

Original Measure 4/2/91
2/28/91 4/5/91

FILED MAR 20 1991

SENATE FILE 446
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 256)

Passed Senate, Date 4/4/91 (p. 1034) Passed House, Date 4/1/92 (p. 975)
Vote: Ayes 46 Nays 0 Vote: Ayes 78 Nays 20
Approved April 22, 1992

A BILL FOR

1 An Act relating to agricultural chemicals, by regulating the use
2 of chemicals in irrigation distribution systems, providing for
3 fees, providing for penalties, and providing for an effective
4 date and date of applicability.

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

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

SF 446

1 Section 1. Section 206.2, Code 1991, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 30. "Chemigation" means the application
4 of a chemical to land or plants, if the chemical is injected
5 into water used in an irrigation distribution system as
6 provided in section 206A.4.

7 Sec. 2. Section 206.5, Code 1991, is amended by striking
8 the subsection and inserting in lieu thereof the following:

9 6. A commercial, private, or public applicator shall not
10 apply a pesticide as part of chemigation without first
11 complying with the certification requirements of section
12 206A.5. An examination or reexamination of a commercial,
13 public, or private applicator required pursuant to section
14 206A.5, shall be part of the examination or reexamination
15 provided by this section. An applicator shall be exempt from
16 the fee required under this section, if the applicator elects
17 to satisfy examination or reexamination requirements set forth
18 in section 206A.5 and has paid the examination or
19 reexamination fee required in section 206A.5.

20 Sec. 3. Section 206.22, Code 1991, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 4. A penalty imposed pursuant to this
23 section shall be in addition to and not in lieu of any penalty
24 which may be imposed upon a person pursuant to section
25 206A.11.

26 Sec. 4. NEW SECTION. 206A.1 DEFINITIONS.

27 As used in this chapter, unless the context otherwise
28 requires:

29 1. "Applicator" means a person applying chemicals by
30 chemigation.

31 2. "Chemical" means a fertilizer as defined in section
32 200.3 or a pesticide or plant growth regulator as defined in
33 section 206.2.

34 3. "Chemigation" means the application of a chemical to
35 land or plants, if the pesticide is injected into water used

1 in an irrigation distribution system.

2 4. "Chemigation permit" means a permit issued by the
3 department authorizing a person to apply a chemical to land or
4 plants, if the chemical is injected into water used in an
5 irrigation distribution system. A chemigation permit includes
6 a permit, renewal, or emergency permit as provided in section
7 206A.2.

8 5. "Commercial applicator" means the same as defined in
9 section 206.2.

10 6. "Farming" means the same as defined in section 172C.1.

11 7. "Injection location" means a site where a chemical is
12 applied through an irrigation distribution system.

13 8. "Irrigation distribution system" means a mechanism
14 containing a conduit, including but not limited to a hose or
15 pipe, which connects directly to a water source of groundwater
16 or surface water through which water is drawn and applied for
17 purposes of farming. An irrigation distribution system does
18 not include a mechanism which is constructed to provide that
19 an interruption in water flow automatically prevents a
20 backflow of water to the water source.

21 9. "Open discharge system" means a system in which water
22 is pumped or diverted directly into a channel, including a
23 ditch or canal, if the system prevents the force of gravity,
24 located at the point of discharge of water into the channel,
25 to cause the water to flow back to the point from which the
26 water was pumped or diverted.

27 10. "Permit holder" means the person issued a permit
28 pursuant to section 206A.2.

29 11. "Pesticide" means the same as defined in section
30 206.2.

31 12. "Restricted use pesticide" means the same as defined
32 in section 206.2.

33 328933 Sec. 5. NEW SECTION. 206A.2 CHEMIGATION PERMIT.

34 1. Land shall not be subject to chemigation, unless a
35 chemigation permit is issued by the department. The permit

1 shall be issued to the titleholder of the land or the person
2 responsible for the day-to-day management of the land. The
3 chemigation permit shall expire one year from the date of its
4 issuance. However, a person is not required to obtain a
5 permit to pump or divert water to or through an open discharge
6 system. A person shall not install a new injection location
7 unless the injection location is subject to a chemigation
8 permit. The department shall review each application and
9 either approve or deny the application within forty-five days
10 after the application is filed with the department. The
11 department may approve a permit only upon inspection of the
12 land subject to chemigation. The department may approve an
13 application and issue a chemigation permit, if the irrigation
14 distribution system complies with the requirements of this
15 chapter, and the applicator is certified pursuant to section
16 206A.5. The department shall disapprove a permit for good
17 cause as provided in subsection 4.

18 2. The department may issue an emergency chemigation
19 permit upon application by a person. The department shall
20 review each emergency application and approve or deny the
21 application within forty-eight hours after the application is
22 filed. The department may approve an application for an
23 emergency permit if the irrigation distribution system
24 complies with equipment requirements of section 206A.4 and the
25 applicator has been certified under section 206A.5. The
26 department may disapprove a permit for good cause as provided
27 in subsection 4. If the department does not approve an
28 application for an emergency chemigation permit within forty-
29 eight hours, the application shall be deemed approved. A
30 permit issued under this subsection shall be valid for a
31 period of forty-five days from the date of issuance.

32 3. The department shall publish and distribute forms for
33 applications, including applications for chemigation permits,
34 renewal of chemigation permits, and emergency chemigation
35 permits. The rules shall specify information required to be

1 contained in the application. An application shall be
2 submitted according to procedures which shall be adopted by
3 the department. An application shall at least include all of
4 the following:

- 5 a. The name and address of the person seeking the permit.
- 6 b. The location of land subject to chemigation.
- 7 c. A description of the irrigation system and information
8 regarding each injection location.
- 9 d. The name of each chemical to be injected in the
10 chemigation process.

11 If the application seeks an emergency chemigation permit,
12 the application shall specify conditions which cause the
13 emergency. If the application seeks to renew a permit, the
14 application must include the names of all chemicals used in
15 chemigation for the previous year. An emergency chemigation
16 permit is not renewable.

17 4. The department shall deny an application for a
18 chemigation permit, and shall suspend or revoke a chemigation
19 permit, for good cause. As used in this section, "good cause"
20 means that the department has evidence of any of the
21 following:

- 22 a. The applicant committed fraud or deceit in obtaining a
23 chemigation permit.
- 24 b. The permit holder refused an inspection pursuant to
25 section 206A.3.
- 26 c. The permit holder has authorized an applicator to
27 inject a chemical within an irrigation distribution system, if
28 the applicator was not certified pursuant to section 206A.5.
- 29 d. Land described in an application or subject to a permit
30 has been applied with a chemical in violation of this chapter.
- 31 e. The permit holder failed to post a notice warning the
32 public that a chemical was applied in an irrigation
33 distribution system pursuant to section 206A.6.
- 34 f. A report of contamination or suspected contamination
35 was not filed by the permit holder or an applicator pursuant

1 to section 206A.7.

2 g. The permit holder failed to comply with a plan of
3 cleanup or recovery as provided in section 206A.7.

4 5. The department shall establish fees for reviewing
5 applications and renewing permits. The fee for reviewing an
6 application for a chemigation permit shall not exceed thirty
7 dollars. The fee for reviewing an application for an
8 emergency chemigation permit shall not exceed one hundred
9 dollars. The fee for renewing a chemigation permit shall not
10 exceed ten dollars. The fees shall be deposited into the
11 chemigation fund established pursuant to section 206A.10.

12 6. A permit shall be conditioned upon the right of the
13 department to inspect the land subject to chemigation and the
14 irrigation distribution system pursuant to section 206A.3.

15 Sec. 6. NEW SECTION. 206A.3 INSPECTIONS.

16 1. The department shall conduct areawide, selective, and
17 periodic inspections of land subject to chemigation in order
18 to ensure compliance with this chapter or rules adopted by the
19 department pursuant to this chapter. The department shall
20 inspect land which the department believes has been subjected
21 to chemigation in violation of this chapter. The department
22 shall make reasonable efforts to obtain consent from the
23 titleholder of the land, permit holder, or an authorized
24 representative, including a person responsible for managing
25 the day-to-day operations of the land. The district court in
26 Polk county or in the county where the land is located shall
27 upon probable cause issue a search warrant to the department
28 to carry out the inspection. The department may be issued a
29 warrant before or after making reasonable efforts to obtain
30 consent for an inspection. The department is not required to
31 obtain consent or be issued a warrant if emergency conditions
32 require immediate action by the department.

33 2. A person shall not refuse entry or access to the
34 department as a condition of an inspection under this section,
35 if the person is presented with appropriate credentials and a

1 search warrant. A person shall not obstruct, interfere, or
2 hamper with the inspection.

3 3. Upon request, the department shall provide a report of
4 the inspection to the titleholder, permit holder, or
5 authorized representative. The report shall detail findings
6 of the department relating to compliance with this chapter.

7 4. The entry by the department upon land subject to an
8 inspection as provided by this section shall not be considered
9 to be trespass and damages shall not be recoverable based on
10 the entry or damage to crops caused by the inspection.

11 Sec. 7. NEW SECTION. 206A.4 IRRIGATION DISTRIBUTION
12 SYSTEMS.

13 1. The department shall establish, by rule, requirements,
14 procedures, and standards relating to the operation of
15 irrigation distribution systems to prevent the contamination
16 of water supplies caused by chemigation. The rules shall
17 specify the types of equipment used in irrigation distribution
18 systems and design standards for such equipment. The rules
19 shall provide for the installation, operation, and maintenance
20 of irrigation pipes. The rules shall also provide for the
21 installation, operation, and maintenance of equipment serving
22 the following purposes:

- 23 a. To check the performance of the system.
- 24 b. To ensure that chemicals drain away from a source water
25 supply.
- 26 c. To monitor the injection of chemicals into an
27 irrigation distribution system.
- 28 d. To protect a water supply from contamination.

29 2. The rules adopted under this section shall not impose
30 an unduly severe burden on a person without substantially
31 contributing to the prevention of water contamination.

32 Sec. 8. NEW SECTION. 206A.5 CHEMIGATION APPLICATOR
33 CERTIFICATION REQUIREMENTS.

34 1. An applicator shall choose between a one-year
35 certification for which the applicator shall pay a thirty

1 dollar fee or a three-year certification for which the
2 applicator shall pay a seventy-five dollar fee. Fees
3 collected pursuant to this section shall be deposited into the
4 chemigation fund. An applicator is exempt from the fee
5 required under this section, if the applicator elects to
6 satisfy examination or reexamination requirements set forth
7 pursuant to subsection 3, and the applicator is certified
8 pursuant to section 206.5.

9 2. Before being certified, the applicator shall complete
10 an educational program as follows:

11 a. The applicator shall be examined prior to initial
12 certification. In addition, the applicator shall be
13 reexamined every three years following initial certification
14 before the applicator is eligible for a renewal of
15 certification. The department shall adopt, by rule,
16 requirements for the examination, reexamination, and
17 certification of applicants. Examinations and reexaminations
18 under this chapter shall be held in conjunction with those
19 required pursuant to section 206.5. The secretary shall also
20 adopt by rule, the criteria for allowing the selection of a
21 written or oral examination by a person requiring
22 certification.

23 b. The applicator may elect, in lieu of satisfying an
24 examination or reexamination requirement, to complete five
25 hours of instructional courses each year. The instructional
26 courses shall be administered by the department, an agency
27 approved by the department, or an organization certified by
28 the department. An organization representing chemigation
29 applicators may be certified to administer the instructional
30 courses.

31 An educational program administered pursuant to this
32 subsection shall include areas relating to chemigation, the
33 safe handling of chemicals, the effects of chemicals on water
34 supplies, and the installation, operation, and maintenance of
35 irrigation distribution systems in which chemigation is used.

1 3. The department may suspend or revoke a certificate
2 issued under this section, if an applicator does any of the
3 following:

4 a. Applies chemicals by chemigation in violation of
5 section 206A.4.

6 b. Applies chemicals by chemigation by use of equipment or
7 a device that the applicator knows is defective, if such use
8 violates requirements of this chapter, including rules adopted
9 by the department.

