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SENATE FILE 466
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 452)

(SUCCESSOR TO SF 299)

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Approved 5/5/00

(P. 1294)

Re-Passed 4/20/00
Vote 48-0

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Vote 96-0

A BILL FOR

1 An Act relating to the remediation of agricultural sites,
2 providing for fees, and providing for the repeal of a section
3 relating to cleanup prioritization.

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

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SF 466

1 Section 1. NEW SECTION. 200.8A AGRICHEMICAL REMEDIATION
2 FEES.

3 A person licensed to sell or distribute commercial
4 fertilizers and soil conditioners who is required to pay an
5 inspection fee under section 200.8 shall pay an agrichemical
6 remediation fee as required pursuant to section 455L.7.

7 Sec. 2. NEW SECTION. 206.13A AGRICHEMICAL REMEDIATION
8 FEES.

9 A person required to register a pesticide for agricultural
10 or horticultural use in this state under section 206.12 shall
11 pay an agrichemical remediation fee as required pursuant to
12 section 455L.7.

13 Sec. 3. NEW SECTION. 455L.1 TITLE.

14 This section shall be known and may be cited as the "Iowa
15 Agrichemical Remediation Act".

16 Sec. 4. NEW SECTION. 455L.2 DEFINITIONS.

17 1. "Action level" means the level of contamination that
18 causes a risk of adverse health effects based on sources
19 determined to be credible by the department, including the
20 United States environmental protection agency or current
21 toxicological information.

22 2. "Active site cleanup" means treating, dispersing,
23 removing, or disposing of contamination located in soil or
24 water, including, but not limited to, excavating soil or,
25 installing institutional or technological controls to protect
26 water quality.

27 3. "Agrichemical" means a fertilizer or pesticide.

28 4. "Background levels" mean concentrations of a
29 contaminant generally present in the environment in the
30 vicinity of a site or an affected area and not the result of
31 release.

32 5. "Board" means the agrichemical remediation
33 reimbursement board created under section 455L.3.

34 6. "Contaminated site" means a site where contamination
35 has been discovered.

1 7. "Contamination" means the presence of pesticide or
2 fertilizer in soil or groundwater at levels above levels that
3 would result from normal field application rates or above
4 background levels.

5 8. "Department" means the department of agriculture and
6 land stewardship.

7 9. "Fertilizer" means a fertilizer or soil conditioner as
8 defined in section 200.3.

9 10. "Fertilizer site" means a location where one or more
10 containers are used for the storage of fertilizer, if there is
11 one or more nonmobile containers at the location which have a
12 total capacity to hold more than five thousand gallons of
13 fertilizer.

14 11. "Fund" means the agrichemical remediation fund created
15 under section 455L.8.

16 12. "Passive cleanup" means the removal or treatment of a
17 contaminant in soil or water through management practices or
18 the construction of barriers, trenches, and other similar
19 facilities for prevention of contamination, as well as the use
20 of natural processes such as groundwater recharge, natural
21 decay, and chemical or biological decomposition.

22 13. "Pesticide" means a pesticide as defined in section
23 206.2.

24 14. "Pesticide site" means a location where one or more
25 containers are used for the storage or mixing of pesticides,
26 if all of the following apply:

27 a. The location is a site used for the storage or
28 distribution of pesticides.

29 b. One of the following applies:

30 (1) All of the following apply:

31 (a) The pesticides are at the location thirty or more
32 consecutive days.

33 (b) Three hundred or more gallons of liquid pesticides or
34 three hundred or more pounds of dry pesticides are mixed,
35 repackaged, or transferred from one container to another

1 container within thirty consecutive days.

2 (2) All of the following apply:

3 (a) The pesticides are transported from one location to
4 another location.

5 (b) The container storing the pesticides is holding fifty
6 gallons or more of liquid pesticides or two hundred pounds or
7 more of dry pesticides.

8 15. "Prohibited release" means spilling, leaking, pumping,
9 pouring, emitting, emptying, discharging, injecting, escaping,
10 leaching, dumping, or disposing an agrichemical into the
11 environment from a site, if the spill, emission, or discharge
12 is in an amount or manner that causes contamination.

13 16. "Protected groundwater source" means a saturated bed,
14 formation, or group of formations which has a hydraulic
15 conductivity of at least forty-four-hundredths meters per day
16 and a total dissolved solids concentration of less than two
17 thousand five hundred milligrams per liter.

18 17. "Remediation" means a process used to protect the
19 public health and the safety or the environment from
20 contamination, including by doing all of the following:

21 a. Controlling, containing, or stabilizing the effects
22 caused by a prohibited release.

23 b. Investigating, identifying, or analyzing a contaminant
24 or a contamination source; collecting samples, including soil
25 and water samples; assessing the condition of a site;
26 monitoring a contaminated site; providing for structural
27 testing; or providing for engineering services.

28 c. Providing for site cleanup.

29 18. a. "Responsible person" means a person who is legally
30 liable for the contamination or who is legally responsible for
31 abating contamination under any applicable law, including
32 chapters 455B and 455E, and the common law. This may include
33 a person causing, allowing, or otherwise participating in the
34 activities or events which cause the contamination, persons
35 who have failed to conduct their activities so as to prevent

1 the release of contaminants into groundwater, responsible
2 persons who are obligated to abate a condition, or persons
3 responsible for or a successor to such persons.

4 b. "Responsible person" does not include a person who
5 caused contamination by acting in a manner unauthorized by the
6 owner of the pesticide or fertilizer, including a person who
7 trespasses upon a site.

8 19. "Site" means a fertilizer site or a pesticide site.

9 20. "Site cleanup" means measures used to contain, reduce,
10 or eliminate contamination present at a site including by
11 using active site cleanup or passive site cleanup measures, or
12 complying with a correction action required or recommended by
13 the department of natural resources or the United States
14 environmental protection agency.

15 Sec. 5. NEW SECTION. 455L.3 AGRICHEMICAL REMEDIATION
16 BOARD.

17 1. An agrichemical remediation board is established within
18 the department consisting of seven members.

19 2. The members shall include all of the following:

20 a. Five voting members appointed by the secretary of
21 agriculture. The members shall include all of the following:

22 (1) One member who is actively engaged in selling
23 agricultural products on a retail basis, or who represents an
24 association of members actively engaged in selling such
25 products.

26 (2) One member who is actively engaged in producing an
27 agricultural commodity.

28 (3) One member who is actively engaged in the distribution
29 of agrichemicals or who is a representative of an association
30 of members actively engaged in the distribution of
31 agrichemicals.

32 (4) One person who is actively engaged in the manufacture
33 or distribution of fertilizers or who is a representative of
34 an association of members actively engaged in the manufacture
35 or distribution of fertilizers.

1 (5) One person who is a pesticide registrant actively
2 engaged in the manufacture and distribution of pesticides as
3 provided in section 206.12 or who represents an association of
4 members licensed as pesticide registrants.

5 b. The following two members who shall be ex officio
6 nonvoting members of the board:

7 (1) The secretary of agriculture or the secretary's
8 designee.

9 (2) The director of the department of natural resources or
10 the director's designee.

11 3. a. The five voting members are subject to confirmation
12 by the senate pursuant to section 2.32.

13 b. The voting members shall serve terms of three years
14 beginning and ending as provided in section 69.19. However,
15 the secretary shall appoint initial members to serve for less
16 than three years to ensure members serve staggered terms.
17 Appointments to the board shall be based upon the training,
18 experience and capacity of the appointees, and not upon
19 political considerations, other than as provided in sections
20 69.16 and 69.16A.

21 c. A vacancy on the board shall be filled in the same
22 manner as an original appointment. A person appointed to fill
23 a vacancy shall serve only for the unexpired portion of the
24 term. An appointed member is eligible for reappointment.

25 d. An appointed member may be removed from office by the
26 secretary for misfeasance, malfeasance, willful neglect of
27 duty, or other just cause, after notice and hearing, unless
28 the notice and hearing is expressly waived in writing.

29 5. The appointed members shall receive a per diem as
30 specified in section 7E.6 for each day spent in performance of
31 duties as members, and shall be reimbursed for all actual and
32 necessary expenses incurred in the performance of duties as
33 members.

34 6. The board shall elect a chairperson each year. The
35 board shall meet on a regular basis and at the call of the

1 chairperson or upon the written request to the chairperson of
2 two or more members.

3 7. The department shall staff the board.

4 Sec. 6. NEW SECTION. 455L.4 BOARD POWERS AND DUTIES.

5 The board shall have all powers necessary to carry out the
6 functions and duties specified for the board as provided in
7 this chapter. The board shall do all of the following:

8 1. Review and determine the eligibility of responsible
9 persons under section 455L.9 and claims under section 455L.10,
10 and approve administrative costs of the department paid from
11 the fund. Administrative costs for each year shall not exceed
12 one hundred thousand dollars or five percent of revenues
13 deposited into the fund each year, whichever is greater.

14 2. Consult with the department regarding remediation
15 standards adopted by the department pursuant to section
16 455L.5.

17 3. Approve rules proposed by the department for the
18 administration of this chapter. The rules of the department
19 shall contain the rules of the board adopted for its
20 organization, procedures, programs, and requirements as
21 required in this chapter. The rules shall provide for all of
22 the following:

23 a. The board's organization and parliamentary procedures.

24 b. Standards for remediation as provided in section
25 455L.5.

26 c. The administration of agrichemical remediation fees as
27 provided in section 455L.7.

28 d. Procedures for paying claims as provided in section
29 455L.10.

30 Sec. 7. NEW SECTION. 455L.5 REMEDIATION STANDARDS.

31 1. The department shall establish remediation standards
32 after consultation with the board. The standards must provide
33 for the protection of the public health and safety and the
34 environment.

35 2. In establishing these standards, all of the following

1 shall be considered:

2 a. Separate standards shall be established for
3 contaminants in soil, in groundwater which is a protected
4 groundwater source, and in groundwater which is not a
5 protected groundwater source.

6 b. In groundwater which is a protected groundwater source,
7 the standards shall be no more protective than the least
8 restrictive of the maximum contaminant levels established
9 pursuant to the department of natural resources' drinking
10 water standards, a standard reflecting an increased cancer
11 risk of one in one million, or a standard reflecting a
12 noncancer health risk of one. An affected area shall not be
13 required to be cleaned up to concentration levels below or
14 more restrictive than background levels.

15 c. In groundwater which is not a protected groundwater
16 source, the standards shall be no more protective than the
17 least restrictive of a standard reflecting an increased cancer
18 risk of one in ten thousand or a standard reflecting a
19 noncancer health risk of one. An affected area shall not be
20 required to be cleaned up to levels below or more restrictive
21 than background levels.

22 d. In soil, the standards shall be no more protective than
23 the least restrictive of a standard reflecting an increased
24 cancer risk of one in one million or a standard reflecting a
25 noncancer health risk of one. An affected area shall not be
26 required to be cleaned up to concentration levels below or
27 more restrictive than background levels.

28 Sec. 8. NEW SECTION. 455L.6 PRIORITIZATION.

29 1. The board may adopt rules to establish criteria for the
30 classification and prioritization of sites upon which
31 contamination has been discovered.

32 2. A contaminated site shall be classified as either high,
33 medium, or low priority.

34 a. A site shall be considered high priority under any of
35 the following conditions:

- 1 (1) Groundwater contamination exceeds action levels and is
- 2 affecting or likely to affect groundwater used as a drinking
- 3 water source.
- 4 (2) Contamination is affecting or likely to affect surface
- 5 water bodies to a level which exceeds surface water quality
- 6 standards under section 455B.173.
- 7 (3) Contamination is discovered in an ecologically
- 8 sensitive area. An ecologically sensitive area is one which
- 9 is designated by the department.
- 10 b. A site shall be considered medium priority if
- 11 contamination of groundwater exceeds action levels, but does
- 12 not meet the criteria for classification as a high priority
- 13 site.
- 14 c. A site shall be considered low priority under any of
- 15 the following conditions:
- 16 (1) If soil contamination exists at the site, but no
- 17 groundwater contamination exists at the site.
- 18 (2) If soil contamination exists and groundwater
- 19 contamination has been discovered, but is below action levels.
- 20 3. A site shall be reclassified as a site with a higher or
- 21 lower classification when the site falls within a higher or
- 22 lower classification as established under this section.
- 23 4. This section is applicable to all sites upon which
- 24 contamination has been discovered, unless corrective action on
- 25 a site has already been approved by the department and
- 26 completely implemented.
- 27 5. An initial plan of remediation shall be developed by
- 28 the responsible person and approved by the department for each
- 29 site upon which contamination has been discovered. The plan
- 30 of remediation shall include all of the following:
- 31 a. A determination as to the extent of the existing soil,
- 32 groundwater, or surface water contamination.
- 33 b. The proximity of the contamination and the likelihood
- 34 that the contamination will affect a drinking water well.
- 35 c. The characteristics of the site and the potential for

1 migration of the contamination.

2 d. A recommendation as to whether the site should be
3 classified as a high, medium, or low priority site.

4 e. If a site is classified as a high or medium priority
5 site, further investigation shall be conducted to determine
6 the extent of the remediation which should be conducted on the
7 site.

8 6. The corrective action response shall be administered as
9 follows:

10 a. For a high priority site, soil and groundwater
11 remediation shall include active remediation where technically
12 feasible, until such time as the groundwater contamination
13 levels are below action levels.

14 b. For a medium priority site, the remediation shall
15 include either monitoring or active or passive remediation as
16 determined by the department on a site-by-site basis upon
17 considering the findings of the plan of remediation. However,
18 the remediation shall at least be the same remediation
19 required if the site were classified as a low priority site.

20 c. For a low priority site, the remediation shall include
21 active soil remediation, if remediation would be more
22 practical and cost-effective than monitoring. If active soil
23 remediation is undertaken, no further action shall be required
24 on the site. If active soil remediation is not undertaken,
25 the site shall be monitored, for a specified period of time as
26 determined by the department.

27 7. Contaminated groundwater and soil shall be applied on
28 land in accordance with rules adopted by the department. The
29 application rate shall not exceed a level which precludes the
30 resumption of normal farming practices within a two-year
31 period.

