

**CHAPTER 1108**  
**HAZARDOUS WASTE REMEDIAL FUND**  
*H.F. 2471*

**AN ACT** creating a hazardous waste remedial fund and providing for the cleanup of hazardous conditions and the management and cleanup of abandoned or uncontrolled hazardous waste disposal sites.

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

Section 1. Section 455B.381, Code 1983, is amended by adding the following new subsections:

**NEW SUBSECTION. 6.** "Cleanup" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

**NEW SUBSECTION. 7.** "Cleanup costs" means costs incurred by the state or its political subdivisions or their agents, or by any other person participating with the approval of the executive director in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.

**NEW SUBSECTION. 8.** "Person having control over a hazardous substance" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

**NEW SUBSECTION. 9.** "Release" means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the state unless one of the following applies:

- a. The release is done in compliance with the conditions of a federal or state permit.
- b. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.
- c. In the use of pesticides, the application is done in accordance with the product label.

**NEW SUBSECTION. 10.** "Waters of the state" means rivers, streams, lakes and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. "Waters of the state" includes waters of the United States lying within the state.

Sec. 2. Section 455B.386, Code 1983, is amended to read as follows:

**455B.386 NOTIFICATION OF SPILLS.** Any A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department, the local police department, or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. A sheriff or police chief who has been notified of a hazardous condition shall immediately notify the department. Persons If requested, a person shall submit within thirty days of the department's request a written report

of particulars of the incident. A person violating this section shall be is subject to a civil penalty of not more than five hundred one thousand dollars.

Sec. 3. Section 455B.387, Code Supplement 1983, is amended by adding the following new subsection:

**NEW SUBSECTION. 3.** An action taken by a person to abate, control, or clean up a hazardous substance involved in a hazardous condition shall not be construed as an admission of liability for a hazardous condition.

Sec. 4. **NEW SECTION. 455B.392 LIABILITY FOR CLEANUP COSTS.**

1. A person having control over a hazardous substance is strictly liable to the state for all of the following:

a. The reasonable cleanup costs incurred by the state as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

b. The reasonable costs incurred by the state to evacuate people from the area threatened by a hazardous condition caused by the person.

c. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.

If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the executive director by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The executive director shall keep a record of all expenses incurred in carrying out a project or activity authorized by this part.

2. Liability under subsection 1 is limited to following maximum dollar limitations:

a. Five million dollars for any vehicle, boat, aircraft, pipeline, or other manner of conveyance which transports a hazardous substance.

b. Fifty million dollars for any facility generating, storing, or disposing of a hazardous substance.

3. There is no liability under this section for a person otherwise liable if the hazardous condition is solely resulting from one or more of the following:

a. An act of God.

b. An act of war.

c. An act or omission of a third party if the person establishes both of the following:

(1) That taking into consideration the characteristics of the hazardous substance, the person otherwise liable exercised due care with respect to the hazardous substance.

(2) That the person otherwise liable took precautions against the foreseeable acts or omissions of the third party and the foreseeable consequences.

As used in this paragraph, "third party" does not include an employee or agent of the person otherwise liable or a third party whose act or omission occurs directly or indirectly in connection with a contractual-relationship with the person otherwise liable.

4. There is no liability under this section for a person otherwise liable if all of the following conditions exist:

a. The liability arises during the transportation of a hazardous substance.

b. The fact that the hazardous substance is a hazardous substance has been misrepresented to the person transporting the hazardous substance.

c. The person transporting the hazardous substance does not know or have reason to know that the misrepresentation has been made.

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423 and used in the manner permitted for the fund.

6. This section does not deny any person any legal or equitable rights, remedies or defenses or affect any legal relationship other than the legal relationship between the state and a person having control over a hazardous substance pursuant to subsection 1.

Sec. 5. **NEW SECTION. 455B.393 LIABILITY OF STATE EMPLOYEES OR PERSONS PROVIDING ASSISTANCE.**

1. A person employed by the state is not liable for damages incurred as a result of actions taken by the person when acting in the person's official capacity pursuant to this part, rules adopted pursuant to this part and the hazardous condition contingency plan.

2. A person who provides assistance at the request of the department or by previous agreement with the department in the event of a hazardous condition is not liable in a civil action for damages as a result of that person's acts or omissions in rendering the assistance. This section does not relieve a person from civil damages in any of the following circumstances:

a. If the person providing assistance is also the person having control over the hazardous substance which created the hazardous condition.

b. If the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment.

c. For acts or omissions which result from intentional wrongdoing or gross negligence.