10 c. Fails to report contamination of a water supply as
11 provided in section 206A.7 which results from chemigation, if
12 the contamination is known to the applicator, or should have
13 been known to an applicator trained to perform similar
14 functions.

15 d. Violates a provision of this chapter or rule adopted by
16 the department pursuant to this chapter.

17 Sec. 9. NEW SECTION. 206A.6 NOTICE OF CHEMICAL USE
18 REQUIRED.

19 A permit holder shall post a notice warning the public that
20 chemicals are applied in an irrigation distribution system,
21 and that land is being applied with chemicals by means of
22 chemigation. The notice shall name any restricted use
23 pesticide applied in the irrigation distribution system. The
24 notice shall be posted on the land subject to chemigation in a
25 manner and according to procedures adopted by departmental
26 rule.

27 Sec. 10. NEW SECTION. 206A.7 CONTAMINATION REPORT.

28 A permit holder or an applicator certified pursuant to
29 section 206A.5 shall report an actual or suspected case of
30 contamination related to the use of chemigation on land
31 subject to the permit or where the applicator is using
32 chemigation. The report shall be made promptly to the
33 department according to rules which shall be adopted by the
34 department. The department shall investigate the report
35 within forty-eight hours of the report. The department shall

1 take all actions necessary to protect the public. The
2 department shall establish a plan of cleanup and recovery.
3 The plan shall be carried out by the permit holder under the
4 supervision of the department.

5 Sec. 11. NEW SECTION. 206A.8 COOPERATION BY OTHER
6 AGENCIES.

7 The department of natural resources shall cooperate with
8 the department of agriculture and land stewardship in adopting
9 rules required pursuant to this chapter. The department of
10 natural resources shall also cooperate with the department of
11 agriculture and land stewardship in enforcing provisions of
12 this chapter and rules adopted pursuant to this chapter. The
13 department of natural resources and the Iowa cooperative
14 extension service in agriculture and home economics at Iowa
15 state university of science and technology shall cooperate
16 with the department of agriculture and land stewardship in
17 administering instructional courses required pursuant to
18 section 206A.5.

19 Sec. 12. NEW SECTION. 206A.9 REMEDIES -- DISCIPLINARY
20 ACTION AND INJUNCTIVE RELIEF.

21 1. The department may initiate disciplinary action against
22 a person under this section by doing any of the following:

23 a. Referring any case of a violation pursuant to this
24 chapter to the county attorney in the county where the
25 violation occurs or to the attorney general.

26 b. Suspending or revoking a chemigation permit issued
27 pursuant to section 206A.2.

28 c. Suspending or revoking a certificate issued pursuant to
29 section 206A.5.

30 The department shall not initiate disciplinary action until
31 the department provides at least ten days' notice to a person
32 of a violation committed by the person. The notice shall be
33 delivered by personal service or by certified mail.

34 Acceptance of the notice does not constitute evidence of a
35 violation. The department shall make every reasonable effort

1 to obtain voluntary compliance.

2 The county attorney may initiate a prosecution under this
3 section regardless of notice received by the department. If
4 the county attorney does not initiate prosecution within
5 thirty days after receiving the department's referral, the
6 department shall notify the attorney general who shall
7 initiate the prosecution. Voluntary compliance shall not
8 preclude the department, a county attorney, or the attorney
9 general from carrying out disciplinary action under this
10 section.

11 2. Prosecution may be waived, if the waiver is conditioned
12 upon compliance by the violator with a schedule for curing the
13 violation. The schedule must be approved by the department
14 and by the county attorney or attorney general if one of them
15 has been asked to prosecute the case. If the violation is
16 cured pursuant to the schedule, no prosecution shall be
17 initiated based on that violation.

18 3. The department may bring an action in district court in
19 the county where a violation is occurring to enjoin a person
20 from actions which may threaten the public safety. The
21 department, acting as petitioner in the action, shall not be
22 required to allege facts necessary to show, or tending to
23 show, a lack of adequate remedy at law, that irreparable
24 damage or injury will result if the action is brought at law,
25 or that unique or special circumstances exist.

26 Sec. 13. NEW SECTION. 206A.10 CHEMIGATION FUND.

27 1. A chemigation fund is created in the state treasury
28 under the control of the secretary. The fund is composed of
29 moneys deposited from the following sources:

30 a. Collected and dedicated to the fund under this chapter,
31 including fees dedicated to the fund pursuant to section
32 206A.2 and 206A.5.

33 b. Appropriated to the fund by the general assembly.

34 c. Accepted for deposit into the fund by the secretary
35 from the United States, other states in the union, foreign

1 nations, state agencies, political subdivisions, and private
2 sources.

3 2. Moneys deposited into the fund shall be used to
4 administer and enforce this chapter.

5 3. Moneys in the fund shall be subject to an annual audit
6 by the auditor of state. The fund shall be subject to
7 warrants by the director of revenue and finance, drawn upon
8 the written requisition of the secretary or an authorized
9 representative of the secretary.

10 4. All interest earned on proceeds in the fund shall
11 remain in the fund. Section 8.33 does not apply to moneys in
12 the fund.

13 ⁸⁵⁴ Sec. 14. NEW SECTION. 206A.11 PENALTIES.

14 1. a. A person required to obtain a chemigation permit
15 pursuant to section 206A.2 who fails to obtain or retain the
16 permit is subject to a civil penalty not to exceed two hundred
17 fifty dollars.

18 b. A person who applies chemicals without obtaining or
19 retaining a certification as required pursuant to section
20 206A.5 is subject to a civil penalty not to exceed two hundred
21 fifty dollars.

22 c. A person who willfully tampers with or destroys
23 equipment required pursuant to section 206A.4 used to protect
24 water supplies from chemigation is subject to a civil penalty
25 not to exceed three hundred dollars, if the tampering or
26 destruction causes contamination or threatens to cause
27 contamination of a water supply.

28 d. A person who fails to report contamination or suspected
29 contamination of a water supply as required pursuant to
30 section 206A.7 is subject to a civil penalty not to exceed one
31 thousand dollars.

32 e. A person who fails to erect a notice or destroy a
33 notice as required pursuant to section 206A.6 is subject to a
34 civil penalty not to exceed one hundred dollars.

35 f. A person who fails to file a report required in section

1 206A.7 is subject to a civil penalty not to exceed one hundred
2 dollars.

3 2. Each day that a violation continues constitutes a
4 separate offense. However, a person shall not be subject to a
5 civil penalty of more than one thousand dollars, if the
6 penalty is based on a continuing violation. The department
7 shall not consider a day that an offense continues as a
8 separate violation if the offense is beyond the control of the
9 person to cure.

10 3. Moneys collected from civil penalties shall be
11 deposited into the general fund of the state.

12 4. The penalties provided in this section are separate and
13 cumulative. The penalties are in addition to and not in lieu
14 of penalties imposed by provisions in other chapters,
15 including chapter 206.

16 Sec. 15. EFFECTIVE DATE AND DATE OF APPLICABILITY.

17 1. This Act, being deemed of immediate importance, takes
18 effect upon enactment.

19 2. The department of agriculture and land stewardship
20 shall adopt rules to administer this Act as soon as
21 practicable. All rules required under this Act shall be
22 adopted by January 1, 1992. This subsection does not
23 authorize the department to adopt emergency rules.

24 3. A person shall not be required to comply with
25 requirements of this Act until three months following adoption
26 of all rules required to be adopted by the department of
27 agriculture and land stewardship.

28 EXPLANATION

29 This bill relates to the regulation of chemicals injected
30 in irrigation distribution systems used to produce crops on
31 agricultural land. The bill defines the process of applying
32 such chemicals as "chemigation". The bill creates a new
33 chapter tentatively reserved as chapter 206A, and amends
34 related chapter 206 regulating pesticides. Both chapters
35 would be regulated by the department of agriculture and land

1 stewardship.

2 The bill amends chapter 206 to provide that an examination
3 required for commercial, private, or public applicators of
4 pesticides under the chapter shall be held in conjunction with
5 an examination for applicators using chemigation as required
6 in chapter 206A. The bill also provides that a person taking
7 both examinations is not subject to a double fee.

8 The bill provides that land shall not be subject to
9 chemigation, unless a chemigation permit is issued by the
10 department. The bill provides for the contents of an
11 application for a permit and procedures for approving the
12 permit. The department may also issue an emergency
13 chemigation permit. The bill provides for the denial of an
14 application and for the suspension or revocation of a permit
15 for good cause. The department is required to establish fees
16 for reviewing applications and renewing permits. The fee for
17 reviewing an ordinary application shall not exceed thirty
18 dollars.

19 The bill provides for inspections by the department. The
20 bill provides for notice to persons subject to inspections and
21 for procedures related to obtaining search warrants to enter
22 onto property for purposes of conducting an inspection.

23 The bill provides that the department must establish, by
24 rule, requirements, procedures, and standards relating to the
25 operation of irrigation systems to prevent the contamination
26 of water supplies caused by chemigation. The bill prohibits
27 the department from adopting rules which impose an undue
28 severe burden upon a person without substantially contributing
29 to the prevention of water contamination.

30 The bill requires applicators involved in chemigation to be
31 certified. The bill provides for charging fees for
32 certification. In addition, the bill provides that
33 certification may be accomplished by attending instruction
34 courses administered by the department. The bill provides for
35 the suspension or revocation of a certificate by the

1 department.

2 The bill provides for the posting of notices warning the
3 public that chemicals are applied in an irrigation
4 distribution system, and that land is subject to chemical
5 application by means of chemigation. A person issued a permit
6 or certified as a chemigation applicator is required to report
7 an actual or suspected case of contamination related to the
8 use of chemigation.

9 The bill requires the department of natural resources and
10 the Iowa cooperative extension service in agriculture and home
11 economics at Iowa state university of science and technology
12 to cooperate with the department of agriculture and land
13 stewardship in administering provisions of the bill.

14 The bill creates a chemigation fund. The bill provides
15 that the fund may contain moneys dedicated to the fund from a
16 variety of sources. The fund is subject to an annual audit.
17 The bill also provides that moneys collected pursuant to
18 chapter 206A shall be deposited into the fund for purposes of
19 administering and enforcing chapter 206.

20 The bill provides for disciplinary action initiated against
21 a person failing to meet requirements of the chapter. The
22 department may refer a case of violation to the county
23 attorney in the county where the violation occurs or to the
24 attorney general. The bill provides for a notice to be sent
25 to the violator before the case is referred for prosecution.
26 The department is provided the right to seek injunctive relief
27 in district court to restrain violations of the chapter.

28 The bill provides that violations of the chapter are
29 subject to civil penalties. The department may consider each
30 day that a violation occurs as a separate violation. A person
31 shall not be subject to a civil penalty of more than \$1,000
32 for a continuing violation.

33 The bill takes effect upon enactment. The department is
34 required to adopt rules under the bill without delay, but not
35 later than January 1, 1992. A person is not required to

1 comply with the Act until three months following adoption of
2 the departmental rules.

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

SENATE FILE 446

S-3289

- 1 Amend Senate File 446 as follows:
- 2 1. Page 3, by striking lines 8 through 11 and in-
3 serting the following: "permit. The department shall
4 establish procedures for the review and approval of
5 applications for chemigation permits. The department
6 shall automatically grant all applications for a
7 permit submitted before July 1, 1993, unless good
8 cause exists to deny the permit as provided in
9 subsection 4. The department shall, to the extent
10 practicable, inspect land subject to chemigation after
11 the automatic granting of a permit. A permit shall
12 expire ten years after its issuance. On and after
13 July 1, 1993, the department may approve an
14 application for a new permit only upon inspection of
15 the".
- 16 2. Page 3, line 16, by striking the words "a
17 permit" and inserting the following: "an
18 application".
- 19 3. Page 3, line 18, by striking the words "an
20 emergency" and inserting the following: "a
21 temporary".
- 22 4. Page 3, line 20, by striking the word
23 "emergency" and inserting the following: "temporary".
- 24 5. Page 3, line 21, by striking the words "forty-
25 eight hours" and inserting the following: "forty-five
26 days".
- 27 6. Page 3, lines 22 and 23, by striking the words
28 "an emergency" and inserting the following: "a
29 temporary".
- 30 7. Page 3, line 28, by striking the words "an
31 emergency" and inserting the following: "a
32 temporary".
- 33 8. Page 3, lines 28 and 29, by striking the words
34 "forty-eight hours" and inserting the following:
35 "forty-five days".
- 36 9. Page 3, line 34, by striking the word
37 "emergency" and inserting the following: "temporary".
- 38 10. Page 4, line 11, by striking the words "an
39 emergency" and inserting the following: "a
40 temporary".
- 41 11. Page 4, line 13, by striking the word
42 "emergency" and inserting the following: "need for
43 such a permit".
- 44 12. Page 4, line 15, by striking the words "An
45 emergency" and inserting the following: "A
46 temporary".
- 47 13. Page 4, line 22, by striking the word
48 "obtaining" and inserting the following: "seeking to
49 obtain".
- 50 14. Page 4, line 24, by inserting before the word

S-3289

Page 2

1 "permit" the following: "applicant or".