32 8. This section does not affect the ability of the
33 department or the United States environmental protection
34 agency to require monitoring or remediation on sites that are
35 placed on the national priorities list pursuant to the federal

1 Comprehensive Environmental Response, Compensation and
2 Liability Act.

3 Sec. 9. NEW SECTION. 455L.7 AGRICHEMICAL REMEDIATION
4 FEES.

5 1. The department shall establish an agrichemical
6 remediation fee. The department shall set the fee as follows:

7 a. A person required to register a pesticide for
8 agricultural or horticultural use in this state shall pay an
9 agrichemical remediation fee. The fee shall be paid and
10 collected in the same manner as a fee provided pursuant to
11 section 206.12.

12 (1) For registrants required to pay the minimum fee under
13 section 206.12, the agrichemical remediation fee shall not
14 exceed fifteen dollars.

15 (2) For registrants who are required to pay more than the
16 minimum fee but less than the maximum fee under section
17 206.12, the agrichemical remediation fee shall not exceed
18 three hundred fifty dollars.

19 (3) For registrants who are required to pay the maximum
20 fee under section 206.12, the agrichemical remediation fee
21 shall not exceed one-fifth of one percent of the registrant's
22 annual gross sales of pesticides for use in this state.

23 b. A person licensed to sell or distribute commercial
24 fertilizers and soil conditioners who is required to pay an
25 inspection fee under section 200.8 shall pay an agrichemical
26 remediation fee. The fee shall be paid and collected in the
27 same manner as a fee provided pursuant to section 200.8. The
28 amount of the fee shall not be more than seventeen cents per
29 ton of fertilizers and soil conditioners.

30 2. a. Each year the department shall adjust the
31 agrichemical remediation fees necessary to ensure that the
32 unobligated and unencumbered balance of the fund, less any
33 pending or unsettled claims, at the end of the following year
34 is more than two million dollars but not more than six million
35 dollars. The department shall make any adjustments in the

1 fees by rule adopted pursuant to chapter 17A.

2 b. The board shall recommend to the department any
3 adjustments in the agrichemical fees that are necessary to
4 maintain the fund within the limits established under this
5 subsection. During its review, the board shall determine the
6 unobligated and unencumbered balance of the fund and the
7 expected debits of and credits to the fund for the following
8 year in which an agrichemical remediation fee is to be paid
9 pursuant to this section, including the amount of fees
10 expected to be collected during the following year and any
11 expected, pending, or unsettled claims. The board shall make
12 its recommendations at least thirty days before the
13 adjustments to the fees become effective. Adjustments in the
14 fees shall become effective for the next filing of a statement
15 for commercial fertilizers or soil conditioners as provided in
16 section 200.8 and the next registration of pesticides as
17 provided in section 206.12.

18 3. If, at the end of any three-month period, the
19 unobligated or unencumbered balance of the fund exceeds six
20 million dollars, less any pending or unsettled claims, the
21 department, after consultation with the board, shall waive the
22 fees which shall not be assessable or owing. The department
23 after consultation with the board shall reinstate the fees if
24 the unobligated or unencumbered balance of the fund, less any
25 pending or unsettled claims, is two million dollars or less.

26 Sec. 10. NEW SECTION. 455L.8 AGRICHEMICAL REMEDIATION
27 FUND.

28 1. An agrichemical remediation fund is created within the
29 state treasury under the control of the department.

30 2. The fund shall consist of any moneys appropriated by
31 the general assembly for placement in the fund, and moneys
32 available to and obtained or accepted by the department from
33 the federal government or private sources for placement in the
34 fund.

35 3. The fund shall be used exclusively to support

1 agrichemical remediation as provided in this chapter,
2 including the payment of claims under section 455L.10 and the
3 administration of this chapter by the board and the
4 department.

5 4. The treasurer of state shall act as custodian of the
6 fund and disburse amounts contained in the fund as directed by
7 the department, in consultation with the board. The treasurer
8 of state is authorized to invest the moneys deposited in the
9 fund. The income from such investment shall be credited to
10 and deposited in the fund. Notwithstanding section 8.33,
11 moneys in the fund are not subject to reversion to the general
12 fund of the state. The fund shall be administered by the
13 department which shall make expenditures from the fund
14 consistent with the purposes set out in this chapter. The
15 moneys in the fund shall be disbursed upon warrants drawn by
16 the director of revenue and finance pursuant to the order of
17 the department. The finances of the fund shall be calculated
18 on an accrual basis in accordance with generally accepted
19 accounting principles. The auditor of state shall regularly
20 perform audits of the fund.

21 Sec. 11. NEW SECTION. 455L.9 ELIGIBILITY OF RESPONSIBLE
22 PERSONS.

23 1. A responsible person is eligible to submit a claim to
24 the board for reimbursement from the fund, if the board
25 determines that all of the following apply:

26 a. The responsible person is not subject to any of the
27 following:

28 (1) A pending criminal adjudication against the
29 responsible person relating to the contamination.

30 (2) Criminal sanctions imposed against the responsible
31 person relating to the contamination.

32 b. Any of the following:

33 (1) The responsible person performed reasonable measures
34 necessary for the immediate abatement of any prohibited
35 release.

1 (2) The responsible person has complied or is in the
2 process of complying in a timely manner with orders issued by
3 the state or federal government for remediation of the
4 contaminated site.

5 2. Unless the department has cause to believe that the
6 responsible person is not eligible, the department shall
7 provide a statement to the responsible person upon request.
8 The statement shall be printed on forms prescribed by the
9 board. The statement shall verify that to the extent of the
10 department's knowledge, the responsible person is eligible
11 under this section. The board may use the statement as
12 evidence of eligibility. The board shall provide the
13 statement with any weight determined appropriate by the board.

14 3. The state, a state agency, a political subdivision of
15 the state, or federal government, or an agency of the federal
16 government, is not eligible to submit a claim to the board for
17 reimbursement from the fund.

18 4. A responsible person shall not be eligible to receive a
19 payment from the fund, unless the responsible person submits a
20 remediation plan to the department which is approved by the
21 board. The plan shall provide procedures for a remediation of
22 the contaminated site, a schedule for providing for the
23 remediation of the site, or the installation of passive site
24 cleanup.

25 Sec. 12. NEW SECTION. 455L.10 PAYMENT OF CLAIMS.

26 1. The board shall approve a claim against the fund to pay
27 for remediation of a contaminated site, if all of the
28 following apply:

29 a. The claim is made in a manner and according to
30 procedures established by the board.

31 b. The person filing the claim is a responsible person
32 eligible under section 455L.9.

33 c. The claim includes all of the following:

34 (1) Evidence of the contamination, including affidavits of
35 experts, photographs, or documentation by federal or state

1 agencies including the department of natural resources.

2 (2) The total amount required to pay for all costs related
3 to remediating the site as performed by a qualified person
4 according to a business invoice. The business invoice shall
5 be accompanied by supporting evidence.

6 (3) Information about any insurance policy required to
7 indemnify the responsible person for costs associated with
8 remediating the contaminated site, including a copy of the
9 policy.

10 (4) The site has been remediated according to a plan of
11 remediation approved by the board as provided in section
12 455L.9.

13 (5) The claim is complete and accurate, and contains no
14 false or misleading statements.

15 (6) The approval by the department, in consultation with
16 the board, of a comprehensive plan by the responsible person
17 for the prevention of future contamination at the site.

18 d. The responsible person submits a remediation plan to
19 the department which is approved by the board.

20 2. If the board approves a claim, the board shall
21 reimburse the responsible person by doing any of the
22 following:

23 a. Providing for the immediate payment of a claim, if the
24 board determines that the contamination causes a clear,
25 present, and impending danger to the public health or the
26 natural environment.

27 b. Providing for the ordinary payment of a claim as
28 follows:

29 (1) The board may pay the amount of the claim based on a
30 final statement submitted by a responsible person. The
31 department, in consultation with the board, may establish
32 guidelines for reasonable and necessary charges for specific
33 remediation procedures. Payment shall not exceed these
34 reasonable and necessary charges without prior approval of the
35 board.

1 (2) Upon a determination that the claim is eligible for
2 payment, the department shall provide for payment of the claim
3 as provided in this subsection.

4 c. The amount of the claim shall be the total amount
5 required to remediate the site subject to all of the
6 following:

7 (1) A deduction of five thousand dollars.

8 (2) A deduction in the amount of the insurance payments
9 owed to or received by the responsible person for
10 indemnification of remediation costs. The amount of the
11 insurance payments shall be applied first to satisfy the five
12 thousand dollar deduction required in subparagraph (1).

13 (3) After making the deductions required in subparagraphs
14 (1) and (2), the department shall provide for payment in the
15 amount of ninety percent of claims up to one hundred thousand
16 dollars, eighty percent of claims over one hundred thousand
17 dollars, but not exceeding two hundred thousand dollars, and
18 seventy percent of claims over two hundred thousand dollars up
19 to two hundred fifty thousand dollars.

20 (4) The amount of a claim shall not be more than two
21 hundred fifty thousand dollars to pay the costs of remediating
22 a contaminated site.

23 3. The board shall not provide payments from the fund
24 until the board determines that the claim is reasonable and
25 that the claimant has submitted all evidence necessary in
26 order to support the claim and any expenditure of moneys from
27 the fund. The board shall place conditions or requirements
28 upon the payment of moneys from the fund in order to ensure
29 that the moneys are used to provide remediation in compliance
30 with a remediation plan required pursuant to section 455L.9.

31 4. If at any time the department determines that there are
32 insufficient moneys in the fund to make payment of all claims,
33 the department shall pay claims according to the date that the
34 claims are received by the department. To the extent that a
35 claim cannot be fully satisfied, the department shall order

1 that the unpaid portion of the payment be deferred until the
2 claim can be satisfied. However, the department shall not
3 satisfy claims from moneys dedicated for the administration of
4 the fund.

5 5. The department shall have a claim on behalf of the fund
6 against any responsible person who files a claim in violation
7 of this chapter for the amount paid for remediation. The
8 responsible person shall be liable for damages. The moneys
9 collected by the department under this subsection shall be
10 deposited into the fund.

11 Sec. 13. NEW SECTION. 455L.11 REPORT.

12 The department in cooperation with the board shall submit a
13 report to the general assembly by January 10 of each odd-
14 numbered year. The report shall provide a summary and a
15 detailed accounting of the fund's financial condition,
16 including expected revenue and expenses during the following
17 two years.

18 Sec. 14. Section 455B.601, Code 1999, is repealed.

19 Sec. 15. FULL-TIME EQUIVALENT POSITIONS. There is
20 authorized for the fiscal year beginning July 1, 1999, and
21 ending June 30, 2000, the following full-time equivalent
22 positions within the department of agriculture and land
23 stewardship, in order to support administration of chapter
24 455L, as enacted by this Act, in addition to any other full-
25 time equivalent positions authorized by the Seventy-eighth
26 General Assembly, 1999 Session, to support the department:
27 FTEs 1.00

28 EXPLANATION

29 This bill creates a new Code chapter 455L which is referred
30 to as the "Iowa Agrichemical Remediation Act". The bill
31 provides for the remediation of sites where there has been
32 contamination because of a release of pesticides or
33 fertilizers. The bill establishes an agrichemical remediation
34 board within the department of agriculture and land
35 stewardship. The board includes a farmer, and persons

1 involved in the distribution and manufacture of fertilizers
2 and pesticides. The bill provides that the board has all the
3 powers and duties to carry out the functions and duties as
4 specified in the bill. The bill requires the department to
5 establish remediation standards after consultation with the
6 board. The standards must provide for the protection of the
7 public health and safety and the environment. The bill
8 requires that separate standards shall be established for
9 contaminants in soil and groundwater.

10 The bill provides for the prioritization of sites for
11 cleanup. The bill's provision is based closely on Code
12 section 455B.601, which the bill repeals. The bill provides
13 that a contaminated site must be cleaned up based on a low,
14 medium, or high priority status. The bill requires a person
15 to file a plan of remediation with the board and institute
16 remediation as provided according to the site's priority.

17 The bill requires the department to establish an
18 agrichemical remediation fee. The fee is imposed in the same
19 way as the fee for registration of pesticides and the
20 inspection fee on fertilizers and soil conditioners. Under
21 the bill, a person required to register a pesticide for
22 agricultural or horticultural use must pay a fee. The bill
23 provides that a person licensed to sell or distribute
24 commercial fertilizers and soil conditioners who is required
25 to pay an inspection fee under Code section 200.8 must also
26 pay a fee. The bill establishes an agrichemical remediation
27 fund. The bill provides that the fund must be used
28 exclusively to support agrichemical remediation, including the
29 payment of claims and the administration of this chapter by
30 the board and the department.

31 The bill provides for the payment of claims to eligible
32 persons. A person is eligible, if the person is not subject
33 to criminal charges, the person performed reasonable measures
34 necessary for the immediate abatement of any prohibited
35 release, the person is complying with administrative orders,

1 and the person submits a remediation plan approved by the
2 board. The bill provides procedures for the payment of
3 claims, including emergency or ordinary payments. The bill
4 provides limits on the amount of reimbursement, including a
5 deductible. The bill provides that the amount of the claim
6 shall not be more than \$250,000 to pay the costs of
7 remediating a contaminated site.

8 The bill requires the department in cooperation with the
9 board to submit a report to the general assembly by January 10
10 of each odd-numbered year.

11 The bill authorizes a full-time equivalent position within
12 the department of agriculture and land stewardship in order to
13 administer the bill's provisions.