Sec. 6. **NEW SECTION. 455B.394 RIGHT OF ENTRY.** A person shall not refuse entry or access to, or harass or obstruct an authorized representative of the department who seeks entry or access for the purpose of investigating or responding to a hazardous condition. The representative shall present appropriate credentials. Upon a showing of probable cause in writing and made under oath, a judge or magistrate having proper jurisdiction shall issue a suitably restricted search warrant to the representative of the department for the purposes of enabling the representative to investigate or respond to a hazardous condition.

Sec. 7. **NEW SECTION. 455B.395 PUBLIC INFORMATION.** Information obtained under this part or a rule, order or condition adopted or issued under this part, or an investigation authorized thereby, shall be available to the public unless the information constitutes trade secrets or information which is entitled to confidential treatment in order to protect a plan, process, tool, mechanism, or compound which is known only to the person claiming confidential treatment and confidential treatment is necessary to protect the person's trade, business or manufacturing process.

Sec. 8. Section 455B.411, Code 1983, is amended by adding the following new subsection:

**NEW SUBSECTION. 6.** "Abandoned or uncontrolled hazardous waste disposal site" means real property which has been used for the disposal of hazardous waste either illegally or prior to regulation under this chapter.

Sec. 9. **NEW SECTION. 455B.423 HAZARDOUS WASTE REMEDIAL FUND.**

1. A hazardous waste remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the hazardous waste remedial fund at the end of each fiscal year shall be retained in the fund. However, any unexpended balance shall be transferred to the general fund to replace funds appropriated from the general fund during fiscal year 1985 and fiscal year 1986 for the purposes for which expenditures from the hazardous waste remedial fund are allowed.

2. The executive director may use the fund for any of the following purposes:
  - a. Administrative services for the identification, assessment and cleanup of abandoned or uncontrolled sites.
  - b. Payments to other state agencies for services consistent with the management of abandoned or uncontrolled hazardous waste sites.
  - c. Emergency response activities as provided in part 4 of this division.
  - d. Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.
  - e. Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of abandoned or uncontrolled hazardous waste disposal sites that do not qualify for federal cost-sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.
  - f. Through agreements or contracts with other state agencies, work with private industry to develop alternatives to land disposal of hazardous waste including, but not limited to, resource recovery, recycling, neutralization, and reduction.

However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraphs "d" and "e".

3. Neither the state nor its officers, employees or agents is liable for an injury caused by a dangerous condition at an abandoned or uncontrolled site unless the condition is the result of gross negligence on the part of the state, its officers, employees or agents.

4. The executive director may contract with any person to perform the acts authorized in this section.

5. Moneys shall not be used from the fund for abandoned site cleanup unless the executive director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of abandoned or uncontrolled hazardous waste sites or other responsible persons.

6. The executive director shall make all reasonable efforts to recover the full amount of funds expended from the fund through litigation or cooperative agreements with responsible persons. Moneys recovered pursuant to this subsection shall be deposited with the treasurer of state and credited to the hazardous waste remedial fund.

**Sec. 10. NEW SECTION. 455B.424 HAZARDOUS WASTE FEES.**

1. The person who generates hazardous waste or the owner or operator of a hazardous waste disposal facility who transports hazardous wastes off of the site where the hazardous waste was generated or off the disposal facility site shall pay a fee of ten dollars for each ton of hazardous waste transported off the site, excluding the water content of any waste that is transported to another facility under the ownership of the generator for the purposes of waste treatment or recycling.

2. A person who generates hazardous waste or owns or operates a facility which treats or disposes of hazardous waste at the facility shall pay the following fees:

- a. Forty dollars for each ton of hazardous wastes placed, deposited, dumped or disposed of onto or into the land at a disposal facility in Iowa.

- b. Two dollars for each ton of hazardous waste destroyed or treated at the generator's site or at the disposal facility to render the hazardous waste nonhazardous.

3. Fees specified in subsections 1 and 2 shall not be imposed on the state or any of its political subdivisions.

4. Fees specified in subsections 1 and 2 shall not be imposed on any of the following:

- a. Hazardous waste that is reclaimed or reused for energy or materials.
- b. Hazardous waste that is transformed into new products which are not wastes.
- c. Hazardous wastes created or retrieved as a result of remedial actions at an abandoned or uncontrolled hazardous waste site.
- d. Influent waste water to a treatment facility which is subject to regulation under either 33 U.S.C. 1317(b) or 33 U.S.C. 1342.
- e. A hazardous waste which due to its intrinsic physical, chemical or biological composition degrades, decomposes or changes physical characteristics so as to be rendered or considered nonhazardous without any form of external mechanical, physical or chemical treatment being introduced. However, such change to a nonhazardous nature must occur within twenty-four hours of the generation of the hazardous waste before the exemption granted in this paragraph is applicable.