2 15. Page 5, lines 7 and 8, by striking the words
3 "an emergency" and inserting the following: "a
4 temporary".

5 16. Page 5, line 19, by inserting after the word
6 "chapter." the following: "The department shall
7 inspect land subject to chemigation at least once each
8 three years."

9 17. Page 8, line 34, by striking the word
10 "investigate" and inserting the following: "initiate
11 an investigation of".

12 18. Page 12, by striking lines 17 and 18 and
13 inserting the following:

14 "1. Sections 1 through 14 of this Act take effect
15 on January 1, 1992."

16 19. Page 12, by striking lines 24 through 27.

17 20. By renumbering as necessary.

By ALVIN V. MILLER

S-3289 FILED APRIL 3, 1991

(Adopted 4/4/91 (p 103))

**SENATE FILE 446
FISCAL NOTE**

A fiscal note for Senate File 446 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 446 establishes a system for regulation of chemicals injected into irrigation systems and used for producing crops on agricultural land (chemigation) to be administered by the Department of Agriculture and Land Stewardship (DALs).

Permit fees are to be set by the DALs and the department is responsible for performing inspections and establishing rules relating to chemigation. Applicators involved in chemigation must be certified, and certification may be attained by attending instruction courses administered by the DALs.

A Chemigation Fund is created to contain monies collected which are to be used for the purposes of administering and enforcing the provisions of this bill.

Assumptions:

1. ISU will cooperate with DALs in administering instructional courses.
2. There are 1,720 permitted irrigators which would require chemigation permits.
3. All applicants for permits require an inspection before a permit is issued and an annual inspection thereafter.

	Fiscal Year 1992			Fiscal Year 1993		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
REVENUE						
Fees	\$ 0	\$ 94,600	\$ 94,600	\$ 0	\$ 60,200	\$ 60,200
Total	\$ 0	\$ 94,600	\$ 94,600	\$ 0	\$ 60,200	\$ 60,200
EXPENDITURES						
DALS Salaries	\$ 0	\$ 316,287	\$ 316,287	\$ 0	\$ 324,622	\$ 324,622
DALS Support	0	21,320	21,320	0	21,320	21,320
DALS Capitals	0	89,800	89,800	0	0	0
ISU Salaries	0	25,000	25,000	0	18,000	18,000
ISU Support	0	20,000	20,000	0	10,000	10,000
Total	\$ 0	\$ 472,407	\$ 472,407	\$ 0	\$ 373,942	\$ 373,942
NET EFFECT	\$ 0	\$ (377,807)	\$ (377,807)	\$ 0	\$ (313,742)	\$ (313,742)

Source: Department of Agriculture and Land Stewardship (LSB 1940sv, AAW)

FILED MARCH 26, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 446
FISCAL NOTE

REQ. BY SENATOR MILLER

A fiscal note for Senate File 446 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 446 establishes a system for regulation of chemicals injected into irrigation systems and used for producing crops on agricultural land (chemigation) to be administered by the Department of Agriculture and Land Stewardship (DALS).

Permit fees are to be set by the DALS and the department is responsible for performing inspections and establishing rules relating to chemigation. Applicators involved in chemigation must be certified, and certification may be attained by attending instruction courses administered by the DALS.

A Chemigation Fund is created to contain monies collected which are to be used for the purposes of administering and enforcing the provisions of this bill.

Assumptions:

1. There are 1,720 permitted irrigators. The Irrigators' Association states that less than 10% of their members use chemigation, and the DALS has prepared cost estimates based upon the possibility that 20%, or 344 irrigators could use chemigation.
2. All applicants for permits require an inspection before a permit is issued and an annual inspection thereafter.

	Fiscal Year 1992			Fiscal Year 1993		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
REVENUE						
Fees	\$ 0	\$ 18,920	\$ 18,920	\$ 0	\$ 12,040	\$ 12,040
Total	\$ 0	\$ 18,920	\$ 18,920	\$ 0	\$ 12,040	\$ 12,040
EXPENDITURES						
DALS Salaries	\$ 0	\$ 92,903	\$ 92,903	\$ 0	\$ 95,383	\$ 95,383
DALS Support	0	5,460	5,460	0	5,460	5,460
DALS Capitals	0	27,500	27,500	0	0	0
Total	\$ 0	\$ 125,863	\$ 125,863	\$ 0	\$ 100,843	\$ 100,843
NET EFFECT	\$ 0	\$ (106,943)	\$ (106,943)	\$ 0	\$ (88,803)	\$ (88,803)

Source: Department of Agriculture and Land Stewardship (LSB 1940sv.2, AAW)

FILED APRIL 2, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 446
AS AMENDED BY H5451
FISCAL NOTE**

A fiscal note for Senate File 446 as amended by H5451 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 446 establishes a system for regulation of chemicals injected into irrigation systems and used for producing crops on agricultural land (chemigation) to be administered by the Department of Agriculture and Land Stewardship (DALs).

A Chemigation Fund is created to receive application, permit renewal, and permit certification fees which are to be used for the purposes of administering and enforcing the provisions of this bill.

Assumptions:

1. The Irrigators' Association states that less than 100 of their members use chemigation, and the DALs has prepared cost estimates based upon the possibility that 100 irrigators could use chemigation.
2. Administrative rules would allow for initial inspections to be incorporated into existing travel during the interim period from enactment to the January 1, 1994 effective date.

	Fiscal Year 1994			Fiscal Year 1995		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
REVENUE						
Fees	\$ 0	\$ 16,500	\$ 16,500	\$ 0	\$ 15,000	\$ 15,000
Total	\$ 0	\$ 16,500	\$ 16,500	\$ 0	\$ 15,000	\$ 15,000
EXPENDITURES						
DALS Salaries	\$ 0	\$ 14,200	\$ 14,200	\$ 0	\$ 14,700	\$ 14,700
DALS Startup	0	2,100	2,100	0	0	0
Total	\$ 0	\$ 16,300	\$ 16,300	\$ 0	\$ 14,700	\$ 14,700
NET EFFECT	\$ 0	\$ 200	\$ 200	\$ 0	\$ 300	\$ 300

Source: Department of Agriculture and Land Stewardship (LSB 1940sv.3, AAW)

FILED MARCH 25, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

1 Section 1. Section 206.2, Code 1991, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 30. "Chemigation" means the application
4 of a chemical to land or plants, if the chemical is injected
5 into water used in an irrigation distribution system as
6 provided in section 206A.4.

7 Sec. 2. Section 206.5, Code 1991, is amended by striking
8 the subsection and inserting in lieu thereof the following:

9 6. A commercial, private, or public applicator shall not
10 apply a pesticide as part of chemigation without first
11 complying with the certification requirements of section
12 206A.5. An examination or reexamination of a commercial,
13 public, or private applicator required pursuant to section
14 206A.5, shall be part of the examination or reexamination
15 provided by this section. An applicator shall be exempt from
16 the fee required under this section, if the applicator elects
17 to satisfy examination or reexamination requirements set forth
18 in section 206A.5 and has paid the examination or
19 reexamination fee required in section 206A.5.

20 Sec. 3. Section 206.22, Code 1991, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 4. A penalty imposed pursuant to this
23 section shall be in addition to and not in lieu of any penalty
24 which may be imposed upon a person pursuant to section
25 206A.11.

26 Sec. 4. NEW SECTION. 206A.1 DEFINITIONS.

27 As used in this chapter, unless the context otherwise
28 requires:

29 1. "Applicator" means a person applying chemicals by
30 chemigation.

31 2. "Chemical" means a fertilizer as defined in section
32 200.3 or a pesticide or plant growth regulator as defined in
33 section 206.2.

34 3. "Chemigation" means the application of a chemical to
35 land or plants, if the pesticide is injected into water used

1 in an irrigation distribution system.

2 4. "Chemigation permit" means a permit issued by the
3 department authorizing a person to apply a chemical to land or
4 plants, if the chemical is injected into water used in an
5 irrigation distribution system. A chemigation permit includes
6 a permit, renewal, or emergency permit as provided in section
7 206A.2.

8 5. "Commercial applicator" means the same as defined in
9 section 206.2.

10 6. "Farming" means the same as defined in section 172C.1.

11 7. "Injection location" means a site where a chemical is
12 applied through an irrigation distribution system.

13 8. "Irrigation distribution system" means a mechanism
14 containing a conduit, including but not limited to a hose or
15 pipe, which connects directly to a water source of groundwater
16 or surface water through which water is drawn and applied for
17 purposes of farming. An irrigation distribution system does
18 not include a mechanism which is constructed to provide that
19 an interruption in water flow automatically prevents a
20 backflow of water to the water source.

21 9. "Open discharge system" means a system in which water
22 is pumped or diverted directly into a channel, including a
23 ditch or canal, if the system prevents the force of gravity,
24 located at the point of discharge of water into the channel,
25 to cause the water to flow back to the point from which the
26 water was pumped or diverted.

27 10. "Permit holder" means the person issued a permit
28 pursuant to section 206A.2.

29 11. "Pesticide" means the same as defined in section
30 206.2.

31 12. "Restricted use pesticide" means the same as defined
32 in section 206.2.

33 Sec. 5. NEW SECTION. 206A.2 CHEMIGATION PERMIT.

34 1. Land shall not be subject to chemigation, unless a
35 chemigation permit is issued by the department. The permit

1 shall be issued to the titleholder of the land or the person
2 responsible for the day-to-day management of the land. The
3 chemigation permit shall expire one year from the date of its
4 issuance. However, a person is not required to obtain a
5 permit to pump or divert water to or through an open discharge
6 system. A person shall not install a new injection location
7 unless the injection location is subject to a chemigation
8 permit. The department shall establish procedures for the
9 review and approval of applications for chemigation permits.
10 The department shall automatically grant all applications for
11 a permit submitted before July 1, 1993, unless good cause
12 exists to deny the permit as provided in subsection 4. The
13 department shall, to the extent practicable, inspect land
14 subject to chemigation after the automatic granting of a
15 permit. A permit shall expire ten years after its issuance.
16 On and after July 1, 1993, the department may approve an
17 application for a new permit only upon inspection of the land
18 subject to chemigation. The department may approve an
19 application and issue a chemigation permit, if the irrigation
20 distribution system complies with the requirements of this
21 chapter, and the applicator is certified pursuant to section
22 206A.5. The department shall disapprove an application for
23 good cause as provided in subsection 4.

24 2. The department may issue a temporary chemigation permit
25 upon application by a person. The department shall review
26 each temporary application and approve or deny the application
27 within forty-five days after the application is filed. The
28 department may approve an application for a temporary permit
29 if the irrigation distribution system complies with equipment
30 requirements of section 206A.4 and the applicator has been
31 certified under section 206A.5. The department may disapprove
32 a permit for good cause as provided in subsection 4. If the
33 department does not approve an application for a temporary
34 chemigation permit within forty-five days, the application
35 shall be deemed approved. A permit issued under this

1 subsection shall be valid for a period of forty-five days from
2 the date of issuance.