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SENATE FILE 466

S-3443

1 Amend Senate File 466 as follows:
2 1. Page 1, by striking lines 1 through 12.
3 2. Page 1, line 13, by striking the figure
4 "455L.1" and inserting the following: "161.1".
5 3. Page 1, line 16, by striking the figure
6 "455L.2" and inserting the following: "161.2".
7 4. Page 1, line 33, by striking the figure
8 "455L.3" and inserting the following: "161.3".
9 5. Page 2, by striking lines 9 through 13 and
10 inserting the following:
11 "_____. "Fertilizer site" means a place where
12 containers used for storing or mixing a fertilizer, if
13 any of the following applies:
14 a. The container holds one thousand gallons or
15 more of a liquid fertilizer or one thousand pounds or
16 more of a dry fertilizer.
17 b. The container is in the process of being
18 transported."
19 6. Page 2, line 15, by striking the figure
20 "455L.8" and inserting the following: "161.8".
21 7. By striking page 2, line 24, through page 3,
22 line 7, and inserting the following:
23 "_____. "Pesticide site" means a place where a
24 container used for storing or mixing a pesticide is
25 located, if any of the following applies:
26 a. The container holds fifty gallons or more of a
27 liquid pesticide or two hundred pounds or more of a
28 dry pesticide.
29 b. The container is in the process of being
30 transported."
31 8. Page 4, line 15, by striking the figure
32 "455L.3" and inserting the following: "161.3".
33 9. Page 4, line 18, by striking the word "seven"
34 and inserting the following: "eight".
35 10. Page 4, by inserting after line 19 the
36 following:
37 "_____. The secretary of agriculture or the
38 secretary's designee who shall serve as a nonvoting ex
39 officio member."
40 11. Page 4, line 20, by striking the word "Five"
41 and inserting the following: "Six".
42 12. Page 4, by striking lines 26 and 27 and
43 inserting the following:
44 "(2) Two members who are actively engaged in
45 producing agricultural crops."
46 13. Page 5, by striking lines 5 through 14 and
47 inserting the following:
48 "_____. The director of the department of natural
49 resources who shall serve as a voting member.
50 _____. The appointed members shall serve terms of

S-3443

S-3443

Page 2

1 three years beginning and ending as provided in
2 section 69.19. However,".

3 14. Page 6, line 4, by striking the figure
4 "455L.4" and inserting the following: "161.4".

5 15. Page 6, line 9, by striking the figure
6 "455L.9" and inserting the following: "161.9".

7 16. Page 6, line 9, by striking the figure
8 "455L.10" and inserting the following: "161.10".

9 17. Page 6, line 12, by inserting after the word
10 "hundred" the following: "and fifty".

11 18. Page 6, line 16, by striking the figure
12 "455L.5" and inserting the following: "161.5".

13 19. Page 6, by striking line 17, and inserting
14 the following:

15 "_____. Consult with the department in the adoption
16 of rules necessary for the".

17 20. Page 6, line 25, by striking the figure
18 "455L.5" and inserting the following: "161.5".

19 21. Page 6, line 27, by striking the figure
20 "455L.7" and inserting the following: "161.7".

21 22. Page 6, line 29, by striking the figure
22 "455L.10" and inserting the following: "161.10".

23 23. Page 6, line 30, by striking the figure
24 "455L.5" and inserting the following: "161.5".

25 24. Page 7, line 28, by striking the figure
26 "455L.6" and inserting the following: "161.6".

27 25. Page 10, line 3, by striking the figure
28 "455L.7" and inserting the following: "161.7".

29 26. Page 11, line 26, by striking the figure
30 "455L.8" and inserting the following: "161.8".

31 27. Page 12, line 21, by striking the figure
32 "455L.9" and inserting the following: "161.9".

33 28. Page 13, line 25, by striking the figure
34 "455L.10" and inserting the following: "161.10".

35 29. Page 13, line 32, by striking the figure
36 "455L.9" and inserting the following: "161.9".

37 30. Page 14, line 12, by striking the figure
38 "455L.9" and inserting the following: "161.9".

39 31. Page 16, line 11, by striking the figure
40 "455L.11" and inserting the following: "161.11".

41 32. Page 16, by inserting after line 17 the
42 following:

43 "Sec. _____. NEW SECTION. 200.8A AGRICHEMICAL
44 REMEDIATION FEES.

45 A person licensed to sell or distribute commercial
46 fertilizers and soil conditioners who is required to
47 pay an inspection fee under section 200.8 shall pay an
48 agrichemical remediation fee as required pursuant to
49 section 161.7.

50 Sec. _____. NEW SECTION. 206.13A AGRICHEMICAL

S-3443 -2-

S-3443

Page 3

- 1 REMEDIATION FEES.
- 2 A person required to register a pesticide for
- 3 agricultural or horticultural use in this state under
- 4 section 206.12 shall pay an agrichemical remediation
- 5 fee as required pursuant to section 161.7."
- 6 33. Page 16, line 24, by striking the figure
- 7 "455L" and inserting the following: "161".
- 8 34. Page 16, line 27, by striking the figure
- 9 "1.00" and inserting the following: "2.00".
- 10 35. By renumbering as necessary.

By MIKE SEXTON

S-3443 FILED APRIL 20, 1999

adopted
4/22/99 (p.1255)

SENATE FILE 466

S-3370

- 1 Amend Senate File 466 as follows:
- 2 1. Page 16, line 27, by striking the figure
- 3 "1.00" and inserting the following: "2.00".

By MERLIN E. BARTZ

S-3370 FILED APRIL 14, 1999

o/o
4/22/99 (p.1255)

H. 4/23/99 Ways & Means
H. 3/8/00 Amend Do Pass
W/H. 8261
H. 3/23/00 Unamended
Business Calendar
H 4/12/00 Referred to W. & M.

SENATE FILE 466

BY COMMITTEE ON WAYS AND MEANS

H 4/12/00 Amend/Do Pass W/H 8261

(SUCCESSOR TO SF 452)

(SUCCESSOR TO SF 299)

(AS AMENDED AND PASSED BY THE SENATE APRIL 22, 1999)

_____ - New Language by the Senate

* - Language Stricken by the Senate

Passed Senate, ^(P. 1294) Date 4/20/00 Passed House, ^(P. 1456) Date 4/12/00
Vote: Ayes 48 Nays 0 Vote: Ayes 74 Nays 22

Approved _____
Passed 4-24-00
u Vote 96-0

A BILL FOR

- 1 An Act relating to the remediation of agrichemical sites,
- 2 providing for fees, and providing for the repeal of a section
- 3 relating to cleanup prioritization.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S.F. 466

*1 Section 1. NEW SECTION. 161.1 TITLE.

2 This section shall be known and may be cited as the "Iowa
3 Agrichemical Remediation Act".

4 Sec. 2. NEW SECTION. 161.2 DEFINITIONS.

5 1. "Action level" means the level of contamination that
6 causes a risk of adverse health effects based on sources
7 determined to be credible by the department, including the
8 United States environmental protection agency or current
9 toxicological information.

10 2. "Active site cleanup" means treating, dispersing,
11 removing, or disposing of contamination located in soil or
12 water, including, but not limited to, excavating soil or,
13 installing institutional or technological controls to protect
14 water quality.

15 3. "Agrichemical" means a fertilizer or pesticide.

16 4. "Background levels" mean concentrations of a
17 contaminant generally present in the environment in the
18 vicinity of a site or an affected area and not the result of
19 release.

20 5. "Board" means the agrichemical remediation
21 reimbursement board created under section 161.3.

22 6. "Contaminated site" means a site where contamination
23 has been discovered.

24 7. "Contamination" means the presence of pesticide or
25 fertilizer in soil or groundwater at levels above levels that
26 would result from normal field application rates or above
27 background levels.

28 8. "Department" means the department of agriculture and
29 land stewardship.

30 9. "Fertilizer" means a fertilizer or soil conditioner as
31 defined in section 200.3.

32 10. "Fertilizer site" means a place where containers used
33 for storing or mixing a fertilizer, if any of the following
34 applies:

35 a. The container holds one thousand gallons or more of a

1 liquid fertilizer or one thousand pounds or more of a dry
2 fertilizer.

3 b. The container is in the process of being transported.

4 11. "Fund" means the agrichemical remediation fund created
5 under section 161.8.

6 12. "Passive cleanup" means the removal or treatment of a
7 contaminant in soil or water through management practices or
8 the construction of barriers, trenches, and other similar
9 facilities for prevention of contamination, as well as the use
10 of natural processes such as groundwater recharge, natural
11 decay, and chemical or biological decomposition.

12 13. "Pesticide" means a pesticide as defined in section
13 206.2.

14 14. "Pesticide site" means a place where a container used
15 for storing or mixing a pesticide is located, if any of the
16 following applies:

17 a. The container holds fifty gallons or more of a liquid
18 pesticide or two hundred pounds or more of a dry pesticide.

19 b. The container is in the process of being transported.

20 15. "Prohibited release" means spilling, leaking, pumping,
21 pouring, emitting, emptying, discharging, injecting, escaping,
22 leaching, dumping, or disposing an agrichemical into the
23 environment from a site, if the spill, emission, or discharge
24 is in an amount or manner that causes contamination.

25 16. "Protected groundwater source" means a saturated bed,
26 formation, or group of formations which has a hydraulic
27 conductivity of at least forty-four-hundredths meters per day
28 and a total dissolved solids concentration of less than two
29 thousand five hundred milligrams per liter.

30 17. "Remediation" means a process used to protect the
31 public health and the safety or the environment from
32 contamination, including by doing all of the following:

33 a. Controlling, containing, or stabilizing the effects
34 caused by a prohibited release.

35 b. Investigating, identifying, or analyzing a contaminant

1 or a contamination source; collecting samples, including soil
2 and water samples; assessing the condition of a site;
3 monitoring a contaminated site; providing for structural
4 testing; or providing for engineering services.

5 c. Providing for site cleanup.

6 18. a. "Responsible person" means a person who is legally
7 liable for the contamination or who is legally responsible for
8 abating contamination under any applicable law, including
9 chapters 455B and 455E, and the common law. This may include
10 a person causing, allowing, or otherwise participating in the
11 activities or events which cause the contamination, persons
12 who have failed to conduct their activities so as to prevent
13 the release of contaminants into groundwater, responsible
14 persons who are obligated to abate a condition, or persons
15 responsible for or a successor to such persons.

16 b. "Responsible person" does not include a person who
17 caused contamination by acting in a manner unauthorized by the
18 owner of the pesticide or fertilizer, including a person who
19 trespasses upon a site.

20 19. "Site" means a fertilizer site or a pesticide site.

21 20. "Site cleanup" means measures used to contain, reduce,
22 or eliminate contamination present at a site including by
23 using active site cleanup or passive site cleanup measures, or
24 complying with a correction action required or recommended by
25 the department of natural resources or the United States
26 environmental protection agency.

27 Sec. 3. NEW SECTION. 161.3 AGRICHEMICAL REMEDIATION
28 BOARD.

29 1. An agrichemical remediation board is established within
30 the department consisting of eight members.

31 2. The members shall include all of the following:

32 a. The secretary of agriculture or the secretary's
33 designee who shall serve as a nonvoting ex officio member.

34 b. Six voting members appointed by the secretary of
35 agriculture. The members shall include all of the following:

1 (1) One member who is actively engaged in selling
2 agricultural products on a retail basis, or who represents an
3 association of members actively engaged in selling such
4 products.

5 (2) Two members who are actively engaged in producing
6 agricultural crops.

7 (3) One member who is actively engaged in the distribution
8 of agrichemicals or who is a representative of an association
9 of members actively engaged in the distribution of
10 agrichemicals.

11 (4) One person who is actively engaged in the manufacture
12 or distribution of fertilizers or who is a representative of
13 an association of members actively engaged in the manufacture
14 or distribution of fertilizers.

15 (5) One person who is a pesticide registrant actively
16 engaged in the manufacture and distribution of pesticides as
17 provided in section 206.12 or who represents an association of
18 members licensed as pesticide registrants.

19 c. The director of the department of natural resources who
20 shall serve as a voting member.

21 3. The appointed members shall serve terms of three years
22 beginning and ending as provided in section 69.19. However,
23 the secretary shall appoint initial members to serve for less
24 than three years to ensure members serve staggered terms.
25 Appointments to the board shall be based upon the training,
26 experience and capacity of the appointees, and not upon
27 political considerations, other than as provided in sections
28 69.16 and 69.16A.

29 a. A vacancy on the board shall be filled in the same
30 manner as an original appointment. A person appointed to fill
31 a vacancy shall serve only for the unexpired portion of the
32 term. An appointed member is eligible for reappointment.

33 b. An appointed member may be removed from office by the
34 secretary for misfeasance, malfeasance, willful neglect of
35 duty, or other just cause, after notice and hearing, unless

1 the notice and hearing is expressly waived in writing.

2 c. The appointed members shall receive a per diem as
3 specified in section 7E.6 for each day spent in performance of
4 duties as members, and shall be reimbursed for all actual and
5 necessary expenses incurred in the performance of duties as
6 members.

7 4. The board shall elect a chairperson each year. The
8 board shall meet on a regular basis and at the call of the
9 chairperson or upon the written request to the chairperson of
10 two or more members.

11 5. The department shall staff the board.

12 Sec. 4. NEW SECTION. 161.4 BOARD POWERS AND DUTIES.

13 The board shall have all powers necessary to carry out the
14 functions and duties specified for the board as provided in
15 this chapter. The board shall do all of the following:

16 1. Review and determine the eligibility of responsible
17 persons under section 161.9 and claims under section 161.10,
18 and approve administrative costs of the department paid from
19 the fund. Administrative costs for each year shall not exceed
20 one hundred and fifty thousand dollars or five percent of
21 revenues deposited into the fund each year, whichever is
22 greater.

23 2. Consult with the department regarding remediation
24 standards adopted by the department pursuant to section 161.5.

25 3. Consult with the department in the adoption of rules
26 necessary for the administration of this chapter. The rules
27 of the department shall contain the rules of the board adopted
28 for its organization, procedures, programs, and requirements
29 as required in this chapter. The rules shall provide for all
30 of the following:

31 a. The board's organization and parliamentary procedures.

32 b. Standards for remediation as provided in section 161.5.

33 c. The administration of agricultural remediation fees as
34 provided in section 161.7.

35 d. Procedures for paying claims as provided in section

1 161.10.

2 Sec. 5. NEW SECTION. 161.5 REMEDIATION STANDARDS.

3 1. The department shall establish remediation standards
4 after consultation with the board. The standards must provide
5 for the protection of the public health and safety and the
6 environment.

