this section does not limit the authority of the executive director under sections 455B.132 and 455B.134. A local unit of government shall not unduly restrict the transportation of hazardous waste to a facility for which a license has been issued under this Act.

Sec. 12. NEW SECTION. SINGLE HEARING--JUDICIAL REVIEW. Notwithstanding chapter 17A:

1. Any proceeding or oral presentation held before the commission on an application for a license shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance, or operation of a facility.

2. The issuance or denial of the license is a final agency action, and the date for determining whether any person is aggrieved or adversely affected by the action is the date of the issuance or denial of the license.

Sec. 13. NEW SECTION. RULES. The commission shall adopt rules under chapter 17A necessary to implement this Act including but not limited to the form for an application for a license and the description of information to be furnished by the applicant.

Sec. 14. NEW SECTION. PENALTIES. A person required to obtain a site license under this Act who constructs a facility without having first obtained the license is subject to a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by

the clerk of court to the treasurer of state for deposit in the general fund of the state.

Sec. 15. NEW SECTION. SURCHARGE IMPOSED. A land burial surcharge tax of two percent is imposed on the fee for land burial of a hazardous waste. The owner of the land burial facility shall remit the tax collected to the director of revenue after consultation with the executive director according to rules that the director shall adopt. The executive director shall forward a copy of the site license to the director of revenue which shall be the appropriate license for the collection of the land burial surcharge tax and shall be subject to suspension or revocation if the site license holder fails to collect or remit the tax collected under section 15 of this Act. The provisions of sections 422.25, subsection 4, 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and 422.70 to 422.75, consistent with the provisions of this Act, shall apply with respect to the taxes authorized under this Act, in the same manner and with the same effect as if the land burial surcharge tax were retail sales taxes within the meaning of those statutes. Notwithstanding the provisions of this paragraph, the director shall provide for only quarterly filing of returns as prescribed in section 422.51. Taxes collected by the director of revenue under this section shall be deposited in the general fund of the state.

Approved May 11, 1981

CHAPTER 153
SOIL CONSERVATION PLAN

H. F. 465

AN ACT relating to the preparation of the farm unit soil conservation folder and plan.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 467A.62, subsection 1, paragraphs a and b, Code 1981, are amended to read as follows:

a. Each farm unit shall be furnished a conservation folder complying with the rules of the department by the ~~department of soil conservation, acting through the~~ soil conservation district in which the farm unit is located, not later than January 1, 1985, or as soon thereafter as adequate funding is available to permit completion of a conservation folder for every farm unit in the state. Technical assistance in the development of the conservation folder may be provided by the United States department of agriculture soil conservation service through the memorandum of understanding with the district or by the department. The department shall provide by rule that an updated farm plan prepared for a particular farm unit within ten years prior to the effective date of this subsection shall be considered an adequate