3 3. The department shall publish and distribute forms for
4 applications, including applications for chemigation permits,
5 renewal of chemigation permits, and temporary chemigation
6 permits. The rules shall specify information required to be
7 contained in the application. An application shall be
8 submitted according to procedures which shall be adopted by
9 the department. An application shall at least include all of
10 the following:

11 a. The name and address of the person seeking the permit.

12 b. The location of land subject to chemigation.

13 c. A description of the irrigation system and information
14 regarding each injection location.

15 d. The name of each chemical to be injected in the
16 chemigation process.

17 If the application seeks a temporary chemigation permit,
18 the application shall specify conditions which cause the need
19 for such a permit. If the application seeks to renew a
20 permit, the application must include the names of all
21 chemicals used in chemigation for the previous year. A
22 temporary chemigation permit is not renewable.

23 4. The department shall deny an application for a
24 chemigation permit, and shall suspend or revoke a chemigation
25 permit, for good cause. As used in this section, "good cause"
26 means that the department has evidence of any of the
27 following:

28 a. The applicant committed fraud or deceit in seeking to
29 obtain a chemigation permit.

30 b. The applicant or permit holder refused an inspection
31 pursuant to section 206A.3.

32 c. The permit holder has authorized an applicator to
33 inject a chemical within an irrigation distribution system, if
34 the applicator was not certified pursuant to section 206A.5.

35 d. Land described in an application or subject to a permit

1 has been applied with a chemical in violation of this chapter.

2 e. The permit holder failed to post a notice warning the
3 public that a chemical was applied in an irrigation
4 distribution system pursuant to section 206A.6.

5 f. A report of contamination or suspected contamination
6 was not filed by the permit holder or an applicator pursuant
7 to section 206A.7.

8 g. The permit holder failed to comply with a plan of
9 cleanup or recovery as provided in section 206A.7.

10 5. The department shall establish fees for reviewing
11 applications and renewing permits. The fee for reviewing an
12 application for a chemigation permit shall not exceed thirty
13 dollars. The fee for reviewing an application for a temporary
14 chemigation permit shall not exceed one hundred dollars. The
15 fee for renewing a chemigation permit shall not exceed ten
16 dollars. The fees shall be deposited into the chemigation
17 fund established pursuant to section 206A.10.

18 6. A permit shall be conditioned upon the right of the
19 department to inspect the land subject to chemigation and the
20 irrigation distribution system pursuant to section 206A.3.

21 Sec. 6. NEW SECTION. 206A.3 INSPECTIONS.

22 1. The department shall conduct areawide, selective, and
23 periodic inspections of land subject to chemigation in order
24 to ensure compliance with this chapter or rules adopted by the
25 department pursuant to this chapter. The department shall
26 inspect land subject to chemigation at least once each three
27 years. The department shall inspect land which the department
28 believes has been subjected to chemigation in violation of
29 this chapter. The department shall make reasonable efforts to
30 obtain consent from the titleholder of the land, permit
31 holder, or an authorized representative, including a person
32 responsible for managing the day-to-day operations of the
33 land. The district court in Polk county or in the county
34 where the land is located shall upon probable cause issue a
35 search warrant to the department to carry out the inspection.

1 The department may be issued a warrant before or after making
2 reasonable efforts to obtain consent for an inspection. The
3 department is not required to obtain consent or be issued a
4 warrant if emergency conditions require immediate action by
5 the department.

6 2. A person shall not refuse entry or access to the
7 department as a condition of an inspection under this section,
8 if the person is presented with appropriate credentials and a
9 search warrant. A person shall not obstruct, interfere, or
10 hamper with the inspection.

11 3. Upon request, the department shall provide a report of
12 the inspection to the titleholder, permit holder, or
13 authorized representative. The report shall detail findings
14 of the department relating to compliance with this chapter.

15 4. The entry by the department upon land subject to an
16 inspection as provided by this section shall not be considered
17 to be trespass and damages shall not be recoverable based on
18 the entry or damage to crops caused by the inspection.

19 Sec. 7. NEW SECTION. 206A.4 IRRIGATION DISTRIBUTION
20 SYSTEMS.

21 1. The department shall establish, by rule, requirements,
22 procedures, and standards relating to the operation of
23 irrigation distribution systems to prevent the contamination
24 of water supplies caused by chemigation. The rules shall
25 specify the types of equipment used in irrigation distribution
26 systems and design standards for such equipment. The rules
27 shall provide for the installation, operation, and maintenance
28 of irrigation pipes. The rules shall also provide for the
29 installation, operation, and maintenance of equipment serving
30 the following purposes:

31 a. To check the performance of the system.

32 b. To ensure that chemicals drain away from a source water
33 supply.

34 c. To monitor the injection of chemicals into an
35 irrigation distribution system.

1 d. To protect a water supply from contamination.

2 2. The rules adopted under this section shall not impose
3 an unduly severe burden on a person without substantially
4 contributing to the prevention of water contamination.

5 Sec. 8. NEW SECTION. 206A.5 CHEMIGATION APPLICATOR
6 CERTIFICATION REQUIREMENTS.

7 1. An applicator shall choose between a one-year
8 certification for which the applicator shall pay a thirty
9 dollar fee or a three-year certification for which the
10 applicator shall pay a seventy-five dollar fee. Fees
11 collected pursuant to this section shall be deposited into the
12 chemigation fund. An applicator is exempt from the fee
13 required under this section, if the applicator elects to
14 satisfy examination or reexamination requirements set forth
15 pursuant to subsection 3, and the applicator is certified
16 pursuant to section 206.5.

17 2. Before being certified, the applicator shall complete
18 an educational program as follows:

19 a. The applicator shall be examined prior to initial
20 certification. In addition, the applicator shall be
21 reexamined every three years following initial certification
22 before the applicator is eligible for a renewal of
23 certification. The department shall adopt, by rule,
24 requirements for the examination, reexamination, and
25 certification of applicants. Examinations and reexaminations
26 under this chapter shall be held in conjunction with those
27 required pursuant to section 206.5. The secretary shall also
28 adopt by rule, the criteria for allowing the selection of a
29 written or oral examination by a person requiring
30 certification.

31 b. The applicator may elect, in lieu of satisfying an
32 examination or reexamination requirement, to complete five
33 hours of instructional courses each year. The instructional
34 courses shall be administered by the department, an agency
35 approved by the department, or an organization certified by

1 the department. An organization representing chemigation
2 applicators may be certified to administer the instructional
3 courses.

4 An educational program administered pursuant to this
5 subsection shall include areas relating to chemigation, the
6 safe handling of chemicals, the effects of chemicals on water
7 supplies, and the installation, operation, and maintenance of
8 irrigation distribution systems in which chemigation is used.

9 3. The department may suspend or revoke a certificate
10 issued under this section, if an applicator does any of the
11 following:

12 a. Applies chemicals by chemigation in violation of
13 section 206A.4.

14 b. Applies chemicals by chemigation by use of equipment or
15 a device that the applicator knows is defective, if such use
16 violates requirements of this chapter, including rules adopted
17 by the department.

18 c. Fails to report contamination of a water supply as
19 provided in section 206A.7 which results from chemigation, if
20 the contamination is known to the applicator, or should have
21 been known to an applicator trained to perform similar
22 functions.

23 d. Violates a provision of this chapter or rule adopted by
24 the department pursuant to this chapter.

25 Sec. 9. NEW SECTION. 206A.6 NOTICE OF CHEMICAL USE
26 REQUIRED.

27 A permit holder shall post a notice warning the public that
28 chemicals are applied in an irrigation distribution system,
29 and that land is being applied with chemicals by means of
30 chemigation. The notice shall name any restricted use
31 pesticide applied in the irrigation distribution system. The
32 notice shall be posted on the land subject to chemigation in a
33 manner and according to procedures adopted by departmental
34 rule.

35 Sec. 10. NEW SECTION. 206A.7 CONTAMINATION REPORT.

1 A permit holder or an applicator certified pursuant to
2 section 206A.5 shall report an actual or suspected case of
3 contamination related to the use of chemigation on land
4 subject to the permit or where the applicator is using
5 chemigation. The report shall be made promptly to the
6 department according to rules which shall be adopted by the
7 department. The department shall initiate an investigation of
8 the report within forty-eight hours of the report. The
9 department shall take all actions necessary to protect the
10 public. The department shall establish a plan of cleanup and
11 recovery. The plan shall be carried out by the permit holder
12 under the supervision of the department.

13 Sec. 11. NEW SECTION. 206A.8 COOPERATION BY OTHER
14 AGENCIES.

15 The department of natural resources shall cooperate with
16 the department of agriculture and land stewardship in adopting
17 rules required pursuant to this chapter. The department of
18 natural resources shall also cooperate with the department of
19 agriculture and land stewardship in enforcing provisions of
20 this chapter and rules adopted pursuant to this chapter. The
21 department of natural resources and the Iowa cooperative
22 extension service in agriculture and home economics at Iowa
23 state university of science and technology shall cooperate
24 with the department of agriculture and land stewardship in
25 administering instructional courses required pursuant to
26 section 206A.5.

27 Sec. 12. NEW SECTION. 206A.9 REMEDIES -- DISCIPLINARY
28 ACTION AND INJUNCTIVE RELIEF.

29 1. The department may initiate disciplinary action against
30 a person under this section by doing any of the following:

31 a. Referring any case of a violation pursuant to this
32 chapter to the county attorney in the county where the
33 violation occurs or to the attorney general.

34 b. Suspending or revoking a chemigation permit issued
35 pursuant to section 206A.2.

1 c. Suspending or revoking a certificate issued pursuant to
2 section 206A.5.

3 The department shall not initiate disciplinary action until
4 the department provides at least ten days' notice to a person
5 of a violation committed by the person. The notice shall be
6 delivered by personal service or by certified mail.

7 Acceptance of the notice does not constitute evidence of a
8 violation. The department shall make every reasonable effort
9 to obtain voluntary compliance.

10 The county attorney may initiate a prosecution under this
11 section regardless of notice received by the department. If
12 the county attorney does not initiate prosecution within
13 thirty days after receiving the department's referral, the
14 department shall notify the attorney general who shall
15 initiate the prosecution. Voluntary compliance shall not
16 preclude the department, a county attorney, or the attorney
17 general from carrying out disciplinary action under this
18 section.

19 2. Prosecution may be waived, if the waiver is conditioned
20 upon compliance by the violator with a schedule for curing the
21 violation. The schedule must be approved by the department
22 and by the county attorney or attorney general if one of them
23 has been asked to prosecute the case. If the violation is
24 cured pursuant to the schedule, no prosecution shall be
25 initiated based on that violation.

26 3. The department may bring an action in district court in
27 the county where a violation is occurring to enjoin a person
28 from actions which may threaten the public safety. The
29 department, acting as petitioner in the action, shall not be
30 required to allege facts necessary to show, or tending to
31 show, a lack of adequate remedy at law, that irreparable
32 damage or injury will result if the action is brought at law,
33 or that unique or special circumstances exist.

34 Sec. 13. NEW SECTION. 206A.10 CHEMIGATION FUND.

35 1. A chemigation fund is created in the state treasury

1 under the control of the secretary. The fund is composed of
2 moneys deposited from the following sources:

3 a. Collected and dedicated to the fund under this chapter,
4 including fees dedicated to the fund pursuant to section
5 206A.2 and 206A.5.

6 b. Appropriated to the fund by the general assembly.

7 c. Accepted for deposit into the fund by the secretary
8 from the United States, other states in the union, foreign
9 nations, state agencies, political subdivisions, and private
10 sources.

11 2. Moneys deposited into the fund shall be used to
12 administer and enforce this chapter.

13 3. Moneys in the fund shall be subject to an annual audit
14 by the auditor of state. The fund shall be subject to
15 warrants by the director of revenue and finance, drawn upon
16 the written requisition of the secretary or an authorized
17 representative of the secretary.

18 4. All interest earned on proceeds in the fund shall
19 remain in the fund. Section 8.33 does not apply to moneys in
20 the fund.

21 Sec. 14. NEW SECTION. 206A.11 PENALTIES.

22 1. a. A person required to obtain a chemigation permit
23 pursuant to section 206A.2 who fails to obtain or retain the
24 permit is subject to a civil penalty not to exceed two hundred
25 fifty dollars.