7 2. In establishing these standards, all of the following
8 shall be considered:

9 a. Separate standards shall be established for
10 contaminants in soil, in groundwater which is a protected
11 groundwater source, and in groundwater which is not a
12 protected groundwater source.

13 b. In groundwater which is a protected groundwater source,
14 the standards shall be no more protective than the least
15 restrictive of the maximum contaminant levels established
16 pursuant to the department of natural resources' drinking
17 water standards, a standard reflecting an increased cancer
18 risk of one in one million, or a standard reflecting a
19 noncancer health risk of one. An affected area shall not be
20 required to be cleaned up to concentration levels below or
21 more restrictive than background levels.

22 c. In groundwater which is not a protected groundwater
23 source, the standards shall be no more protective than the
24 least restrictive of a standard reflecting an increased cancer
25 risk of one in ten thousand or a standard reflecting a
26 noncancer health risk of one. An affected area shall not be
27 required to be cleaned up to levels below or more restrictive
28 than background levels.

29 d. In soil, the standards shall be no more protective than
30 the least restrictive of a standard reflecting an increased
31 cancer risk of one in one million or a standard reflecting a
32 noncancer health risk of one. An affected area shall not be
33 required to be cleaned up to concentration levels below or
34 more restrictive than background levels.

35 Sec. 6. NEW SECTION. 161.6 PRIORITIZATION.

1 1. The board may adopt rules to establish criteria for the
2 classification and prioritization of sites upon which
3 contamination has been discovered.

4 2. A contaminated site shall be classified as either high,
5 medium, or low priority.

6 a. A site shall be considered high priority under any of
7 the following conditions:

8 (1) Groundwater contamination exceeds action levels and is
9 affecting or likely to affect groundwater used as a drinking
10 water source.

11 (2) Contamination is affecting or likely to affect surface
12 water bodies to a level which exceeds surface water quality
13 standards under section 455B.173.

14 (3) Contamination is discovered in an ecologically
15 sensitive area. An ecologically sensitive area is one which
16 is designated by the department.

17 b. A site shall be considered medium priority if
18 contamination of groundwater exceeds action levels, but does
19 not meet the criteria for classification as a high priority
20 site.

21 c. A site shall be considered low priority under any of
22 the following conditions:

23 (1) If soil contamination exists at the site, but no
24 groundwater contamination exists at the site.

25 (2) If soil contamination exists and groundwater
26 contamination has been discovered, but is below action levels.

27 3. A site shall be reclassified as a site with a higher or
28 lower classification when the site falls within a higher or
29 lower classification as established under this section.

30 4. This section is applicable to all sites upon which
31 contamination has been discovered, unless corrective action on
32 a site has already been approved by the department and
33 completely implemented.

34 5. An initial plan of remediation shall be developed by
35 the responsible person and approved by the department for each

1 site upon which contamination has been discovered. The plan
2 of remediation shall include all of the following:

3 a. A determination as to the extent of the existing soil,
4 groundwater, or surface water contamination.

5 b. The proximity of the contamination and the likelihood
6 that the contamination will affect a drinking water well.

7 c. The characteristics of the site and the potential for
8 migration of the contamination.

9 d. A recommendation as to whether the site should be
10 classified as a high, medium, or low priority site.

11 e. If a site is classified as a high or medium priority
12 site, further investigation shall be conducted to determine
13 the extent of the remediation which should be conducted on the
14 site.

15 6. The corrective action response shall be administered as
16 follows:

17 a. For a high priority site, soil and groundwater
18 remediation shall include active remediation where technically
19 feasible, until such time as the groundwater contamination
20 levels are below action levels.

21 b. For a medium priority site, the remediation shall
22 include either monitoring or active or passive remediation as
23 determined by the department on a site-by-site basis upon
24 considering the findings of the plan of remediation. However,
25 the remediation shall at least be the same remediation
26 required if the site were classified as a low priority site.

27 c. For a low priority site, the remediation shall include
28 active soil remediation, if remediation would be more
29 practical and cost-effective than monitoring. If active soil
30 remediation is undertaken, no further action shall be required
31 on the site. If active soil remediation is not undertaken,
32 the site shall be monitored, for a specified period of time as
33 determined by the department.

34 7. Contaminated groundwater and soil shall be applied on
35 land in accordance with rules adopted by the department. The

1 application rate shall not exceed a level which precludes the
2 resumption of normal farming practices within a two-year
3 period.

4 8. This section does not affect the ability of the
5 department or the United States environmental protection
6 agency to require monitoring or remediation on sites that are
7 placed on the national priorities list pursuant to the federal
8 Comprehensive Environmental Response, Compensation and
9 Liability Act.

10 Sec. 7. NEW SECTION. 161.7 AGRICHEMICAL REMEDIATION
11 FEES.

12 1. The department shall establish an agrichemical
13 remediation fee. The department shall set the fee as follows:

14 a. A person required to register a pesticide for
15 agricultural or horticultural use in this state shall pay an
16 agrichemical remediation fee. The fee shall be paid and
17 collected in the same manner as a fee provided pursuant to
18 section 206.12.

19 (1) For registrants required to pay the minimum fee under
20 section 206.12, the agrichemical remediation fee shall not
21 exceed fifteen dollars.

22 (2) For registrants who are required to pay more than the
23 minimum fee but less than the maximum fee under section
24 206.12, the agrichemical remediation fee shall not exceed
25 three hundred fifty dollars.

26 (3) For registrants who are required to pay the maximum
27 fee under section 206.12, the agrichemical remediation fee
28 shall not exceed one-fifth of one percent of the registrant's
29 annual gross sales of pesticides for use in this state.

30 b. A person licensed to sell or distribute commercial
31 fertilizers and soil conditioners who is required to pay an
32 inspection fee under section 200.8 shall pay an agrichemical
33 remediation fee. The fee shall be paid and collected in the
34 same manner as a fee provided pursuant to section 200.8. The
35 amount of the fee shall not be more than seventeen cents per

1 ton of fertilizers and soil conditioners.

2 2. a. Each year the department shall adjust the
3 agrichemical remediation fees necessary to ensure that the
4 unobligated and unencumbered balance of the fund, less any
5 pending or unsettled claims, at the end of the following year
6 is more than two million dollars but not more than six million
7 dollars. The department shall make any adjustments in the
8 fees by rule adopted pursuant to chapter 17A.

9 b. The board shall recommend to the department any
10 adjustments in the agrichemical fees that are necessary to
11 maintain the fund within the limits established under this
12 subsection. During its review, the board shall determine the
13 unobligated and unencumbered balance of the fund and the
14 expected debits of and credits to the fund for the following
15 year in which an agrichemical remediation fee is to be paid
16 pursuant to this section, including the amount of fees
17 expected to be collected during the following year and any
18 expected, pending, or unsettled claims. The board shall make
19 its recommendations at least thirty days before the
20 adjustments to the fees become effective. Adjustments in the
21 fees shall become effective for the next filing of a statement
22 for commercial fertilizers or soil conditioners as provided in
23 section 200.8 and the next registration of pesticides as
24 provided in section 206.12.

25 3. If, at the end of any three-month period, the
26 unobligated or unencumbered balance of the fund exceeds six
27 million dollars, less any pending or unsettled claims, the
28 department, after consultation with the board, shall waive the
29 fees which shall not be assessable or owing. The department
30 after consultation with the board shall reinstate the fees if
31 the unobligated or unencumbered balance of the fund, less any
32 pending or unsettled claims, is two million dollars or less.

33 Sec. 8. NEW SECTION. 161.8 AGRICHEMICAL REMEDIATION
34 FUND.

35 1. An agrichemical remediation fund is created within the

1 state treasury under the control of the department.

2 2. The fund shall consist of any moneys appropriated by
3 the general assembly for placement in the fund, and moneys
4 available to and obtained or accepted by the department from
5 the federal government or private sources for placement in the
6 fund.

7 3. The fund shall be used exclusively to support
8 agrichemical remediation as provided in this chapter,
9 including the payment of claims under section 455L.10 and the
10 administration of this chapter by the board and the
11 department.

12 4. The treasurer of state shall act as custodian of the
13 fund and disburse amounts contained in the fund as directed by
14 the department, in consultation with the board. The treasurer
15 of state is authorized to invest the moneys deposited in the
16 fund. The income from such investment shall be credited to
17 and deposited in the fund. Notwithstanding section 8.33,
18 moneys in the fund are not subject to reversion to the general
19 fund of the state. The fund shall be administered by the
20 department which shall make expenditures from the fund
21 consistent with the purposes set out in this chapter. The
22 moneys in the fund shall be disbursed upon warrants drawn by
23 the director of revenue and finance pursuant to the order of
24 the department. The finances of the fund shall be calculated
25 on an accrual basis in accordance with generally accepted
26 accounting principles. The auditor of state shall regularly
27 perform audits of the fund.

28 Sec. 9. NEW SECTION. 161.9 ELIGIBILITY OF RESPONSIBLE
29 PERSONS.

30 1. A responsible person is eligible to submit a claim to
31 the board for reimbursement from the fund, if the board
32 determines that all of the following apply:

33 a. The responsible person is not subject to any of the
34 following:

35 (1) A pending criminal adjudication against the

1 responsible person relating to the contamination.

2 (2) Criminal sanctions imposed against the responsible
3 person relating to the contamination.

4 b. Any of the following:

5 (1) The responsible person performed reasonable measures
6 necessary for the immediate abatement of any prohibited
7 release.

8 (2) The responsible person has complied or is in the
9 process of complying in a timely manner with orders issued by
10 the state or federal government for remediation of the
11 contaminated site.

12 2. Unless the department has cause to believe that the
13 responsible person is not eligible, the department shall
14 provide a statement to the responsible person upon request.
15 The statement shall be printed on forms prescribed by the
16 board. The statement shall verify that to the extent of the
17 department's knowledge, the responsible person is eligible
18 under this section. The board may use the statement as
19 evidence of eligibility. The board shall provide the
20 statement with any weight determined appropriate by the board.

21 3. The state, a state agency, a political subdivision of
22 the state, or federal government, or an agency of the federal
23 government, is not eligible to submit a claim to the board for
24 reimbursement from the fund.

25 4. A responsible person shall not be eligible to receive a
26 payment from the fund, unless the responsible person submits a
27 remediation plan to the department which is approved by the
28 board. The plan shall provide procedures for a remediation of
29 the contaminated site, a schedule for providing for the
30 remediation of the site, or the installation of passive site
31 cleanup.

32 Sec. 10. NEW SECTION. 161.10 PAYMENT OF CLAIMS.

33 1. The board shall approve a claim against the fund to pay
34 for remediation of a contaminated site, if all of the
35 following apply:

1 a. The claim is made in a manner and according to
2 procedures established by the board.

3 b. The person filing the claim is a responsible person
4 eligible under section 161.9.

5 c. The claim includes all of the following:

6 (1) Evidence of the contamination, including affidavits of
7 experts, photographs, or documentation by federal or state
8 agencies including the department of natural resources.

9 (2) The total amount required to pay for all costs related
10 to remediating the site as performed by a qualified person
11 according to a business invoice. The business invoice shall
12 be accompanied by supporting evidence.

13 (3) Information about any insurance policy required to
14 indemnify the responsible person for costs associated with
15 remediating the contaminated site, including a copy of the
16 policy.

17 (4) The site has been remediated according to a plan of
18 remediation approved by the board as provided in section
19 161.9.

20 (5) The claim is complete and accurate, and contains no
21 false or misleading statements.

22 (6) The approval by the department, in consultation with
23 the board, of a comprehensive plan by the responsible person
24 for the prevention of future contamination at the site.

25 d. The responsible person submits a remediation plan to
26 the department which is approved by the board.

27 2. If the board approves a claim, the board shall
28 reimburse the responsible person by doing any of the
29 following:

30 a. Providing for the immediate payment of a claim, if the
31 board determines that the contamination causes a clear,
32 present, and impending danger to the public health or the
33 natural environment.

34 b. Providing for the ordinary payment of a claim as
35 follows:

1 (1) The board may pay the amount of the claim based on a
2 final statement submitted by a responsible person. The
3 department, in consultation with the board, may establish
4 guidelines for reasonable and necessary charges for specific
5 remediation procedures. Payment shall not exceed these
6 reasonable and necessary charges without prior approval of the
7 board.

8 (2) Upon a determination that the claim is eligible for
9 payment, the department shall provide for payment of the claim
10 as provided in this subsection.

11 c. The amount of the claim shall be the total amount
12 required to remediate the site subject to all of the
13 following:

14 (1) A deduction of five thousand dollars.

15 (2) A deduction in the amount of the insurance payments
16 owed to or received by the responsible person for
17 indemnification of remediation costs. The amount of the
18 insurance payments shall be applied first to satisfy the five
19 thousand dollar deduction required in subparagraph (1).

20 (3) After making the deductions required in subparagraphs
21 (1) and (2), the department shall provide for payment in the
22 amount of ninety percent of claims up to one hundred thousand
23 dollars, eighty percent of claims over one hundred thousand
24 dollars, but not exceeding two hundred thousand dollars, and
25 seventy percent of claims over two hundred thousand dollars up
26 to two hundred fifty thousand dollars.

27 (4) The amount of a claim shall not be more than two
28 hundred fifty thousand dollars to pay the costs of remediating
29 a contaminated site.

30 3. The board shall not provide payments from the fund
31 until the board determines that the claim is reasonable and
32 that the claimant has submitted all evidence necessary in
33 order to support the claim and any expenditure of moneys from
34 the fund. The board shall place conditions or requirements
35 upon the payment of moneys from the fund in order to ensure

1 that the moneys are used to provide remediation in compliance
2 with a remediation plan required pursuant to section 455L.9.

3 4. If at any time the department determines that there are
4 insufficient moneys in the fund to make payment of all claims,
5 the department shall pay claims according to the date that the
6 claims are received by the department. To the extent that a
7 claim cannot be fully satisfied, the department shall order
8 that the unpaid portion of the payment be deferred until the
9 claim can be satisfied. However, the department shall not
10 satisfy claims from moneys dedicated for the administration of
11 the fund.