5. Fees imposed by this section shall be paid to the department on an annual basis. Fees are due on April 15 for the previous calendar year. The payment shall be accompanied by a return in the form prescribed by the department.

6. A person required to pay fees by this section who fails or refused to pay the fees imposed by this section shall be assessed a penalty of fifteen percent of the fee due. The penalty shall be paid in addition to the fee due.

7. Moneys collected or received by the department pursuant to this section shall be transmitted to the treasurer of state for deposit in the hazardous waste remedial fund.

8. The fees imposed by this section shall be suspended if after collection of the fees due from the previous quarter, the hazardous waste remedial fund has a balance in excess of six million dollars. If the balance falls below three million dollars, the fees shall be reimposed commencing the beginning of the next calendar quarter.

Sec. 11. NEW SECTION. 455B.425 ANNUAL REPORT ON HAZARDOUS WASTE REMEDIAL FUND. The executive director shall annually on January 1 give a full accounting of moneys received, moneys expended, sources and recipients, and purposes of the expenditures for the preceding fiscal year in the hazardous waste remedial fund to the general assembly and the governor.

Sec. 12. NEW SECTION. 455B.426 REGISTRY OF ABANDONED OR UNCONTROLLED DISPOSAL SITES.

1. The executive director shall maintain and make available for public inspection a registry of confirmed abandoned or uncontrolled hazardous waste disposal sites in the state. The executive director shall take all necessary action to ensure that the registry provides a complete listing of all sites. The registry shall contain the exact location of each site and identify the types of waste found at each site.

2. The executive director shall investigate all known or suspected abandoned or uncontrolled sites and determine whether each site should be included in the registry. In the evaluation of known or suspected abandoned or uncontrolled sites, the executive director may enter private property and perform tests and analyses in the manner provided in section 455B.416.

Sec. 13. NEW SECTION. 455B.427 ANNUAL REPORT ON ABANDONED OR UNCONTROLLED HAZARDOUS WASTE DISPOSAL SITES.

1. The executive director shall annually on January 1 transmit a report to the general assembly and the governor identifying all abandoned or uncontrolled hazardous waste disposal sites in the state listed on the registry. A copy of the report shall also be sent to the board of supervisors of every county containing a site.

2. The annual report shall include, but is not limited to, the following information for each site:

a. A general description of the site, including the name and address of the site, the type and quantity of the hazardous waste disposed of at the site and the name of the current owners of the site.

b. A summary of significant environmental problems at or near the site.

c. A summary of serious health problems in the immediate vicinity of the site and health problems deemed by the executive director in cooperation with the state department of health to be related to conditions at the site.

d. The status of testing, monitoring or remedial actions in progress or recommended by the executive director.

e. The status of pending legal actions and federal, state or local government permits concerning the site.

f. The relative priority for remedial action at each site.

g. The proximity of the site to private residences, public buildings or property, school facilities, places of work or other areas where individuals may be regularly present.

3. In developing and maintaining the annual report, the executive director shall assess the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes at the sites. In making its assessments of relative priority, the executive director, in cooperation with the state department of health on matters relating to public health, shall place every site in one of the following classifications:

a. Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment—immediate action required.

b. Significant threat to the environment—action required.

c. Not a significant threat to the public health or environment—action may be deferred.

d. Site properly closed—requires continued management.

e. Site properly closed, no evidence of present or potential adverse impact—no further action required.

4. A site classified as properly closed under subsection 3, paragraph "e", shall be removed from all subsequent annual reports and the register of abandoned or uncontrolled sites.

5. The executive director shall work with the department of health when assessing the effects of an abandoned or uncontrolled site on human health.

Sec. 14. NEW SECTION. 455B.428 INVESTIGATION OF SITES.

1. The executive director shall investigate each abandoned or uncontrolled hazardous waste disposal site listed in the registry to determine its relative priority.

2. The executive director shall identify each abandoned or uncontrolled site by providing all of the following:

a. The address and site boundaries.

b. The time period of use for disposal of hazardous waste.

c. The name of the current owner and operator and names of reported owners and operators during the time period of use for disposal of hazardous waste.

d. The names of persons responsible for the generation and transportation of the hazardous waste disposed of at the site.

e. The type, quantity and manner of hazardous waste disposal.

3. When preliminary evidence suggests further assessment is necessary, the executive director may assess any of the following:

- a. The depth of the water table at the site.
- b. The nature of soils at the site.
- c. The location, nature and size of aquifers at the site.
- d. The direction of present and historic groundwater flows at the site.
- e. The location and nature of surface waters at and near the site.
- f. The levels of contaminants in groundwater, surface water, air and soils at and near the site resulting from hazardous wastes disposed of at the site.
- g. The current quality of all drinking water drawn from or distributed through the area in which the site is located if the executive director determines that water quality may have been affected by the site.