26 b. A person who applies chemicals without obtaining or
27 retaining a certification as required pursuant to section
28 206A.5 is subject to a civil penalty not to exceed two hundred
29 fifty dollars.

30 c. A person who willfully tampers with or destroys
31 equipment required pursuant to section 206A.4 used to protect
32 water supplies from chemigation is subject to a civil penalty
33 not to exceed three hundred dollars, if the tampering or
34 destruction causes contamination or threatens to cause
35 contamination of a water supply.

1 d. A person who fails to report contamination or suspected
2 contamination of a water supply as required pursuant to
3 section 206A.7 is subject to a civil penalty not to exceed one
4 thousand dollars.

5 e. A person who fails to erect a notice or destroy a
6 notice as required pursuant to section 206A.6 is subject to a
7 civil penalty not to exceed one hundred dollars.

8 f. A person who fails to file a report required in section
9 206A.7 is subject to a civil penalty not to exceed one hundred
10 dollars.

11 2. Each day that a violation continues constitutes a
12 separate offense. However, a person shall not be subject to a
13 civil penalty of more than one thousand dollars, if the
14 penalty is based on a continuing violation. The department
15 shall not consider a day that an offense continues as a
16 separate violation if the offense is beyond the control of the
17 person to cure.

18 3. Moneys collected from civil penalties shall be
19 deposited into the general fund of the state.

20 4. The penalties provided in this section are separate and
21 cumulative. The penalties are in addition to and not in lieu
22 of penalties imposed by provisions in other chapters,
23 including chapter 206.

24 Sec. 15. EFFECTIVE DATE AND DATE OF APPLICABILITY.

25 1. Sections 1 through 14 of this Act take effect on
26 January 1, 1992.

27 2. The department of agriculture and land stewardship
28 shall adopt rules to administer this Act as soon as
29 practicable. All rules required under this Act shall be
30 adopted by January 1, 1992. This subsection does not
31 authorize the department to adopt emergency rules.

*32

33

34

35

SENATE FILE 446

H-5451

- 1 Amend Senate File 446, as amended, passed, and
2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 1, by inserting after the word
4 "Code" the following: "Supplement".
- 5 2. Page 1, line 6, by striking the word and
6 figure "section 206A.4" and inserting the following:
7 "rules adopted by the department".
- 8 3. Page 1, line 7, by inserting after the figure
9 "206.5," the following: "subsection 6,".
- 10 4. Page 1, by striking lines 12 through 19, and
11 inserting the following: "206A.5. The applicator
12 shall pay the certification fee required in section
13 206A.5 in addition to the fee required in this
14 section."
- 15 5. Page 2, line 1, by inserting after the word
16 "system" the following: "as provided in rules adopted
17 by the department".
- 18 6. Page 2, by striking lines 6 and 7 and
19 inserting the following: "a permit or a renewal of a
20 permit as provided in section 206A.2."
- 21 7. Page 2, by striking lines 17 through 26, and
22 inserting the following: "purposes of farming."
- 23 8. Page 3, by striking lines 4 through 6 and
24 inserting the following: "issuance. A person shall
25 not install a new injection location".
- 26 9. Page 3, by striking lines 10 through 18 and
27 inserting the following: "The department may approve
28 an application for a new permit only upon inspection
29 of the irrigation distribution system. The department
30 may approve an".
- 31 10. Page 3, line 22, by inserting after the
32 figure "206A.5." the following: "The department must
33 approve or disapprove the application in a timely
34 manner but not later than ninety days after the
35 application is filed."
- 36 11. By striking page 3, line 24 through page 4,
37 line 2.
- 38 12. Page 4, by striking lines 4 and 5 and
39 inserting the following: "applications for
40 chemigation".
- 41 13. Page 4, line 13, by inserting after the word
42 "irrigation" the following: "distribution".
- 43 14. Page 4, by striking lines 17 through 22.
- 44 15. Page 5, line 12, by striking the word
45 "thirty" and inserting the following: "ninety".
- 46 16. Page 5, by striking lines 13 and 14 and
47 inserting the following: "dollars. The".
- 48 17. Page 5, line 15, by striking the word "ten"
49 and inserting the following: "seventy-five".
- 50 18. Page 5, line 25, by striking the words "land

H-5451

-1-

1 subject to" and inserting the following: "irrigation
2 distribution systems used for".

3 19. Page 5, lines 25 through 27 by striking the
4 words "The department shall inspect land subject to
5 chemigation at least once each three years."

6 20. Page 6, line 26, by inserting after the word
7 "equipment." the following: "The department may
8 establish different standards for different irrigation
9 distribution systems."

10 21. Page 7, line 8, by striking the word "thirty"
11 and inserting the following: "seventy-five".

12 22. Page 7, line 10, by striking the word
13 "seventy-five" and inserting the following: "two
14 hundred twenty-five".

15 23. Page 7, by striking lines 12 through 16 and
16 inserting the following: "chemigation fund. The
17 applicator shall pay the certification fee required in
18 this section in addition to any fee required in
19 section 206.5."

20 24. Page 7, by striking lines 17 through 19 and
21 inserting the following:

22 "2. The applicator shall be examined prior to
23 initial".

24 25. By striking page 7, line 31 through page 8,
25 line 8.

26 26. Page 9, by striking line 4 and inserting the
27 following: "serviced by an irrigation distribution
28 system".

29 27. Page 9, line 5, by striking the word
30 "chemigation".

31 28. Page 9, by inserting after line 12, the
32 following:

33 "Sec. . NEW SECTION. 206A.7A EXCEPTIONS --
34 ENCLOSED FACILITIES.

35 Sections 206A.2 and 206A.5 shall not apply to a
36 person otherwise required to obtain a permit or be
37 certified, to the extent that the person is a title-
38 holder of land enclosed within a facility serviced by
39 an irrigation distribution system, is responsible for
40 the day-to-day management of the facility, or is an
41 applicator within the facility."

42 29. Page 12, by striking lines 12 through 14 and
43 inserting the following: "separate offense. The
44 department".

45 30. Page 12, by striking lines 25 through 31, and
46 inserting the following:

47 "1. This Act, being deemed of immediate
48 importance, takes effect upon enactment.

49 2. The department of agriculture and land
50 stewardship shall adopt rules to administer this Act

1 as soon as practicable.

2 3. A person is not required to comply with this
3 Act until on and after January 1, 1994. A person may
4 apply for a permit and become certified before January
5 1, 1994."

By COMMITTEE ON ENERGY AND
ENVIRONMENTAL
PROTECTION
OSTERBERG of Linn, Chairperson

Adopted as recommended 4/1/92 (p. 975)

HOUSE AMENDMENT TO
SENATE FILE 446

S-5540

1 Amend Senate File 446, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 1, by inserting after the word
4 "Code" the following: "Supplement".

5 2. Page 1, line 6, by striking the word and
6 figure "section 206A.4" and inserting the following:
7 "rules adopted by the department".

8 3. Page 1, line 7, by inserting after the figure
9 "206.5," the following: "subsection 6,".

10 4. Page 1, by striking lines 12 through 19, and
11 inserting the following: "206A.5. The applicator
12 shall pay the certification fee required in section
13 206A.5 in addition to the fee required in this
14 section."

15 5. Page 2, line 1, by inserting after the word
16 "system" the following: "as provided in rules adopted
17 by the department".

18 6. Page 2, by striking lines 6 and 7 and
19 inserting the following: "a permit or a renewal of a
20 permit as provided in section 206A.2."

21 7. Page 2, by striking lines 17 through 26, and
22 inserting the following: "purposes of farming."

23 8. Page 3, by striking lines 4 through 6 and
24 inserting the following: "issuance. A person shall
25 not install a new injection location".

26 9. Page 3, by striking lines 10 through 18 and
27 inserting the following: "The department may approve
28 an application for a new permit only upon inspection
29 of the irrigation distribution system. The department
30 may approve an".

31 10. Page 3, line 22, by inserting after the
32 figure "206A.5." the following: "The department must
33 approve or disapprove the application in a timely
34 manner but not later than ninety days after the
35 application is filed."

36 11. By striking page 3, line 24 through page 4,
37 line 2.

38 12. Page 4, by striking lines 4 and 5 and
39 inserting the following: "applications for
40 chemigation".

41 13. Page 4, line 13, by inserting after the word
42 "irrigation" the following: "distribution".

43 14. Page 4, by striking lines 17 through 22.

44 15. Page 5, line 12, by striking the word
45 "thirty" and inserting the following: "ninety".

46 16. Page 5, by striking lines 13 and 14 and
47 inserting the following: "dollars. The".

48 17. Page 5, line 15, by striking the word "ten"
49 and inserting the following: "seventy-five".

50 18. Page 5, line 23, by striking the words "land

S-5540

- 1 subject to" and inserting the following: "irrigation
- 2 distribution systems used for".
- 3 19. Page 5, lines 25 through 27 by striking the
- 4 words "The department shall inspect land subject to
- 5 chemigation at least once each three years."
- 6 20. Page 6, line 26, by inserting after the word
- 7 "equipment." the following: "The department may
- 8 establish different standards for different irrigation
- 9 distribution systems."
- 10 21. Page 7, line 8, by striking the word "thirty"
- 11 and inserting the following: "seventy-five".
- 12 22. Page 7, line 10, by striking the word "
- 13 "seventy-five" and inserting the following: "two
- 14 hundred twenty-five".
- 15 23. Page 7, by striking lines 12 through 16 and
- 16 inserting the following: "chemigation fund. The
- 17 applicator shall pay the certification fee required in
- 18 this section in addition to any fee required in
- 19 section 206.5."
- 20 24. Page 7, by striking lines 17 through 19 and
- 21 inserting the following:
- 22 "2. The applicator shall be examined prior to
- 23 initial".
- 24 25. By striking page 7, line 31 through page 8,
- 25 line 8.
- 26 26. Page 9, by striking line 4 and inserting the
- 27 following: "serviced by an irrigation distribution
- 28 system".
- 29 27. Page 9, line 5, by striking the word
- 30 "chemigation".
- 31 28. Page 9, by inserting after line 12, the
- 32 following:
- 33 "Sec. . . NEW SECTION. 206A.7A EXCEPTIONS --
- 34 ENCLOSED FACILITIES.
- 35 Sections 206A.2 and 206A.5 shall not apply to a
- 36 person otherwise required to obtain a permit or be
- 37 certified, to the extent that the person is a title-
- 38 holder of land enclosed within a facility serviced by
- 39 an irrigation distribution system, is responsible for
- 40 the day-to-day management of the facility, or is an
- 41 applicator within the facility."
- 42 29. Page 9, line 20, by striking the word "The".
- 43 30. Page 9, by striking lines 21 through 26.
- 44 31. Page 12, by striking lines 12 through 14 and
- 45 inserting the following: "separate offense. The
- 46 department".
- 47 32. Page 12, by striking lines 25 through 31, and
- 48 inserting the following:
- 49 "1. This Act, being deemed of immediate
- 50 importance, takes effect upon enactment.

- 1 2. The department of agriculture and land
- 2 stewardship shall adopt rules to administer this Act
- 3 as soon as practicable.
- 4 3. A person is not required to comply with this
- 5 Act until on and after January 1, 1994. A person may
- 6 apply for a permit and become certified before January
- 7 1, 1994."

RECEIVED FROM THE HOUSE

MILLER, CH.
VANDG HOEF
PETERSON

SSB 256
AGRICULTURE

SENATE FILE 446
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON PRIEBE)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to agricultural chemicals, by regulating the use
2 of chemicals in irrigation distribution systems, providing for
3 fees, providing for penalties, and providing for an effective
4 date and date of applicability.

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

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. Section 206.2, Code 1991, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 30. "Chemigation" means the application
4 of a chemical to land or plants, if the chemical is injected
5 into water used in an irrigation distribution system as
6 provided in section 206A.26.