12 5. The department shall have a claim on behalf of the fund
13 against any responsible person who files a claim in violation
14 of this chapter for the amount paid for remediation. The
15 responsible person shall be liable for damages. The moneys
16 collected by the department under this subsection shall be
17 deposited into the fund.

18 Sec. 11. NEW SECTION. 161.11 REPORT.

19 The department in cooperation with the board shall submit a
20 report to the general assembly by January 10 of each odd-
21 numbered year. The report shall provide a summary and a
22 detailed accounting of the fund's financial condition,
23 including expected revenue and expenses during the following
24 two years.

25 Sec. 12. NEW SECTION. 200.8A AGRICHEMICAL REMEDIATION
26 FEES.

27 A person licensed to sell or distribute commercial
28 fertilizers and soil conditioners who is required to pay an
29 inspection fee under section 200.8 shall pay an agrichemical
30 remediation fee as required pursuant to section 161.7.

31 Sec. 13. NEW SECTION. 206.13A AGRICHEMICAL REMEDIATION
32 FEES.

33 A person required to register a pesticide for agricultural
34 or horticultural use in this state under section 206.12 shall
35 pay an agrichemical remediation fee as required pursuant to

1 section 161.7.

2 Sec. 14. Section 455B.601, Code 1999, is repealed.

3 Sec. 15. FULL-TIME EQUIVALENT POSITIONS. There is
4 authorized for the fiscal year beginning July 1, 1999, and
5 ending June 30, 2000, the following full-time equivalent
6 positions within the department of agriculture and land
7 stewardship, in order to support administration of chapter
8 161, as enacted by this Act, in addition to any other full-
9 time equivalent positions authorized by the Seventy-eighth
10 General Assembly, 1999 Session, to support the department:

11 FTEs 2.00

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SENATE FILE 466

H-8261

- 1 Amend Senate File 466, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 3, line 30, by striking the word "eight"
- 4 and inserting the following: "seven".
- 5 2. Page 3, by striking lines 32 and 33, and
- 6 inserting the following:
- 7 "____. Two nonvoting ex officio members who shall
- 8 be the secretary of agriculture and the director of
- 9 the department of natural resources, or their
- 10 designees."
- 11 3. Page 3, line 34, by striking the word "Six"
- 12 and inserting the following: "Five".
- 13 4. Page 4, line 5, by striking the words "Two
- 14 members who are" and inserting the following: "One
- 15 member who is".
- 16 5. Page 4, by striking lines 19 and 20.
- 17 6. Page 5, by striking lines 20 through 22, and
- 18 inserting the following: "five percent of the fund on
- 19 the day of its greatest balance or one hundred fifty
- 20 thousand dollars, whichever is less."
- 21 7. Page 5, by striking lines 33 and 34.
- 22 8. By striking page 9, line 10 through page 10,
- 23 line 32.
- 24 9. By striking page 15, line 25 through page 16,
- 25 line 1.
- 26 10. Page 16, line 4, by striking the figure
- 27 "1999" and inserting the following: "2000".
- 28 11. Page 16, line 5, by striking the figure:
- 29 "2000" and inserting the following: "2001".
- 30 12. Page 16, line 10, by striking the figure
- 31 "1999" and inserting the following: "2000".
- 32 13. Title page, line 2, by striking the words
- 33 "providing for fees,".
- 34 14. By renumbering as necessary.

By COMMITTEE ON AGRICULTURE
KLEMME of Plymouth, Chairperson

H-8261 FILED MARCH 8, 2000

adopted
4-12-00
(p. 1455)

SENATE FILE 466

H-8857

1 Amend the amendment, H-8261, to Senate File 466, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by striking lines 3 through 33, and
5 inserting the following:
6 "____. Page 3, line 30, by striking the word
7 "eight" and inserting the following: "seven voting".
8 _____. Page 3, by striking lines 32 and 33, and
9 inserting the following:
10 "____. Two public members who shall include the
11 following:
12 (____) The secretary of agriculture or the
13 secretary's designee.
14 (____) The director of the department of natural
15 resources, or the director's designee."
16 _____. Page 3, line 34, by striking the words "Six
17 voting" and inserting the following: "Five".
18 _____. Page 4, line 5, by striking the words "Two
19 members who are" and inserting the following: "One
20 member who is".
21 _____. Page 4, by striking lines 19 and 20.
22 _____. Page 5, by inserting after line 15, the
23 following:
24 "____. Execute remediation agreements with eligible
25 persons as provided in section 161.9."
26 _____. Page 5, by striking lines 20 through 22, and
27 inserting the following: "five percent of the fund on
28 the day of the year of its greatest balance or one
29 hundred fifty thousand dollars, whichever is less."
30 _____. Page 5, by striking lines 33 and 34.
31 _____. Page 6, by inserting after line 1, the
32 following:
33 "____. Approve any contract with a person for
34 assuring that remediation is performed in accordance
35 with the provisions of a remediation agreement as
36 provided in section 161.9."
37 _____. Page 6, line 7, by inserting before the word
38 "In" the following: "The department shall establish
39 standards based, to every degree practicable, on rules
40 adopted by the department of natural resources
41 required to clean up sites from contamination under
42 chapter 455H."
43 _____. By striking page 9, line 10 through page 10,
44 line 32.
45 _____. Page 11, by striking line 7, and inserting
46 the following:
47 "____. Moneys in the fund are appropriated
48 exclusively to support".
49 _____. Page 11, by striking lines 28 through 31,
50 and inserting the following:

H-8857

-1-

H-8857

Page 2

1 "Sec. __. NEW SECTION. 161.9 REMEDIATION
2 AGREEMENT.

3 1. A person is not required to comply with the
4 requirements of this chapter, including the
5 remediation of a site, unless the person is a
6 responsible person who executes a remediation
7 agreement with the board, as provided in this section.
8 The remediation agreement shall provide for all of the
9 following:

10 a. The terms and conditions required to perform
11 remediation under a plan of remediation as provided in
12 this section, and the payment of claims as provided in
13 section 161.10.

14 b. A plan for remediation of a site where
15 contamination has been discovered. The plan shall
16 provide procedures for a remediation of the
17 contaminated site, a schedule for providing for the
18 remediation of the site according to remediation
19 standards provided in section 161.5, and the
20 classification and prioritization of sites as provided
21 in section 161.6. The plan may be amended at any
22 time, if approved by the department, if the amendment
23 to the agreement is executed by the responsible person
24 and the board. The plan shall be developed by the
25 responsible person and approved by the department for
26 each site subject to the agreement. The plan shall
27 include all of the following:

28 (1) A determination as to the extent of the
29 existing soil, groundwater, or surface water
30 contamination.

31 (2) The proximity of the contamination and the
32 likelihood that the contamination will affect a
33 drinking water well.

34 (3) The characteristics of the site and the
35 potential for migration of the contamination.

36 (4) Whether the site is classified as a high,
37 medium, or low priority site, as provided in section
38 161.6.

39 The department may require that an initial plan of
40 remediation be submitted prior to execution of a
41 remediation agreement. The department may require
42 that the initial plan recommend whether a site be
43 classified as a high or medium priority site. The
44 department may require further investigation be
45 conducted to determine the extent of the remediation
46 which should be conducted on the site.

47 2. a. The department, upon approval of the board,
48 may contract with a person in order to do any of the
49 following:

50 (1) Consult with the department and the board in

H-8857

-2-

H-8857

Page 3

1 reviewing a remediation agreement, including but not
2 limited to investigating a site or recommending
3 approval or denial of a plan for remediation.

4 (2) Ensure compliance with the plan for
5 remediation as provided in this section. The person
6 may be authorized to provide a statement to a
7 responsible person, stating that the person is
8 eligible for payment of a claim submitted from the
9 fund as provided in section 161.10.

10 b. The department may execute the contract with a
11 private individual or entity or a state and local
12 government as provided in chapter 28E.

13 3. a. A responsible person is eligible to execute
14 a remediation agreement under this section, if the
15 board".

16 _____. Page 12, by striking lines 25 through 31.

17 _____. Page 13, line 2, by striking the word
18 "established" and inserting the following: "contained
19 in a remediation agreement executed by the board and
20 the eligible person and rules adopted".

21 _____. Page 13, line 3, by inserting after the
22 words "The person" the following: "who has executed a
23 remediation agreement with the board and is".

24 _____. Page 13, line 18, by striking the word
25 "board" and inserting the following: "department".

26 _____. Page 13, by striking lines 25 and 26.

27 _____. Page 14, by inserting after line 10, the
28 following:

29 "_____. Withholding a portion of the payment as
30 provided in the remediation agreement, for final
31 payment when the department determines that the site
32 has been monitored for a period necessary to ensure
33 that remediation has been successful."

34 _____. By striking page 15, line 25 through page
35 16, line 1.

36 _____. Page 16, line 4, by striking the figure
37 "1999" and inserting the following: "2000".

38 _____. Page 16, line 5, by striking the figure
39 "2000" and inserting the following: "2001".

40 _____. Page 16, line 10, by striking the figure
41 "1999" and inserting the following: "2000".

42 _____. Title page, line 2, by striking the words
43 "providing for fees, "."

By KLEMME of Plymouth

H-8857 FILED APRIL 11, 2000

Adopted
4-12-00
(P. 1455)

SENATE FILE 466

H-8866

1 Amend Senate File 466, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 15, by inserting after line 24, the
4 following:
5 "Sec. ____ . INTERIM STUDY. The legislative council
6 is requested to establish an interim study committee
7 to consider methods to fund the agrichemical
8 remediation fund as created in section 161.8, as
9 enacted in this Act. The interim study committee
10 shall include members of the general assembly and
11 members of the agrichemical remediation board as
12 established in section 161.3, as enacted in this Act.
13 The secretary of agriculture shall appoint members of
14 the board prior to the first meeting of the interim
15 study committee."

By WEIGEL of Chickasaw

H-8866 FILED APRIL 12, 2000

Doct 4/12/00

(p. 1456)

SENATE FILE 466

H-8870

1 Amend the amendment, H-8261, to Senate File 466, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by inserting after line 2, the
5 following:
6 " ____ . Page 1, by striking lines 5 through 9.
7 ____ . Page 2, by striking lines 25 through 29."
8 2. Page 1, by striking line 21, and inserting the
9 following:
10 " ____ . Page 5, by striking lines 32 through 34,
11 and inserting the following:
12 " ____ . Soil and groundwater standards for
13 remediation. The standards shall be the same as those
14 adopted in rules by the department of natural
15 resources.""
16 3. Page 1, by inserting before line 22, the
17 following:
18 " ____ . By striking page 6, line 2 through page 9,
19 line 9."
20 4. Page 1, line 25, by striking the figure "1"
21 and inserting the following: "2".

By SHOULTZ of Black Hawk

H-8870 FILED APRIL 12, 2000

Doct 4/12/00

(p. 1455)

SENATE FILE 466

H-8873

1 Amend Senate File 466, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 11, line 9, by striking the figure
4 "455L.10" and inserting the following: "161.10".
5 2. Page 15, line 2, by striking the figure
6 "455L.9" and inserting the following: "161.9".

By KLEMME of Plymouth

H-8873 FILED APRIL 12, 2000

adopted 4/12/00 (p. 1455)

SENATE AMENDMENT TO HOUSE AMENDMENT TO S. F. 466

H-9041

1 Amend the House amendment, S-5398, to Senate File
2 466, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 1, by inserting after line 2, the
5 following:
6 "_____. Page 1, by striking lines 5 through 14, and
7 inserting the following:
8 "_____. "Action level" means the same as defined in
9 section 455B.602.
10 "_____. "Active site cleanup" means the same as
11 defined in section 455B.602."
12 "_____. Page 1, by striking lines 16 through 19.
13 "_____. Page 1, by striking lines 22 through 27, and
14 inserting the following:
15 "_____. "Contaminated site" means the same as
16 defined in section 455B.602.
17 "_____. "Contamination" means the same as defined in
18 section 455B.602."
19 "_____. Page 2, by striking lines 6 through 11, and
20 inserting the following:
21 "_____. "Passive site cleanup" means the same as
22 defined in section 455B.602."
23 "_____. By striking page 2, line 20 through page 3,
24 line 19, and inserting the following:
25 "_____. "Prohibited release" means the same as
26 defined in section 455B.602.
27 "_____. "Remediation" means the same as defined in
28 section 455B.602.
29 "_____. "Responsible person" means the same as
30 defined in section 455B.602."
31 "_____. Page 3, by striking lines 21 through 26."
32 2. Page 1, line 7, by striking the word "members"
33 and inserting the following: "officials".
34 3. Page 1, by inserting after line 26, the
35 following:
36 "_____. Page 5, by striking lines 23 and 24.
37 "_____. Page 5, by striking line 32."
38 4. Page 1, by striking lines 23 and 24 and
39 inserting the following:
40 "_____. Page 5, by striking lines 19 through 22 and
41 inserting the following: "the fund. Of the moneys
42 appropriated from the fund under section 161.8, for
43 each fiscal year the department may expend at least
44 sixty-five thousand dollars for purposes of
45 administering this chapter, including the support of a
46 full-time equivalent position as defined in section
47 8.36A. However, if more than sixty-five thousand
48 dollars is required in order to administer this
49 chapter, the total amount which the department may
50 expend from the fund during any fiscal year for

H-9041

-1-

H-9041

Page 2

1 administering this chapter shall not exceed five
2 percent of the balance of the fund on".
3 5. Page 1, by striking lines 34 through 39, and
4 inserting the following:
5 "____. Page 6, by striking lines 3 through 34 and
6 inserting the following:
7 "Remediation conducted pursuant to a plan of
8 remediation incorporated within a remediation
9 agreement as required in section 161.9 shall be
10 performed according to standards adopted by the
11 department of natural resources pursuant to section
12 455B.601.""
13 6. Page 1, by inserting before line 40 the
14 following:
15 "____. Page 7, line 3, by inserting after the word
16 "discovered" the following: ", subject to a plan for
17 remediation as provided in section 161.9".
18 _____. By striking page 7, line 29, through page 8,
19 line 15, and inserting the following: "lower
20 classification, as provided in a plan for remediation
21 pursuant to section 161.9.
22 _____. The remediation of a site classified under
23 this section shall be administered as".
24 _____. Page 8, line 18, by striking the word
25 "remediation" and inserting the following: "site
26 cleanup".
27 _____. Page 8, line 22, by striking the word
28 "remediation" and inserting the following: "site
29 cleanup".
30 _____. Page 8, by striking line 28, and inserting
31 the following: "active site cleanup, if the site
32 cleanup would be more".
33 _____. Page 8, lines 29 and 30, by striking the
34 words "soil remediation" and inserting the following:
35 "site cleanup for soil".
36 _____. Page 8, line 31, by striking the word "soil
37 remediation" and inserting the following: "site
38 cleanup for soil".
39 _____. Page 9, line 4, by striking the word
40 "section" and inserting the following: "chapter".
41 7. Page 3, by inserting after line 36, the
42 following:
43 "____. Page 16, by striking line 2, and inserting
44 the following:
45 "Sec. _____. Section 455B.601, subsection 1,
46 paragraph a, Code 1999, is amended by striking the
47 paragraph.
48 Sec. _____. Section 455B.601, subsection 1,
49 paragraph d, Code 1999, is amended to read as follows:
50 d. ~~The corrective-action-response-requirements A~~

H-9041

H-9041

Page 3

1 responsible person shall remediate a contaminated site
2 according to standards established by rules adopted
3 pursuant to chapter 17A. Remediation for high,
4 medium, or low priority sites shall be administered in
5 accordance with the following:

6 (1) Soils and groundwaters on a high priority site
7 shall be actively-remediated subject to active
8 cleanup, where technically feasible, until such time
9 as the groundwater contamination levels are below
10 action levels.