4. The executive director shall maintain a site assessment file for each site listed in the registry. The file shall contain all information obtained pursuant to this section and shall be open to the public. Information in the file may be reproduced by any person at a charge not to exceed the actual cost of reproduction for copies of file information.

**Sec. 15. NEW SECTION. 455B.429 NOTIFICATION TO OWNERS – APPEALS.**

1. Within sixty days after the effective date of this Act, the executive director shall notify the owner of any part of a site to be included in the registry required by section 455B.426. The notice shall be sent by certified mail to the owner's last known address. Thirty days before a site is added to the registry, the executive director shall notify the owner of any part of the site by certified mail of the proposed addition to the registry. The notice shall be sent by certified mail to the owner's last known address.

2. An owner or operator of a site proposed for listing in the registry or listed in the registry pursuant to section 455B.426, may petition the executive director for deletion of the site, modification of the site classification, or modification of any information regarding the site. A site shall not be listed on the registry until a final determination has been made on any appeal initiated under this section. An appeal is a contested case for the purposes of chapter 17A.

3. Within ninety days after the submission of an appeal, the department shall conduct a hearing to review the determination. At least thirty days prior to the hearing the department shall publish a notice of hearing in a newspaper of general circulation in the county in which the site is located. The department shall also notify in writing the owner or operator of the site at least thirty days prior to the hearing.

4. At least thirty days following the hearing, the department shall provide the owner or operator with a written determination accompanied by reasons for the determination on the appeal.

5. Within ten days of a determination, the executive director shall notify the local governments with jurisdiction over the site whenever a change is made in the registry pursuant to this section.

**Sec. 16. NEW SECTION. 455B.430 USE AND TRANSFER OF SITES.**

1. A person shall not substantially change the manner in which an abandoned or uncontrolled hazardous waste disposal site on the registry pursuant to section 455B.426 is used without the written approval of the executive director.

2. A person shall not sell, convey or transfer title to an abandoned or uncontrolled hazardous waste disposal site which is on the registry pursuant to section 455B.426 without the written approval of the executive director. The executive director shall respond to a request for a change of ownership within thirty days of its receipt.

3. Decisions of the executive director concerning the use or transfer of an abandoned or uncontrolled hazardous waste site may be appealed in the manner provided in section 455B.429.

4. If the executive director has reason to believe this section has been violated, or is in imminent danger of being violated, the executive director may institute a civil action in district court for injunctive relief to prevent the violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation. Moneys collected under this subsection shall be deposited in the hazardous waste remedial fund.

Sec. 17. NEW SECTION. 455B.431 RECORDING OF SITE DESIGNATION. When the executive director places a site on the registry as provided in section 455B.426, then the executive director shall file with the county recorder a statement disclosing the period during which the site was used as a hazardous waste disposal area. When the executive director finds that a site on the registry has been properly closed under section 455B.427, subsection 3, paragraph "e", with no evidence of potential adverse impact, this finding shall be filed with the county recorder. The finding shall state that the executive director's finding does not warrant to a future purchaser of the site that the site will be free from any future adverse impacts as a result of use of the site as a hazardous waste disposal site.

Sec. 18. NEW SECTION. 455B.432 LIABILITY. Acts or omissions of the executive director or the department in carrying out the duties imposed by sections 455B.423 through 455B.431 shall not be cause for a claim against the state within the meaning of chapter 25A.

Sec. 19. The fees imposed by section 455B.424, subsection 2, shall not begin to accrue until July 1, 1985.

Approved April 19, 1984

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**CHAPTER 1109**  
**LEE COUNTY LEGALIZING ACT**  
*S.F. 2057*

**AN ACT** to legalize the proceedings of the board of supervisors of Lee county relating to the compensation of certain county officers and deputies.

WHEREAS, section 340.2, unnumbered paragraph 2, Code 1981, authorized the payment of additional compensation for certain county officers and deputies in counties having two places at which the district court is held; and

WHEREAS, the board of supervisors of Lee county approved the additional compensation authorized by the 1981 Code for the 1981-1982 fiscal year; and

WHEREAS, in 1981 the general assembly repealed the authorization for additional compensation for those counties having two court houses and the repeal became effective July 1, 1981; and

WHEREAS, the additional compensation to certain county officers and deputies was paid as originally approved for the 1981-1982 fiscal year; and

WHEREAS, doubts have arisen as to the validity of the payment of the additional compen-