7 Sec. 2. Section 206.5, Code 1991, is amended by striking
8 the subsection and inserting in lieu thereof the following:

9 6. A commercial, private, or public applicator shall not
10 apply a pesticide as part of chemigation without first
11 complying with the certification requirements of section
12 206A.5. An examination or reexamination of a commercial,
13 public, or private applicator required pursuant to section
14 206A.5, shall be part of the examination or reexamination
15 provided by this section. An applicator shall be exempt from
16 the fee required under this section, if the applicator elects
17 to satisfy examination or reexamination requirements set forth
18 in section 206A.5 and has paid the examination or
19 reexamination fee required in section 206A.5.

20 Sec. 3. Section 206.22, Code 1991, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 4. A penalty imposed pursuant to this
23 section shall be in addition to and not in lieu of any penalty
24 which may be imposed upon a person pursuant to section
25 206A.10.

26 Sec. 4. NEW SECTION. 206A.1 DEFINITIONS.

27 As used in this chapter, unless the context otherwise
28 requires:

29 1. "Applicator" means a person applying chemicals by
30 chemigation.

31 2. "Chemical" means a fertilizer as defined in section
32 200.1 or a pesticide or plant growth regulator as defined in
33 section 206.2.

34 3. "Chemigation" means the application of a chemical to
35 land or plants, if the pesticide is injected into water used

1 in an irrigation distribution system.

2 4. "Chemigation permit" means a permit issued by the
3 department authorizing a person to apply a chemical to land or
4 plants, if the chemical is injected into water used in an
5 irrigation distribution system. A chemigation permit includes
6 a permit, renewal, or emergency permit as provided in section
7 206A.2.

8 5. "Commercial applicator" means the same as defined in
9 section 206.2.

10 6. "Farming" means the same as defined in section 172C.1.

11 7. "Injection location" means a site where a chemical is
12 applied through an irrigation distribution system.

13 8. "Irrigation distribution system" means a mechanism
14 containing a conduit, including but not limited to a hose or
15 pipe, which connects directly to a water source of groundwater
16 or surface water through which water is drawn and applied for
17 purposes of farming. An irrigation distribution system does
18 not include a mechanism which is constructed to provide that
19 an interruption in water flow automatically prevents a
20 backflow of water to the water source.

21 9. "Open discharge system" means a system in which water
22 is pumped or diverted directly into a channel, including a
23 ditch or canal, if the system prevents the force of gravity,
24 located at the point of discharge of water into the channel,
25 to cause the water to flow back to the point from which the
26 water was pumped or diverted.

27 10. "Permit holder" means the person issued a permit
28 pursuant to section 206A.2.

29 11. "Pesticide" means the same as defined in section
30 206.2.

31 12. "Restricted use pesticide" means the same as defined
32 in section 206.2.

33 Sec. 5. NEW SECTION. 206A.2 CHEMIGATION PERMIT.

34 1. Land shall not be subject to chemigation, unless a
35 chemigation permit is issued by the department. The permit

1 shall be issued to the titleholder of the land or the person
2 responsible for the day-to-day management of the land. The
3 chemigation permit shall expire one year from the date of its
4 issuance. However, a person is not required to obtain a
5 permit to pump or divert water to or through an open discharge
6 system. A person shall not install a new injection location
7 unless the injection location is subject to a chemigation
8 permit. The department shall review each application and
9 either approve or deny the application within forty-five days
10 after the application is filed with the department. The
11 department may approve a permit only upon inspection of the
12 land subject to chemigation. The department may approve an
13 application and issue a chemigation permit, if the irrigation
14 distribution system complies with the requirements of this
15 chapter, and the applicator is certified pursuant to section
16 206A.5. The department shall disapprove a permit for good
17 cause as provided in subsection 4.

18 2. The department may issue an emergency chemigation
19 permit upon application by a person. The department shall
20 review each emergency application and approve or deny the
21 application within forty-eight hours after the application is
22 filed. The department may approve an application for an
23 emergency permit if the irrigation distribution system
24 complies with equipment requirements of section 206A.4 and the
25 applicator has been certified under section 206A.5. The
26 department may disapprove a permit for good cause as provided
27 in subsection 4. If the department does not approve an
28 application for an emergency chemigation permit within forty-
29 eight hours, the application shall be deemed approved. A
30 permit issued under this subsection shall be valid for a
31 period of forty-five days from the date of issuance.

32 3. The department shall publish and distribute forms for
33 applications, including applications for chemigation permits,
34 renewal of chemigation permits, and emergency chemigation
35 permits. The rules shall specify information required to be

1 contained in the application. An application shall be
2 submitted according to procedures which shall be adopted by
3 the department. An application shall at least include all of
4 the following:

5 a. The name and address of the person seeking the permit.

6 b. The location of land subject to chemigation.

7 c. A description of the irrigation system and information
8 regarding each injection location.

9 d. The name of each chemical to be injected in the
10 chemigation process.

11 If the application seeks an emergency chemigation permit,
12 the application shall specify conditions which cause the
13 emergency. If the application seeks to renew a permit, the
14 application must include the names of all chemicals used in
15 chemigation for the previous year. An emergency chemigation
16 permit is not renewable.

17 4. The department shall deny an application for a
18 chemigation permit, and shall suspend or revoke a chemigation
19 permit, for good cause. As used in this section, "good cause"
20 means that the department has evidence of any of the
21 following:

22 a. The applicant committed fraud or deceit in obtaining a
23 chemigation permit.

24 b. The permit holder refused an inspection pursuant to
25 section 206A.3.

26 c. The permit holder has authorized an applicator to
27 inject a chemical within an irrigation distribution system, if
28 the applicator was not certified pursuant to section 206A.5.

29 d. Land described in an application or subject to a permit
30 has been applied with a chemical in violation of this chapter.

31 e. The permit holder failed to post a notice warning the
32 public that a chemical was applied in an irrigation
33 distribution system pursuant to section 206A.6.

34 f. A report of contamination or suspected contamination
35 was not filed by the permit holder or an applicator pursuant

1 to section 206A.7.

2 g. The permit holder failed to comply with a plan of
3 cleanup or recovery as provided in section 206A.7.

4 5. The department shall establish fees for reviewing
5 applications and renewing permits. The fee for reviewing an
6 application for a chemigation permit shall not exceed thirty
7 dollars. The fee for reviewing an application for an
8 emergency chemigation permit shall not exceed one hundred
9 dollars. The fee for renewing a chemigation permit shall not
10 exceed ten dollars. The fees shall be deposited into the
11 chemigation fund established pursuant to section 206A.10.

12 6. A permit shall be conditioned upon the right of the
13 department to inspect the land subject to chemigation and the
14 irrigation distribution system pursuant to section 206A.3.

15 Sec. 6. NEW SECTION. 206A.3 INSPECTIONS.

16 1. The department shall conduct areawide, selective, and
17 periodic inspections of land subject to chemigation in order
18 to ensure compliance with this chapter or rules adopted by the
19 department pursuant to this chapter. The department shall
20 inspect land which the department believes has been subjected
21 to chemigation in violation of this chapter. The department
22 shall make reasonable efforts to obtain consent from the
23 titleholder of the land, permit holder, or an authorized
24 representative, including a person responsible for managing
25 the day-to-day operations of the land. The district court in
26 Polk county or in the county where the land is located shall
27 upon probable cause issue a search warrant to the department
28 to carry out the inspection. The department may be issued a
29 warrant before or after making reasonable efforts to obtain
30 consent for an inspection. The department is not required to
31 obtain consent or be issued a warrant if emergency conditions
32 require immediate action by the department.

33 2. A person shall not refuse entry or access to the
34 department as a condition of an inspection under this section,
35 if the person is presented with appropriate credentials and a

1 search warrant. A person shall not obstruct, interfere, or
2 hamper with the inspection.

3 3. Upon request, the department shall provide a report of
4 the inspection to the titleholder, permit holder, or
5 authorized representative. The report shall detail findings
6 of the department relating to compliance with this chapter.

7 4. The entry by the department upon land subject to an
8 inspection as provided by this section shall not be considered
9 to be trespass and damages shall not be recoverable based on
10 the entry or damage to crops caused by the inspection.

11 Sec. 7. NEW SECTION. 206A.4 IRRIGATION DISTRIBUTION
12 SYSTEMS.

13 1. The department shall establish, by rule, requirements,
14 procedures, and standards relating to the operation of
15 irrigation distribution systems to prevent the contamination
16 of water supplies caused by chemigation. The rules shall
17 specify the types of equipment used in irrigation distribution
18 systems and design standards for such equipment. The rules
19 shall provide for the installation, operation, and maintenance
20 of irrigation pipes. The rules shall also provide for the
21 installation, operation, and maintenance of equipment serving
22 the following purposes:

23 a. To check the performance of the system.

24 b. To ensure that chemicals drain away from a source water
25 supply.

26 c. To monitor the injection of chemicals into an
27 irrigation distribution system.

28 d. To protect a water supply from contamination.

29 2. The rules adopted under this section shall not impose
30 an unduly severe burden on a person without substantially
31 contributing to the prevention of water contamination.

32 Sec. 8. NEW SECTION. 206A.5 CHEMIGATION APPLICATOR
33 CERTIFICATION REQUIREMENTS.

34 1. An applicator shall choose between a one-year
35 certification for which the applicator shall pay a thirty

1 dollar fee or a three-year certification for which the
2 applicator shall pay a seventy-five dollar fee. Fees
3 collected pursuant to this section shall be deposited into the
4 chemigation fund. An applicator is exempt from the fee
5 required under this section, if the applicator elects to
6 satisfy examination or reexamination requirements set forth
7 pursuant to subsection 3, and the applicator is certified
8 pursuant to section 206.5.

9 2. Before being certified, the applicator shall complete
10 an educational program as follows:

11 a. The applicator shall be examined prior to initial
12 certification. In addition, the applicator shall be
13 reexamined every three years following initial certification
14 before the applicator is eligible for a renewal of
15 certification. The department shall adopt, by rule,
16 requirements for the examination, reexamination, and
17 certification of applicants. Examinations and reexaminations
18 under this chapter shall be held in conjunction with those
19 required pursuant to section 206.5. The secretary shall also
20 adopt by rule, the criteria for allowing the selection of a
21 written or oral examination by a person requiring
22 certification.

23 b. The applicator may elect, in lieu of satisfying an
24 examination or reexamination requirement, to complete five
25 hours of instructional courses each year. The instructional
26 courses shall be administered by the department, an agency
27 approved by the department, or an organization certified by
28 the department. An organization representing chemigation
29 applicators may be certified to administer the instructional
30 courses.

31 An educational program administered pursuant to this
32 subsection shall include areas relating to chemigation, the
33 safe handling of chemicals, the effects of chemicals on water
34 supplies, and the installation, operation, and maintenance of
35 irrigation distribution systems in which chemigation is used.

1 3. The department may suspend or revoke a certificate
2 issued under this section, if an applicator does any of the
3 following:

4 a. Applies chemicals by chemigation in violation of
5 section 206A.4.

6 b. Applies chemicals by chemigation by use of equipment or
7 a device that the applicator knows is defective, if such use
8 violates requirements of this chapter, including rules adopted
9 by the department.

10 c. Fails to report contamination of a water supply as
11 provided in section 206A.7 which results from chemigation, if
12 the contamination is known to the applicator, or should have
13 been known to an applicator trained to perform similar
14 functions.

15 d. Violates a provision of this chapter or rule adopted by
16 the department pursuant to this chapter.

17 Sec. .9. NEW SECTION. 206A.6 NOTICE OF CHEMICAL USE
18 REQUIRED.

19 A permit holder shall post a notice warning the public that
20 chemicals are applied in an irrigation distribution system,
21 and that land is being applied with chemicals by means of
22 chemigation. The notice shall name any restricted use
23 pesticide applied in the irrigation distribution system. The
24 notice shall be posted on the land subject to chemigation in a
25 manner and according to procedures adopted by departmental
26 rule.

27 Sec. 10. NEW SECTION. 206A.7 CONTAMINATION REPORT.

28 A permit holder or an applicator certified pursuant to
29 section 206A.5 shall report an actual or suspected case of
30 contamination related to the use of chemigation on land
31 subject to the permit or where the applicator is using
32 chemigation. The report shall be made promptly to the
33 department according to rules which shall be adopted by the
34 department. The department shall investigate the report
35 within forty-eight hours of the report. The department shall

1 take all actions necessary to protect the public. The
2 department shall establish a plan of cleanup and recovery.
3 The plan shall be carried out by the permit holder under the
4 supervision of the department.