11 (2) Remediation on a medium priority site shall
12 include either monitoring or active or passive
13 ~~remediation-and-shall-be~~ site cleanup as determined by
14 the department on a site-by-site basis based upon the
15 findings of the site plan. Remediation on a medium
16 priority site shall include at least that which would
17 be required on a low priority site.

18 (3) (a) Active site cleanup for soil remediation
19 shall be required on a low priority site if
20 remediation would be more practical and cost-effective
21 than monitoring.

22 (b) If active site cleanup for soil remediation on
23 a low priority site is undertaken, no further action
24 shall be required on the site.

25 (c) If active ~~soil~~ site remediation for soil is
26 not undertaken on a low priority site, a the site
27 shall be monitored, for a specified period of time as
28 determined by the department.

29 Sec. ____ . Section 455B.601, subsection 2, Code
30 1999, is amended to read as follows:

31 2. This section is applicable to ~~all-sites~~ a site
32 upon which contamination has been discovered, unless
33 corrective-action one of the following applies:

34 a. Remediation on a the site has already been
35 approved by the department and implemented.

36 b. A responsible person has executed a remediation
37 agreement with the remediation reimbursement board and
38 the responsible person is remediating or has
39 remediated the site pursuant to a plan of remediation
40 as provided in chapter 161.

41 Sec. ____ . NEW SECTION. 455B.602 DEFINITIONS.

42 As used in this division:

43 1. "Action level" means action level as provided
44 in 567 IAC ch. 133 or 137.

45 2. "Active site cleanup" means treating,
46 dispersing, removing, or disposing of contamination
47 located in soil or water, including, but not limited
48 to, excavating soil or installing institutional or
49 technological controls to water quality.

50 3. "Background levels" means concentrations of a

H-9041

-3-

H-9041

Page 4

1 contaminant generally present in the environment in
2 the vicinity of a site or an affected area and not the
3 result of release.

4 4. "Contaminated site" means a site upon which
5 contamination has been discovered.

6 5. "Contamination" means the presence of one or
7 more pesticides, as defined in section 206.2, or the
8 presence of fertilizer, as defined in section 200.3,
9 in soil or groundwater at levels above those that
10 would result at normal field application rates or
11 above background levels.

12 6. "Passive site cleanup" means the removal or
13 treatment of a contaminant in soil or water through
14 management practices or the construction of barriers,
15 trenches, and other similar facilities for prevention
16 of contamination, as well as the use of natural
17 processes such as groundwater recharge, natural decay,
18 and chemical or biological decomposition.

19 7. "Remediation" means a process used to protect
20 the public health and safety or the environment from
21 contamination, including by doing all of the
22 following:

23 a. Controlling, containing, or stabilizing the
24 effects caused by a prohibited release.

25 b. Investigating, identifying, or analyzing a
26 contaminant or a contamination source; collecting
27 samples, including soil and water samples; assessing
28 the condition of a site; monitoring a contaminated
29 site; providing for structural testing; or providing
30 for engineering services.

31 c. Providing for site cleanup.

32 8. a. "Responsible person" means a person who is
33 legally liable for the contamination or who is legally
34 responsible for abating contamination under any
35 applicable law, including chapters 455B and 455E, and
36 the common law. This may include a person causing,
37 allowing, or otherwise participating in the activities
38 or events which cause the contamination, persons who
39 have failed to conduct their activities so as to
40 prevent the release of contaminants into groundwater,
41 persons who are obligated to abate a condition, or
42 persons responsible for or a successor to such
43 persons.

44 b. "Responsible person" does not include a person
45 who caused contamination by acting in a manner
46 unauthorized by the owner of the pesticide or
47 fertilizer, including a person who trespasses upon a
48 site.

49 9. "Site cleanup" means measures used to contain,
50 reduce, or eliminate contamination present at a site

H-9041

-4-

H-9041

Page 5

- 1 including by using active site cleanup or passive site
- 2 cleanup measures, or complying with a correction
- 3 action required or recommended by the department of
- 4 natural resources or the United States environmental
- 5 protection agency."
- 6 8. Page 3, by striking lines 43 and 44, and
- 7 inserting the following:
- 8 "____. Title page, by striking lines 2 and 3, and
- 9 inserting the following: "and establishing a fund."
- 10 9. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-9041 FILED APRIL 20, 2000

4-24-00 *House Concurred*
 (p. 1720)

HOUSE AMENDMENT TO
SENATE FILE 466

S-5398

1 Amend Senate File 466, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 3, line 30, by striking the word "eight"
4 and inserting the following: "seven voting".
5 2. Page 3, by striking lines 32 and 33, and
6 inserting the following:
7 "____. Two public members who shall include the
8 following:
9 (____) The secretary of agriculture or the
10 secretary's designee.
11 (____) The director of the department of natural
12 resources, or the director's designee."
13 3. Page 3, line 34, by striking the words "Six
14 voting" and inserting the following: "Five".
15 4. Page 4, line 5, by striking the words "Two
16 members who are" and inserting the following: "One
17 member who is".
18 5. Page 4, by striking lines 19 and 20.
19 6. Page 5, by inserting after line 15, the
20 following:
21 "____. Execute remediation agreements with eligible
22 persons as provided in section 161.9."
23 7. Page 5, by striking lines 20 through 22, and
24 inserting the following: "five percent of the fund on
25 the day of the year of its greatest balance or one
26 hundred fifty thousand dollars, whichever is less."
27 8. Page 5, by striking lines 33 and 34.
28 9. Page 6, by inserting after line 1, the
29 following:
30 "____. Approve any contract with a person for
31 assuring that remediation is performed in accordance
32 with the provisions of a remediation agreement as
33 provided in section 161.9."
34 10. Page 6, line 7, by inserting before the word
35 "In" the following: "The department shall establish
36 standards based, to every degree practicable, on rules
37 adopted by the department of natural resources
38 required to clean up sites from contamination under
39 chapter 455H."
40 11. By striking page 9, line 10 through page 10,
41 line 32.
42 12. Page 11, by striking line 7, and inserting
43 the following:
44 "____. Moneys in the fund are appropriated
45 exclusively to support".
46 13. Page 11, line 9, by striking the figure
47 "455L.10" and inserting the following: "161.10".
48 14. Page 11, by striking lines 28 through 31, and
49 inserting the following:
50 "Sec. ____ NEW SECTION. 161.9 REMEDIATION

S-5398

S-5398

Page 2

1 AGREEMENT.

2 1. A person is not required to comply with the
3 requirements of this chapter, including the
4 remediation of a site, unless the person is a
5 responsible person who executes a remediation
6 agreement with the board, as provided in this section.
7 The remediation agreement shall provide for all of the
8 following:

9 a. The terms and conditions required to perform
10 remediation under a plan of remediation as provided in
11 this section, and the payment of claims as provided in
12 section 161.10.

13 b. A plan for remediation of a site where
14 contamination has been discovered. The plan shall
15 provide procedures for a remediation of the
16 contaminated site, a schedule for providing for the
17 remediation of the site according to remediation
18 standards provided in section 161.5, and the
19 classification and prioritization of sites as provided
20 in section 161.6. The plan may be amended at any
21 time, if approved by the department, if the amendment
22 to the agreement is executed by the responsible person
23 and the board. The plan shall be developed by the
24 responsible person and approved by the department for
25 each site subject to the agreement. The plan shall
26 include all of the following:

27 (1) A determination as to the extent of the
28 existing soil, groundwater, or surface water
29 contamination.

30 (2) The proximity of the contamination and the
31 likelihood that the contamination will affect a
32 drinking water well.

33 (3) The characteristics of the site and the
34 potential for migration of the contamination.

35 (4) Whether the site is classified as a high,
36 medium, or low priority site, as provided in section
37 161.6.

38 The department may require that an initial plan of
39 remediation be submitted prior to execution of a
40 remediation agreement. The department may require
41 that the initial plan recommend whether a site be
42 classified as a high or medium priority site. The
43 department may require further investigation be
44 conducted to determine the extent of the remediation
45 which should be conducted on the site.

46 2. a. The department, upon approval of the board,
47 may contract with a person in order to do any of the
48 following:

49 (1) Consult with the department and the board in
50 reviewing a remediation agreement, including but not

S-5398

-2-

S-5398

Page 3

1 limited to investigating a site or recommending
2 approval or denial of a plan for remediation.
3 (2) Ensure compliance with the plan for
4 remediation as provided in this section. The person
5 may be authorized to provide a statement to a
6 responsible person, stating that the person is
7 eligible for payment of a claim submitted from the
8 fund as provided in section 161.10.
9 b. The department may execute the contract with a
10 private individual or entity or a state and local
11 government as provided in chapter 28E.
12 3. a. A responsible person is eligible to execute
13 a remediation agreement under this section, if the
14 board".
15 15. Page 12, by striking lines 25 through 31.
16 16. Page 13, line 2, by striking the word
17 "established" and inserting the following: "contained
18 in a remediation agreement executed by the board and
19 the eligible person and rules adopted".
20 17. Page 13, line 3, by inserting after the words
21 "The person" the following: "who has executed a
22 remediation agreement with the board and is".
23 18. Page 13, line 18, by striking the word
24 "board" and inserting the following: "department".
25 19. Page 13, by striking lines 25 and 26.
26 20. Page 14, by inserting after line 10, the
27 following:
28 "____. Withholding a portion of the payment as
29 provided in the remediation agreement, for final
30 payment when the department determines that the site
31 has been monitored for a period necessary to ensure
32 that remediation has been successful."
33 21. Page 15, line 2, by striking the figure
34 "455L.9" and inserting the following: "161.9".
35 22. By striking page 15, line 25 through page 16,
36 line 1.
37 23. Page 16, line 4, by striking the figure
38 "1999" and inserting the following: "2000".
39 24. Page 16, line 5, by striking the figure
40 "2000" and inserting the following: "2001".
41 25. Page 16, line 10, by striking the figure
42 "1999" and inserting the following: "2000".
43 26. Title page, line 2, by striking the words
44 "providing for fees,".
45 27. By renumbering, relettering, or redesignating
46 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5398 FILED APRIL 13, 2000

SENATE FILE 466

S-5541

1 Amend the House amendment, S-5398, to Senate File
2 466, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 1, by inserting after line 2, the
5 following:
6 "_____. Page 1, by striking lines 5 through 14, and
7 inserting the following:
8 "_____. "Action level" means the same as defined in
9 section 455B.602.
10 "_____. "Active site cleanup" means the same as
11 defined in section 455B.602."
12 "_____. Page 1, by striking lines 16 through 19.
13 "_____. Page 1, by striking lines 22 through 27, and
14 inserting the following:
15 "_____. "Contaminated site" means the same as
16 defined in section 455B.602.
17 "_____. "Contamination" means the same as defined in
18 section 455B.602."
19 "_____. Page 2, by striking lines 6 through 11, and
20 inserting the following:
21 "_____. "Passive site cleanup" means the same as
22 defined in section 455B.602."
23 "_____. By striking page 2, line 20 through page 3,
24 line 19, and inserting the following:
25 "_____. "Prohibited release" means the same as
26 defined in section 455B.602.
27 "_____. "Remediation" means the same as defined in
28 section 455B.602.
29 "_____. "Responsible person" means the same as
30 defined in section 455B.602."
31 "_____. Page 3, by striking lines 21 through 26."
32 2. Page 1, line 7, by striking the word "members"
33 and inserting the following: "officials".
34 3. Page 1, by inserting after line 26, the
35 following:
36 "_____. Page 5, by striking lines 23 and 24.
37 "_____. Page 5, by striking line 32."
38 4. Page 1, by striking lines 23 and 24 and
39 inserting the following:
40 "_____. Page 5, by striking lines 19 through 22 and
41 inserting the following: "the fund. Of the moneys
42 appropriated from the fund under section 161.8, for
43 each fiscal year the department may expend at least
44 sixty-five thousand dollars for purposes of
45 administering this chapter, including the support of a
46 full-time equivalent position as defined in section
47 8.36A. However, if more than sixty-five thousand
48 dollars is required in order to administer this
49 chapter, the total amount which the department may
50 expend from the fund during any fiscal year for

S-5541

-1-

**SENATE FILE 466
FISCAL NOTE**

A fiscal note for Senate File 466 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 466, creates Chapter 455L, Code of Iowa, called the Iowa Agrichemical Remediation Act. The Bill provides for the remediation of sites contaminated by pesticides or fertilizers and creates an agrichemical remediation board within the Department of Agriculture and Land Stewardship. Senate File 466 establishes an Agrichemical Remediation Fund. This Bill establishes agrichemical fees on persons required to register pesticides for agricultural and horticultural use and on persons licensed to sell or distribute commercial fertilizers and soil conditioners. The Agrichemical Remediation Fund must be used to support agrichemical remediation. Administration fees to run this Program are limited to \$100,000 or 5.0% of total revenue, whichever is greater.