5 Sec. 11. NEW SECTION. 206A.8 COOPERATION BY OTHER
6 AGENCIES.

7 The department of natural resources shall cooperate with
8 the department of agriculture and land stewardship in adopting
9 rules required pursuant to this chapter. The department of
10 natural resources shall also cooperate with the department of
11 agriculture and land stewardship in enforcing provisions of
12 this chapter and rules adopted pursuant to this chapter. The
13 department of natural resources and the Iowa cooperative
14 extension service in agriculture and home economics at Iowa
15 state university of science and technology shall cooperate
16 with the department of agriculture and land stewardship in
17 administering instructional courses required pursuant to
18 section 206A.5.

19 Sec. 12. NEW SECTION. 206A.9 REMEDIES -- DISCIPLINARY
20 ACTION AND INJUNCTIVE RELIEF.

21 1. The department may initiate disciplinary action against
22 a person under this section by doing any of the following:

23 a. Referring any case of a violation pursuant to this
24 chapter to the county attorney in the county where the
25 violation occurs or to the attorney general.

26 b. Suspending or revoking a chemigation permit issued
27 pursuant to section 206A.2.

28 c. Suspending or revoking a certificate issued pursuant to
29 section 206A.5.

30 The department shall not initiate disciplinary action until
31 the department provides at least ten days' notice to a person
32 of a violation committed by the person. The notice shall be
33 delivered by personal service or by certified mail.

34 Acceptance of the notice does not constitute evidence of a
35 violation. The department shall make every reasonable effort

1 to obtain voluntary compliance.

2 The county attorney may initiate a prosecution under this
3 section regardless of notice received by the department. If
4 the county attorney does not initiate prosecution within
5 thirty days after receiving the department's referral, the
6 department shall notify the attorney general who shall
7 initiate the prosecution. Voluntary compliance shall not
8 preclude the department, a county attorney, or the attorney
9 general from carrying out disciplinary action under this
10 section.

11 2. Prosecution may be waived, if the waiver is conditioned
12 upon compliance by the violator with a schedule for curing the
13 violation. The schedule must be approved by the department
14 and by the county attorney or attorney general if one of them
15 has been asked to prosecute the case. If the violation is
16 cured pursuant to the schedule, no prosecution shall be
17 initiated based on that violation.

18 3. The department may bring an action in district court in
19 the county where a violation is occurring to enjoin a person
20 from actions which may threaten the public safety. The
21 department, acting as petitioner in the action, shall not be
22 required to allege facts necessary to show, or tending to
23 show, a lack of adequate remedy at law, that irreparable
24 damage or injury will result if the action is brought at law,
25 or that unique or special circumstances exist.

26 Sec. 13. NEW SECTION. 206A.10 CHEMIGATION FUND.

27 1. A chemigation fund is created in the state treasury
28 under the control of the secretary. The fund is composed of
29 moneys deposited from the following sources:

30 a. Collected and dedicated to the fund under this chapter,
31 including fees dedicated to the fund pursuant to section
32 206A.2 and 206A.5.

33 b. Appropriated to the fund by the general assembly.

34 c. Accepted for deposit into the fund by the secretary
35 from the United States, other states in the union, foreign

1 nations, state agencies, political subdivisions, and private
2 sources.

3 2. Moneys deposited into the fund shall be used to
4 administer and enforce this chapter.

5 3. Moneys in the fund shall be subject to an annual audit
6 by the auditor of state. The fund shall be subject to
7 warrants by the director of revenue and finance, drawn upon
8 the written requisition of the secretary or an authorized
9 representative of the secretary.

10 4. All interest earned on proceeds in the fund shall
11 remain in the fund. Section 8.33 does not apply to moneys in
12 the fund.

13 Sec. 14. NEW SECTION. 206A.11 PENALTIES.

14 1. a. A person required to obtain a chemigation permit
15 pursuant to section 206A.2 who fails to obtain or retain the
16 permit is subject to a civil penalty not to exceed two hundred
17 fifty dollars.

18 b. A person who applies chemicals without obtaining or
19 retaining a certification as required pursuant to section
20 206A.5 is subject to a civil penalty not to exceed two hundred
21 fifty dollars.

22 c. A person who willfully tampers with or destroys
23 equipment required pursuant to section 206A.4 used to protect
24 water supplies from chemigation is subject to a civil penalty
25 not to exceed three hundred dollars, if the tampering or
26 destruction causes contamination or threatens to cause
27 contamination of a water supply.

28 d. A person who fails to report contamination or suspected
29 contamination of a water supply as required pursuant to
30 section 206A.7 is subject to a civil penalty not to exceed one
31 thousand dollars.

32 e. A person who fails to erect a notice or destroy a
33 notice as required pursuant to section 206A.6 is subject to a
34 civil penalty not to exceed one hundred dollars.

35 f. A person who fails to file a report required in section

1 206A.7 is subject to a civil penalty not to exceed one hundred
2 dollars.

3 2. Each day that a violation continues constitutes a
4 separate offense. However, a person shall not be subject to a
5 civil penalty of more than one thousand dollars, if the
6 penalty is based on a continuing violation. The department
7 shall not consider a day that an offense continues as a
8 separate violation if the offense is beyond the control of the
9 person to cure.

10 3. Moneys collected from civil penalties shall be
11 deposited into the general fund of the state.

12 4. The penalties provided in this section are separate and
13 cumulative. The penalties are in addition to and not in lieu
14 of penalties imposed by provisions in other chapters,
15 including chapter 206.

16 Sec. 15. EFFECTIVE DATE AND DATE OF APPLICABILITY.

17 1. This Act, being deemed of immediate importance, takes
18 effect upon enactment.

19 2. The department of agriculture and land stewardship
20 shall adopt rules to administer this Act as soon as
21 practicable. All rules required under this Act shall be
22 adopted by January 1, 1992. This subsection does not
23 authorize the department to adopt emergency rules.

24 3. A person shall not be required to comply with
25 requirements of this Act until three months following adoption
26 of all rules required to be adopted by the department of
27 agriculture and land stewardship.

28 EXPLANATION

29 This bill relates to the regulation of chemicals injected
30 in irrigation distribution systems used to produce crops on
31 agricultural land. The bill defines the process of applying
32 such chemicals as "chemigation". The bill creates a new
33 chapter tentatively reserved as chapter 206A, and amends
34 related chapter 206 regulating pesticides. Both chapters
35 would be regulated by the department of agriculture and land

1 stewardship.

2 The bill amends chapter 206 to provide that an examination
3 required for commercial, private, or public applicators of
4 pesticides under the chapter shall be held in conjunction with
5 an examination for applicators using chemigation as required
6 in chapter 206A. The bill also provides that a person taking
7 both examinations is not subject to a double fee.

8 The bill provides that land shall not be subject to
9 chemigation, unless a chemigation permit is issued by the
10 department. The bill provides for the contents of an
11 application for a permit and procedures for approving the
12 permit. The department may also issue an emergency
13 chemigation permit. The bill provides for the denial of an
14 application and for the suspension or revocation of a permit
15 for good cause. The department is required to establish fees
16 for reviewing applications and renewing permits. The fee for
17 reviewing an ordinary application shall not exceed thirty
18 dollars.

19 The bill provides for inspections by the department. The
20 bill provides for notice to persons subject to inspections and
21 for procedures related to obtaining search warrants to enter
22 onto property for purposes of conducting an inspection.

23 The bill provides that the department must establish, by
24 rule, requirements, procedures, and standards relating to the
25 operation of irrigation systems to prevent the contamination
26 of water supplies caused by chemigation. The bill prohibits
27 the department from adopting rules which impose an unduly
28 severe burden upon a person without substantially contributing
29 to the prevention of water contamination.

30 The bill requires applicators involved in chemigation to be
31 certified. The bill provides for charging fees for
32 certification. In addition, the bill provides that
33 certification may be accomplished by attending instruction
34 courses administered by the department. The bill provides for
35 the suspension or revocation of a certificate by the

1 department.

2 The bill provides for the posting of notices warning the
3 public that chemicals are applied in an irrigation
4 distribution system, and that land is subject to chemical
5 application by means of chemigation. A person issued a permit
6 or certified as a chemigation applicator is required to report
7 an actual or suspected case of contamination related to the
8 use of chemigation.

9 The bill requires the department of natural resources and
10 the Iowa cooperative extension service in agriculture and home
11 economics at Iowa state university of science and technology
12 to cooperate with the department of agriculture and land
13 stewardship in administering provisions of the bill.

14 The bill creates a chemigation fund. The bill provides
15 that the fund may contain moneys dedicated to the fund from a
16 variety of sources. The fund is subject to an annual audit.
17 The bill also provides that moneys collected pursuant to
18 chapter 206A shall be deposited into the fund for purposes of
19 administering and enforcing chapter 206.

20 The bill provides for disciplinary action initiated against
21 a person failing to meet requirements of the chapter. The
22 department may refer a case of violation to the county
23 attorney in the county where the violation occurs or to the
24 attorney general. The bill provides for a notice to be sent
25 to the violator before the case is referred for prosecution.
26 The department is provided the right to seek injunctive relief
27 in district court to restrain violations of the chapter.

28 The bill provides that violations of the chapter are
29 subject to civil penalties. The department may consider each
30 day that a violation occurs as a separate violation. A person
31 shall not be subject to a civil penalty of more than \$1,000
32 for a continuing violation.

33 The bill takes effect upon enactment. The department is
34 required to adopt rules under the bill without delay, but not
35 later than January 1, 1992. A person is not required to

S.F. _____ H.F. _____

1 comply with the Act until three months following adoption of
2 the departmental rules.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

LSB 1940SC 74

da/jw/5.1

SENATE FILE 446

AN ACT

RELATING TO AGRICULTURAL CHEMICALS, BY REGULATING THE USE OF CHEMICALS IN IRRIGATION DISTRIBUTION SYSTEMS, PROVIDING FOR FEES, PROVIDING FOR PENALTIES, AND PROVIDING FOR AN EFFECTIVE DATE AND DATE OF APPLICABILITY.

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

Section 1. Section 206.2, Code Supplement 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 30. "Chemigation" means the application of a chemical to land or plants, if the chemical is injected into water used in an irrigation distribution system as provided in rules adopted by the department.

Sec. 2. Section 206.5, subsection 6, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

6. A commercial, private, or public applicator shall not apply a pesticide as part of chemigation without first complying with the certification requirements of section 206A.5. The applicator shall pay the certification fee required in section 206A.5 in addition to the fee required in this section.

Sec. 3. Section 206.22, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A penalty imposed pursuant to this section shall be in addition to and not in lieu of any penalty which may be imposed upon a person pursuant to section 206A.11.

Sec. 4. NEW SECTION. 206A.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Applicator" means a person applying chemicals by chemigation.

2. "Chemical" means a fertilizer as defined in section 200.3 or a pesticide or plant growth regulator as defined in section 206.2.

3. "Chemigation" means the application of a chemical to land or plants, if the pesticide is injected into water used in an irrigation distribution system as provided in rules adopted by the department.

4. "Chemigation permit" means a permit issued by the department authorizing a person to apply a chemical to land or plants, if the chemical is injected into water used in an irrigation distribution system. A chemigation permit includes a permit or a renewal of a permit as provided in section 206A.2.

5. "Commercial applicator" means the same as defined in section 206.2.

6. "Farming" means the same as defined in section 172C.1.

7. "Injection location" means a site where a chemical is applied through an irrigation distribution system.

8. "Irrigation distribution system" means a mechanism containing a conduit, including but not limited to a hose or pipe, which connects directly to a water source of groundwater or surface water through which water is drawn and applied for purposes of farming.

10. "Permit holder" means the person issued a permit pursuant to section 206A.2.

11. "Pesticide" means the same as defined in section 206.2.

12. "Restricted use pesticide" means the same as defined in section 206.2.