ASSUMPTIONS

1. Fertilizer license fees are collected twice a year but only half of the increased Agrichemical Remediation Fees from fertilizer license fees will be collected and deposited in the Agrichemical Remediation Fund in FY 2000.
2. Total Agrichemical Remediation Fees collected from increased fertilizer license fees are estimated at \$250,000 in FY 2000 and \$552,000 in FY 2001.
3. Total Agrichemical Remediation Fees collected from increased pesticide registration fees are estimated at \$1.13 million in FY 2000 and FY 2001.
4. Administrative fees will be \$100,000 in FY 2000 and FY 2001.
5. The Department of Agriculture and Land Stewardship will require the following new positions: one Program Supervisor 3, one Secretary 2, 0.5 Engineer, 0.5 Geologist, and 0.25 Administrative Assistant 3, above the current FY 1999 funding level. The Program Supervisor 3 and Secretary 2 positions will be required for the entire year in FY 2000. The Engineer and Geologist positions will not be required until January 1, 2000, and the Administrative Assistant position will not be needed until the last three months of FY 2000. In FY 2001, all of these positions will become full-time for a total of five new FTE positions above the current FY 1999 funding level. Annual salary and support for the new FTE positions will be \$209,000 for FY 2000 and \$310,000 for FY 2001.

FISCAL IMPACT

The FY 2000 unfunded cost of Senate File 466 is estimated at approximately \$192,000 (\$292,000 less \$100,000 from administrative fees) and \$220,000

-2-

(\$320,000 less \$100,000 from administrative fees) in FY 2001. Senate File 466 will generate approximately \$1.3 million in Agrichemical Remediation Fees in FY 2000 and approximately \$1.6 million in FY 2001.

	<u>Fiscal Year 2000</u>	<u>Fiscal Year 2001</u>
	Proposed	Proposed
	<u>Law</u>	<u>Law</u>
PROGRAM ADMINISTRATION		
<u>REVENUE</u>		
Ag. Remediation Fees	\$ 100,000	\$ 100,000
Other (unfunded cost)	192,000	220,000
Total Revenue	<u>\$ 292,000</u>	<u>\$ 320,000</u>
<u>EXPENDITURES</u>		
Salaries and Support	\$ 209,000	\$ 310,000
Vehicle/Computer Equip.	73,000	0
Board Expense/Travel	10,000	10,000
Total Expenditures	<u>\$ 292,000</u>	<u>\$ 320,000</u>
(FTE's)	(3.3)	(5.0)

	<u>Fiscal Year 2000</u>	<u>Fiscal Year 2001</u>
	Proposed	Proposed
	<u>Law</u>	<u>Law</u>
AGRICULTURE REMEDIATION FUND		
<u>REVENUE</u>		
Fertilizer Fees	\$ 250,000	\$ 552,000
Pesticide Fees	1,130,000	1,130,000
Total Revenue	<u>\$ 1,380,000</u>	<u>\$ 1,682,000</u>
Less Administrative Fee	100,000	100,000
Net Revenue	<u>\$ 1,280,000</u>	<u>\$ 1,582,000</u>

SOURCE

Department of Agriculture

(LSB 1158SZ, SKW)

FILED APRIL 8, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR

S-5541

Page 2

1 administering this chapter shall not exceed five
2 percent of the balance of the fund on".

3 5. Page 1, by striking lines 34 through 39, and
4 inserting the following:

5 "____. Page 6, by striking lines 3 through 34 and
6 inserting the following:

7 "Remediation conducted pursuant to a plan of
8 remediation incorporated within a remediation
9 agreement as required in section 161.9 shall be
10 performed according to standards adopted by the
11 department of natural resources pursuant to section
12 455B.601."

13 6. Page 1, by inserting before line 40 the
14 following:

15 "____. Page 7, line 3, by inserting after the word
16 "discovered" the following: ", subject to a plan for
17 remediation as provided in section 161.9".

18 _____. By striking page 7, line 29, through page 8,
19 line 15, and inserting the following: "lower
20 classification, as provided in a plan for remediation
21 pursuant to section 161.9.

22 _____. The remediation of a site classified under
23 this section shall be administered as".

24 _____. Page 8, line 18, by striking the word
25 "remediation" and inserting the following: "site
26 cleanup".

27 _____. Page 8, line 22, by striking the word
28 "remediation" and inserting the following: "site
29 cleanup".

30 _____. Page 8, by striking line 28, and inserting
31 the following: "active site cleanup, if the site
32 cleanup would be more".

33 _____. Page 8, lines 29 and 30, by striking the
34 words "soil remediation" and inserting the following:
35 "site cleanup for soil".

36 _____. Page 8, line 31, by striking the word "soil
37 remediation" and inserting the following: "site
38 cleanup for soil".

39 _____. Page 9, line 4, by striking the word
40 "section" and inserting the following: "chapter".

41 7. Page 3, by inserting after line 36, the
42 following:

43 "____. Page 16, by striking line 2, and inserting
44 the following:

45 "Sec. _____. Section 455B.601, subsection 1,
46 paragraph a, Code 1999, is amended by striking the
47 paragraph.

48 Sec. _____. Section 455B.601, subsection 1,
49 paragraph d, Code 1999, is amended to read as follows:

50 d. ~~The corrective-action-response-requirements A~~

S-5541

-2-

S-5541

Page 3

1 responsible person shall remediate a contaminated site
2 according to standards established by rules adopted
3 pursuant to chapter 17A. Remediation for high,
4 medium, or low priority sites shall be administered in
5 accordance with the following:

6 (1) Soils and groundwaters on a high priority site
7 shall be ~~actively-remediated~~ subject to active
8 cleanup, where technically feasible, until such time
9 as the groundwater contamination levels are below
10 action levels.

11 (2) Remediation on a medium priority site shall
12 include either monitoring or active or passive
13 ~~remediation-and-shall-be~~ site cleanup as determined by
14 the department on a site-by-site basis based upon the
15 findings of the site plan. Remediation on a medium
16 priority site shall include at least that which would
17 be required on a low priority site.

18 (3) (a) Active site cleanup for soil remediation
19 shall be required on a low priority site if
20 remediation would be more practical and cost-effective
21 than monitoring.

22 (b) If active site cleanup for soil remediation on
23 a low priority site is undertaken, no further action
24 shall be required on the site.

25 (c) If active ~~soil~~ site remediation for soil is
26 not undertaken on a low priority site, a the site
27 shall be monitored, for a specified period of time as
28 determined by the department.

29 Sec. ____ . Section 455B.601, subsection 2, Code
30 1999, is amended to read as follows:

31 2. This section is applicable to ~~all-sites~~ a site
32 upon which contamination has been discovered, unless
33 ~~corrective-action~~ one of the following applies:

34 a. Remediation on a the site has already been
35 approved by the department and implemented.

36 b. A responsible person has executed a remediation
37 agreement with the remediation reimbursement board and
38 the responsible person is remediating or has
39 remediated the site pursuant to a plan of remediation
40 as provided in chapter 161.

41 Sec. ____ . NEW SECTION. 455B.602 DEFINITIONS.

42 As used in this division:

43 1. "Action level" means action level as provided
44 in 567 IAC ch. 133 or 137.

45 2. "Active site cleanup" means treating,
46 dispersing, removing, or disposing of contamination
47 located in soil or water, including, but not limited
48 to, excavating soil or installing institutional or
49 technological controls to water quality.

50 3. "Background levels" means concentrations of a

S-5541

-3-

S-5541

Page 4

1 contaminant generally present in the environment in
2 the vicinity of a site or an affected area and not the
3 result of release.

4 4. "Contaminated site" means a site upon which
5 contamination has been discovered.

6 5. "Contamination" means the presence of one or
7 more pesticides, as defined in section 206.2, or the
8 presence of fertilizer, as defined in section 200.3,
9 in soil or groundwater at levels above those that
10 would result at normal field application rates or
11 above background levels.

12 6. "Passive site cleanup" means the removal or
13 treatment of a contaminant in soil or water through
14 management practices or the construction of barriers,
15 trenches, and other similar facilities for prevention
16 of contamination, as well as the use of natural
17 processes such as groundwater recharge, natural decay,
18 and chemical or biological decomposition.

19 7. "Remediation" means a process used to protect
20 the public health and safety or the environment from
21 contamination, including by doing all of the
22 following:

23 a. Controlling, containing, or stabilizing the
24 effects caused by a prohibited release.

25 b. Investigating, identifying, or analyzing a
26 contaminant or a contamination source; collecting
27 samples, including soil and water samples; assessing
28 the condition of a site; monitoring a contaminated
29 site; providing for structural testing; or providing
30 for engineering services.

31 c. Providing for site cleanup.

32 8. a. "Responsible person" means a person who is
33 legally liable for the contamination or who is legally
34 responsible for abating contamination under any
35 applicable law, including chapters 455B and 455E, and
36 the common law. This may include a person causing,
37 allowing, or otherwise participating in the activities
38 or events which cause the contamination, persons who
39 have failed to conduct their activities so as to
40 prevent the release of contaminants into groundwater,
41 persons who are obligated to abate a condition, or
42 persons responsible for or a successor to such
43 persons.

44 b. "Responsible person" does not include a person
45 who caused contamination by acting in a manner
46 unauthorized by the owner of the pesticide or
47 fertilizer, including a person who trespasses upon a
48 site.

49 9. "Site cleanup" means measures used to contain,
50 reduce, or eliminate contamination present at a site

S-5541

S-5541

Page 5

- 1 including by using active site cleanup or passive site
- 2 cleanup measures, or complying with a correction
- 3 action required or recommended by the department of
- 4 natural resources or the United States environmental
- 5 protection agency.""
- 6 8. Page 3, by striking lines 43 and 44, and
- 7 inserting the following:
- 8 "____. Title page, by striking lines 2 and 3, and
- 9 inserting the following: "and establishing a fund.""
- 10 9. By renumbering as necessary.

By MIKE SEXTON

S-5541 FILED APRIL 19, 2000

Senate Concurred
4/20/00 (P. 1294)

SENATE FILE 466

AN ACT
RELATING TO THE REMEDIATION OF AGRICHEMICAL SITES, AND ESTAB-
LISHING A FUND.

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

Section 1. NEW SECTION. 161.1 TITLE.

This section shall be known and may be cited as the "Iowa
Agrichemical Remediation Act".

Sec. 2. NEW SECTION. 161.2 DEFINITIONS.

1. "Action level" means the same as defined in section 455B.602.
2. "Active site cleanup" means the same as defined in section 455B.602.
3. "Agrichemical" means a fertilizer or pesticide.
4. "Board" means the agrichemical remediation reimbursement board created under section 161.3.
5. "Contaminated site" means the same as defined in section 455B.602.
6. "Contamination" means the same as defined in section 455B.602.
7. "Department" means the department of agriculture and land stewardship.
8. "Fertilizer" means a fertilizer or soil conditioner as defined in section 200.3.
9. "Fertilizer site" means a place where containers used for storing or mixing a fertilizer, if any of the following applies:
 - a. The container holds one thousand gallons or more of a liquid fertilizer or one thousand pounds or more of a dry fertilizer.
 - b. The container is in the process of being transported.

10. "Fund" means the agrichemical remediation fund created under section 161.3.

11. "Passive site cleanup" means the same as defined in section 455B.602.

12. "Pesticide" means a pesticide as defined in section 206.2.

13. "Pesticide site" means a place where a container used for storing or mixing a pesticide is located, if any of the following applies:

- a. The container holds fifty gallons or more of a liquid pesticide or two hundred pounds or more of a dry pesticide.
- b. The container is in the process of being transported.

14. "Prohibited release" means the same as defined in section 455B.602.

15. "Remediation" means the same as defined in section 455B.602.

16. "Responsible person" means the same as defined in section 455B.602.

17. "Site" means a fertilizer site or a pesticide site,

Sec. 3. NEW SECTION. 161.3 AGRICHEMICAL REMEDIATION BOARD.

1. An agrichemical remediation board is established within the department consisting of seven voting members.
2. The members shall include all of the following:
 - a. Two public officials who shall include the following:
 - (1) The secretary of agriculture or the secretary's designee.
 - (2) The director of the department of natural resources, or the director's designee.
 - b. Five members appointed by the secretary of agriculture. The members shall include all of the following:
 - (1) One member who is actively engaged in selling agricultural products on a retail basis, or who represents an association of members actively engaged in selling such products.

(2) One member who is actively engaged in producing agricultural crops.

(3) One member who is actively engaged in the distribution of agrichemicals or who is a representative of an association of members actively engaged in the distribution of agrichemicals.

(4) One person who is actively engaged in the manufacture or distribution of fertilizers or who is a representative of an association of members actively engaged in the manufacture or distribution of fertilizers.

(5) One person who is a pesticide registrant actively engaged in the manufacture and distribution of pesticides as provided in section 206.12 or who represents an association of members licensed as pesticide registrants.

3. The appointed members shall serve terms of three years beginning and ending as provided in section 69.19. However, the secretary shall appoint initial members to serve for less than three years to ensure members serve staggered terms. Appointments to the board shall be based upon the training, experience and capacity of the appointees, and not upon political considerations, other than as provided in sections 69.16 and 69.16A.

a. A vacancy on the board shall be filled in the same manner as an original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. An appointed member is eligible for reappointment.

b. An appointed member may be removed from office by the secretary for misfeasance, malfeasance, willful neglect of duty, or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

c. The appointed members shall receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

4. The board shall elect a chairperson each year. The board shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members.