Sec. 5. NEW SECTION. 206A.2 CHEMIGATION PERMIT.

1. Land shall not be subject to chemigation, unless a chemigation permit is issued by the department. The permit shall be issued to the titleholder of the land or the person responsible for the day-to-day management of the land. The chemigation permit shall expire one year from the date of its issuance. A person shall not install a new injection location

unless the injection location is subject to a chemigation permit. The department shall establish procedures for the review and approval of applications for chemigation permits. The department may approve an application for a new permit only upon inspection of the irrigation distribution system. The department may approve an application and issue a chemigation permit, if the irrigation distribution system complies with the requirements of this chapter, and the applicator is certified pursuant to section 206A.5. The department must approve or disapprove the application in a timely manner but not later than ninety days after the application is filed. The department shall disapprove an application for good cause as provided in subsection 4.

2. The department shall publish and distribute forms for applications for chemigation permits. The rules shall specify information required to be contained in the application. An application shall be submitted according to procedures which shall be adopted by the department. An application shall at least include all of the following:

- a. The name and address of the person seeking the permit.
- b. The location of land subject to chemigation.
- c. A description of the irrigation distribution system and information regarding each injection location.
- d. The name of each chemical to be injected in the chemigation process.

3. The department shall deny an application for a chemigation permit, and shall suspend or revoke a chemigation permit, for good cause. As used in this section, "good cause" means that the department has evidence of any of the following:

- a. The applicant committed fraud or deceit in seeking to obtain a chemigation permit.
- b. The applicant or permit holder refused an inspection pursuant to section 206A.3.
- c. The permit holder has authorized an applicator to inject a chemical within an irrigation distribution system, if the applicator was not certified pursuant to section 206A.5.

d. Land described in an application or subject to a permit has been applied with a chemical in violation of this chapter.

e. The permit holder failed to post a notice warning the public that a chemical was applied in an irrigation distribution system pursuant to section 206A.6.

f. A report of contamination or suspected contamination was not filed by the permit holder or an applicator pursuant to section 206A.7.

g. The permit holder failed to comply with a plan of cleanup or recovery as provided in section 206A.7.

4. The department shall establish fees for reviewing applications and renewing permits. The fee for reviewing an application for a chemigation permit shall not exceed ninety dollars. The fee for renewing a chemigation permit shall not exceed seventy-five dollars. The fees shall be deposited into the chemigation fund established pursuant to section 206A.10.

5. A permit shall be conditioned upon the right of the department to inspect the land subject to chemigation and the irrigation distribution system pursuant to section 206A.3.

Sec. 6. NEW SECTION. 206A.3 INSPECTIONS.

1. The department shall conduct areawide, selective, and periodic inspections of irrigation distribution systems used for chemigation in order to ensure compliance with this chapter or rules adopted by the department pursuant to this chapter. The department shall inspect land which the department believes has been subjected to chemigation in violation of this chapter. The department shall make reasonable efforts to obtain consent from the titleholder of the land, permit holder, or an authorized representative, including a person responsible for managing the day-to-day operations of the land. The district court in Polk county or in the county where the land is located shall upon probable cause issue a search warrant to the department to carry out the inspection. The department may be issued a warrant before or after making reasonable efforts to obtain consent for an inspection. The department is not required to obtain consent

or be issued a warrant if emergency conditions require immediate action by the department.

2. A person shall not refuse entry or access to the department as a condition of an inspection under this section, if the person is presented with appropriate credentials and a search warrant. A person shall not obstruct, interfere, or hamper with the inspection.

3. Upon request, the department shall provide a report of the inspection to the titleholder, permit holder, or authorized representative. The report shall detail findings of the department relating to compliance with this chapter.

4. The entry by the department upon land subject to an inspection as provided by this section shall not be considered to be trespass and damages shall not be recoverable based on the entry or damage to crops caused by the inspection.

Sec. 7. NEW SECTION. 206A.4 IRRIGATION DISTRIBUTION SYSTEMS.

1. The department shall establish, by rule, requirements, procedures, and standards relating to the operation of irrigation distribution systems to prevent the contamination of water supplies caused by chemigation. The rules shall specify the types of equipment used in irrigation distribution systems and design standards for such equipment. The department may establish different standards for different irrigation distribution systems. The rules shall provide for the installation, operation, and maintenance of irrigation pipes. The rules shall also provide for the installation, operation, and maintenance of equipment serving the following purposes:

- a. To check the performance of the system.
- b. To ensure that chemicals drain away from a source water supply.
- c. To monitor the injection of chemicals into an irrigation distribution system.
- d. To protect a water supply from contamination.

2. The rules adopted under this section shall not impose an unduly severe burden on a person without substantially contributing to the prevention of water contamination.

Sec. 8. NEW SECTION. 206A.5 CHEMIGATION APPLICATOR CERTIFICATION REQUIREMENTS.

1. An applicator shall choose between a one-year certification for which the applicator shall pay a seventy-five dollar fee or a three-year certification for which the applicator shall pay a two hundred twenty-five dollar fee. Fees collected pursuant to this section shall be deposited into the chemigation fund. The applicator shall pay the certification fee required in this section in addition to any fee required in section 206.5.

2. The applicator shall be examined prior to initial certification. In addition, the applicator shall be reexamined every three years following initial certification before the applicator is eligible for a renewal of certification. The department shall adopt, by rule, requirements for the examination, reexamination, and certification of applicants. Examinations and reexaminations under this chapter shall be held in conjunction with those required pursuant to section 206.5. The secretary shall also adopt by rule, the criteria for allowing the selection of a written or oral examination by a person requiring certification.

3. The department may suspend or revoke a certificate issued under this section, if an applicator does any of the following:

- a. Applies chemicals by chemigation in violation of section 206A.4.
- b. Applies chemicals by chemigation by use of equipment or a device that the applicator knows is defective, if such use violates requirements of this chapter, including rules adopted by the department.
- c. Fails to report contamination of a water supply as provided in section 206A.7 which results from chemigation, if

the contamination is known to the applicator, or should have been known to an applicator trained to perform similar functions.

d. Violates a provision of this chapter or rule adopted by the department pursuant to this chapter.

Sec. 9. NEW SECTION. 206A.6 NOTICE OF CHEMICAL USE REQUIRED.

A permit holder shall post a notice warning the public that chemicals are applied in an irrigation distribution system, and that land is being applied with chemicals by means of chemigation. The notice shall name any restricted use pesticide applied in the irrigation distribution system. The notice shall be posted on the land subject to chemigation in a manner and according to procedures adopted by departmental rule.

Sec. 10. NEW SECTION. 206A.7 CONTAMINATION REPORT.

A permit holder or an applicator certified pursuant to section 206A.5 shall report an actual or suspected case of contamination related to the use of chemigation on land serviced by an irrigation distribution system. The report shall be made promptly to the department according to rules which shall be adopted by the department. The department shall initiate an investigation of the report within forty-eight hours of the report. The department shall take all actions necessary to protect the public. The department shall establish a plan of cleanup and recovery. The plan shall be carried out by the permit holder under the supervision of the department.

Sec. 11. NEW SECTION. 206A.7A EXCEPTIONS -- ENCLOSED FACILITIES.

Sections 206A.2 and 206A.5 shall not apply to a person otherwise required to obtain a permit or be certified, to the extent that the person is a titleholder of land enclosed within a facility serviced by an irrigation distribution system, is responsible for the day-to-day management of the facility, or is an applicator within the facility.

Sec. 12. NEW SECTION. 206A.8 COOPERATION BY OTHER AGENCIES.

The department of natural resources shall cooperate with the department of agriculture and land stewardship in adopting rules required pursuant to this chapter. The department of natural resources shall also cooperate with the department of agriculture and land stewardship in enforcing provisions of this chapter and rules adopted pursuant to this chapter.

Sec. 13. NEW SECTION. 206A.9 REMEDIES -- DISCIPLINARY ACTION AND INJUNCTIVE RELIEF.

1. The department may initiate disciplinary action against a person under this section by doing any of the following:

a. Referring any case of a violation pursuant to this chapter to the county attorney in the county where the violation occurs or to the attorney general.

b. Suspending or revoking a chemigation permit issued pursuant to section 206A.2.

c. Suspending or revoking a certificate issued pursuant to section 206A.5.

The department shall not initiate disciplinary action until the department provides at least ten days' notice to a person of a violation committed by the person. The notice shall be delivered by personal service or by certified mail. Acceptance of the notice does not constitute evidence of a violation. The department shall make every reasonable effort to obtain voluntary compliance.

The county attorney may initiate a prosecution under this section regardless of notice received by the department. If the county attorney does not initiate prosecution within thirty days after receiving the department's referral, the department shall notify the attorney general who shall initiate the prosecution. Voluntary compliance shall not preclude the department, a county attorney, or the attorney general from carrying out disciplinary action under this section.

2. Prosecution may be waived, if the waiver is conditioned upon compliance by the violator with a schedule for curing the violation. The schedule must be approved by the department and by the county attorney or attorney general if one of them has been asked to prosecute the case. If the violation is cured pursuant to the schedule, no prosecution shall be initiated based on that violation.

3. The department may bring an action in district court in the county where a violation is occurring to enjoin a person from actions which may threaten the public safety. The department, acting as petitioner in the action, shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, that irreparable damage or injury will result if the action is brought at law, or that unique or special circumstances exist.

Sec. 14. NEW SECTION. 206A.10 CHEMIGATION FUND.

1. A chemigation fund is created in the state treasury under the control of the secretary. The fund is composed of moneys deposited from the following sources:

a. Collected and dedicated to the fund under this chapter, including fees dedicated to the fund pursuant to section 206A.2 and 206A.5.

b. Appropriated to the fund by the general assembly.

c. Accepted for deposit into the fund by the secretary from the United States, other states in the union, foreign nations, state agencies, political subdivisions, and private sources.

2. Moneys deposited into the fund shall be used to administer and enforce this chapter.

3. Moneys in the fund shall be subject to an annual audit by the auditor of state. The fund shall be subject to warrants by the director of revenue and finance, drawn upon the written requisition of the secretary or an authorized representative of the secretary.

4. All interest earned on proceeds in the fund shall remain in the fund. Section 8.33 does not apply to moneys in the fund.

Sec. 15. NEW SECTION. 206A.11 PENALTIES.

1. a. A person required to obtain a chemigation permit pursuant to section 206A.2 who fails to obtain or retain the permit is subject to a civil penalty not to exceed two hundred fifty dollars.

b. A person who applies chemicals without obtaining or retaining a certification as required pursuant to section 206A.5 is subject to a civil penalty not to exceed two hundred fifty dollars.

c. A person who willfully tampers with or destroys equipment required pursuant to section 206A.4 used to protect water supplies from chemigation is subject to a civil penalty not to exceed three hundred dollars, if the tampering or destruction causes contamination or threatens to cause contamination of a water supply.

d. A person who fails to report contamination or suspected contamination of a water supply as required pursuant to section 206A.7 is subject to a civil penalty not to exceed one thousand dollars.

e. A person who fails to erect a notice or destroy a notice as required pursuant to section 206A.6 is subject to a civil penalty not to exceed one hundred dollars.

f. A person who fails to file a report required in section 206A.7 is subject to a civil penalty not to exceed one hundred dollars.

2. Each day that a violation continues constitutes a separate offense. The department shall not consider a day that an offense continues as a separate violation if the offense is beyond the control of the person to cure.

3. Moneys collected from civil penalties shall be deposited into the general fund of the state.

4. The penalties provided in this section are separate and cumulative. The penalties are in addition to and not in lieu of penalties imposed by provisions in other chapters, including chapter 206.

Sec. 16. EFFECTIVE DATE AND DATE OF APPLICABILITY.

1. This Act, being deemed of immediate importance, takes effect upon enactment.

2. The department of agriculture and land stewardship shall adopt rules to administer this Act as soon as practicable.

3. A person is not required to comply with this Act until on and after January 1, 1994. A person may apply for a permit and become certified before January 1, 1994.

MICHAEL E. GRONSTAL
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 446, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 22, 1992

TERRY E. BRANSTAD
Governor