5. The department shall staff the board.

Sec. 4. NEW SECTION. 161.4 BOARD POWERS AND DUTIES.

The board shall have all powers necessary to carry out the functions and duties specified for the board as provided in this chapter. The board shall do all of the following:

1. Execute remediation agreements with eligible persons as provided in section 161.9.

2. Review and determine the eligibility of responsible persons under section 161.9 and claims under section 161.10, and approve administrative costs of the department paid from the fund. Of the moneys appropriated from the fund under section 161.8, for each fiscal year the department may expend at least sixty-five thousand dollars for purposes of administering this chapter, including the support of a full-time equivalent position as defined in section 8.36A. However, if more than sixty-five thousand dollars is required in order to administer this chapter, the total amount which the department may expend from the fund during any fiscal year for administering this chapter shall not exceed five percent of the balance of the fund on the day of the year of its greatest balance or one hundred fifty thousand dollars, whichever is less.

3. Consult with the department in the adoption of rules necessary for the administration of this chapter. The rules of the department shall contain the rules of the board adopted for its organization, procedures, programs, and requirements as required in this chapter. The rules shall provide for all of the following:

a. The board's organization and parliamentary procedures.

b. Procedures for paying claims as provided in section 161.10.

4. Approve any contract with a person for assuring that remediation is performed in accordance with the provisions of a remediation agreement as provided in section 161.9.

Sec. 5. NEW SECTION. 161.5 REMEDIATION STANDARDS.

Remediation conducted pursuant to a plan of remediation incorporated within a remediation agreement as required in section 161.9 shall be performed according to standards adopted by the department of natural resources pursuant to section 455B.601.

Sec. 6. NEW SECTION. 161.6 PRIORITIZATION.

1. The board may adopt rules to establish criteria for the classification and prioritization of sites upon which contamination has been discovered, subject to a plan for remediation as provided in section 161.9.

2. A contaminated site shall be classified as either high, medium, or low priority.

a. A site shall be considered high priority under any of the following conditions:

(1) Groundwater contamination exceeds action levels and is affecting or likely to affect groundwater used as a drinking water source.

(2) Contamination is affecting or likely to affect surface water bodies to a level which exceeds surface water quality standards under section 455B.173.

(3) Contamination is discovered in an ecologically sensitive area. An ecologically sensitive area is one which is designated by the department.

b. A site shall be considered medium priority if contamination of groundwater exceeds action levels, but does not meet the criteria for classification as a high priority site.

c. A site shall be considered low priority under any of the following conditions:

(1) If soil contamination exists at the site, but no groundwater contamination exists at the site.

(2) If soil contamination exists and groundwater contamination has been discovered, but is below action levels.

3. A site shall be reclassified as a site with a higher or lower classification when the site falls within a higher or lower classification, as provided in a plan for remediation pursuant to section 161.9.

4. The remediation of a site classified under this section shall be administered as follows:

a. For a high priority site, soil and groundwater site cleanup shall include active remediation where technically feasible, until such time as the groundwater contamination levels are below action levels.

b. For a medium priority site, the remediation shall include either monitoring or active or passive site cleanup as determined by the department on a site-by-site basis upon considering the findings of the plan of remediation. However, the remediation shall at least be the same remediation required if the site were classified as a low priority site.

c. For a low priority site, the remediation shall include active site cleanup, if the site cleanup would be more practical and cost-effective than monitoring. If active site cleanup for soil is undertaken, no further action shall be required on the site. If active site cleanup for soil is not undertaken, the site shall be monitored, for a specified period of time as determined by the department.

5. Contaminated groundwater and soil shall be applied on land in accordance with rules adopted by the department. The application rate shall not exceed a level which precludes the resumption of normal farming practices within a two-year period.

6. This chapter does not affect the ability of the department or the United States environmental protection agency to require monitoring or remediation on sites that are placed on the national priorities list pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act.

Sec. 7. NEW SECTION. 161.8 AGRICHEMICAL REMEDIATION FUND.

1. An agrichemical remediation fund is created within the state treasury under the control of the department.
2. The fund shall consist of any moneys appropriated by the general assembly for placement in the fund, and moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund.
3. Moneys in the fund are appropriated exclusively to support agrichemical remediation as provided in this chapter, including the payment of claims under section 161.10 and the administration of this chapter by the board and the department.
4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department, in consultation with the board. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this chapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of revenue and finance pursuant to the order of the department. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

Sec. 8. NEW SECTION. 161.9 REMEDIATION AGREEMENT.

1. A person is not required to comply with the requirements of this chapter, including the remediation of a site, unless the person is a responsible person who executes a remediation agreement with the board, as provided in this

section. The remediation agreement shall provide for all of the following:

- a. The terms and conditions required to perform remediation under a plan of remediation as provided in this section, and the payment of claims as provided in section 161.10.
- b. A plan for remediation of a site where contamination has been discovered. The plan shall provide procedures for a remediation of the contaminated site, a schedule for providing for the remediation of the site according to remediation standards provided in section 161.5, and the classification and prioritization of sites as provided in section 161.6. The plan may be amended at any time, if approved by the department, if the amendment to the agreement is executed by the responsible person and the board. The plan shall be developed by the responsible person and approved by the department for each site subject to the agreement. The plan shall include all of the following:

- (1) A determination as to the extent of the existing soil, groundwater, or surface water contamination.
- (2) The proximity of the contamination and the likelihood that the contamination will affect a drinking water well.
- (3) The characteristics of the site and the potential for migration of the contamination.
- (4) Whether the site is classified as a high, medium, or low priority site, as provided in section 161.6.

The department may require that an initial plan of remediation be submitted prior to execution of a remediation agreement. The department may require that the initial plan recommend whether a site be classified as a high or medium priority site. The department may require further investigation be conducted to determine the extent of the remediation which should be conducted on the site.

2. a. The department, upon approval of the board, may contract with a person in order to do any of the following:

(1) Consult with the department and the board in reviewing a remediation agreement, including but not limited to investigating a site or recommending approval or denial of a plan for remediation.

(2) Ensure compliance with the plan for remediation as provided in this section. The person may be authorized to provide a statement to a responsible person, stating that the person is eligible for payment of a claim submitted from the fund as provided in section 161.10.

b. The department may execute the contract with a private individual or entity or a state and local government as provided in chapter 28E.

3. A responsible person is eligible to execute a remediation agreement under this section, if the board determines that all of the following apply:

a. The responsible person is not subject to any of the following:

(1) A pending criminal adjudication against the responsible person relating to the contamination.

(2) Criminal sanctions imposed against the responsible person relating to the contamination.

b. Any of the following:

(1) The responsible person performed reasonable measures necessary for the immediate abatement of any prohibited release.

(2) The responsible person has complied or is in the process of complying in a timely manner with orders issued by the state or federal government for remediation of the contaminated site.

4. Unless the department has cause to believe that the responsible person is not eligible, the department shall provide a statement to the responsible person upon request. The statement shall be printed on forms prescribed by the board. The statement shall verify that to the extent of the department's knowledge, the responsible person is eligible

under this section. The board may use the statement as evidence of eligibility. The board shall provide the statement with any weight determined appropriate by the board.

5. The state, a state agency, a political subdivision of the state, or federal government, or an agency of the federal government, is not eligible to submit a claim to the board for reimbursement from the fund.

Sec. 9. NEW SECTION. 161.10 PAYMENT OF CLAIMS.

1. The board shall approve a claim against the fund to pay for remediation of a contaminated site, if all of the following apply:

a. The claim is made in a manner and according to procedures contained in a remediation agreement executed by the board and the eligible person and rules adopted by the board.

b. The person who has executed a remediation agreement with the board and is filing the claim is a responsible person eligible under section 161.9.

c. The claim includes all of the following:

(1) Evidence of the contamination, including affidavits of experts, photographs, or documentation by federal or state agencies including the department of natural resources.

(2) The total amount required to pay for all costs related to remediating the site as performed by a qualified person according to a business invoice. The business invoice shall be accompanied by supporting evidence.

(3) Information about any insurance policy required to indemnify the responsible person for costs associated with remediating the contaminated site, including a copy of the policy.

(4) The site has been remediated according to a plan of remediation approved by the department as provided in section 161.9.

(5) The claim is complete and accurate, and contains no false or misleading statements.

(6) The approval by the department, in consultation with the board, of a comprehensive plan by the responsible person for the prevention of future contamination at the site.

2. If the board approves a claim, the board shall reimburse the responsible person by doing any of the following:

a. Providing for the immediate payment of a claim, if the board determines that the contamination causes a clear, present, and impending danger to the public health or the natural environment.

b. Providing for the ordinary payment of a claim as follows:

(1) The board may pay the amount of the claim based on a final statement submitted by a responsible person. The department, in consultation with the board, may establish guidelines for reasonable and necessary charges for specific remediation procedures. Payment shall not exceed these reasonable and necessary charges without prior approval of the board.

(2) Upon a determination that the claim is eligible for payment, the department shall provide for payment of the claim as provided in this subsection.

c. Withholding a portion of the payment as provided in the remediation agreement, for final payment when the department determines that the site has been monitored for a period necessary to ensure that remediation has been successful.

d. The amount of the claim shall be the total amount required to remediate the site subject to all of the following:

(1) A deduction of five thousand dollars.

(2) A deduction in the amount of the insurance payments owed to or received by the responsible person for indemnification of remediation costs. The amount of the insurance payments shall be applied first to satisfy the five thousand dollar deduction required in subparagraph (1).

(3) After making the deductions required in subparagraphs (1) and (2), the department shall provide for payment in the amount of ninety percent of claims up to one hundred thousand dollars, eighty percent of claims over one hundred thousand dollars, but not exceeding two hundred thousand dollars, and seventy percent of claims over two hundred thousand dollars up to two hundred fifty thousand dollars.

(4) The amount of a claim shall not be more than two hundred fifty thousand dollars to pay the costs of remediating a contaminated site.

3. The board shall not provide payments from the fund until the board determines that the claim is reasonable and that the claimant has submitted all evidence necessary in order to support the claim and any expenditure of moneys from the fund. The board shall place conditions or requirements upon the payment of moneys from the fund in order to ensure that the moneys are used to provide remediation in compliance with a remediation plan required pursuant to section 161.9.

4. If at any time the department determines that there are insufficient moneys in the fund to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

5. The department shall have a claim on behalf of the fund against any responsible person who files a claim in violation of this chapter for the amount paid for remediation. The responsible person shall be liable for damages. The moneys collected by the department under this subsection shall be deposited into the fund.

Sec. 10. NEW SECTION. 161.11 REPORT.

The department in cooperation with the board shall submit a report to the general assembly by January 10 of each odd-numbered year. The report shall provide a summary and a detailed accounting of the fund's financial condition, including expected revenue and expenses during the following two years.

Sec. 11. Section 455B.601, subsection 1, paragraph a, Code 1999, is amended by striking the paragraph.

Sec. 12. Section 455B.601, subsection 1, paragraph d, Code 1999, is amended to read as follows:

d. ~~The corrective action response requirements A~~ responsible person shall remediate a contaminated site according to standards established by rules adopted pursuant to chapter 17A. Remediation for high, medium, or low priority sites shall be administered in accordance with the following:

(1) Soils and groundwaters on a high priority site shall be actively-remediated subject to active cleanup, where technically feasible, until such time as the groundwater contamination levels are below action levels.

(2) Remediation on a medium priority site shall include either monitoring or active or passive ~~remediation and shall be site cleanup as~~ site cleanup as determined by the department on a site-by-site basis based upon the findings of the site plan. Remediation on a medium priority site shall include at least that which would be required on a low priority site.

(3) (a) Active site cleanup for soil remediation shall be required on a low priority site if remediation would be more practical and cost-effective than monitoring.

(b) If active site cleanup for soil remediation on a low priority site is undertaken, no further action shall be required on the site.

(c) If active ~~soil~~ site remediation for soil is not undertaken on a low priority site, ~~a~~ the site shall be monitored, for a specified period of time as determined by the department.

Sec. 13. Section 455B.601, subsection 2, Code 1999, is amended to read as follows:

2. This section is applicable to ~~all sites~~ a site upon which contamination has been discovered, unless ~~corrective action one of the following applies:~~

a. Remediation on a the site has already been approved by the department and implemented.

b. A responsible person has executed a remediation agreement with the remediation reimbursement board and the responsible person is remediating or has remediated the site pursuant to a plan of remediation as provided in chapter 161.

Sec. 14. NEW SECTION. 455B.602 DEFINITIONS.

As used in this division:

1. "Action level" means action level as provided in 567 IAC ch. 133 or 137.

2. "Active site cleanup" means treating, dispersing, removing, or disposing of contamination located in soil or water, including, but not limited to, excavating soil or installing institutional or technological controls to water quality.

3. "Background levels" means concentrations of a contaminant generally present in the environment in the vicinity of a site or an affected area and not the result of release.

4. "Contaminated site" means a site upon which contamination has been discovered.

5. "Contamination" means the presence of one or more pesticides, as defined in section 206.2, or the presence of fertilizer, as defined in section 200.3, in soil or groundwater at levels above those that would result at normal field application rates or above background levels.

6. "Passive site cleanup" means the removal or treatment of a contaminant in soil or water through management practices or the construction of barriers, trenches, and other similar facilities for prevention of contamination, as well as the use

of natural processes such as groundwater recharge, natural decay, and chemical or biological decomposition.

7. "Remediation" means a process used to protect the public health and safety or the environment from contamination, including by doing all of the following:

a. Controlling, containing, or stabilizing the effects caused by a prohibited release.

b. Investigating, identifying, or analyzing a contaminant or a contamination source; collecting samples, including soil and water samples; assessing the condition of a site; monitoring a contaminated site; providing for structural testing; or providing for engineering services.

c. Providing for site cleanup.

8. a. "Responsible person" means a person who is legally liable for the contamination or who is legally responsible for abating contamination under any applicable law, including chapters 455B and 455E, and the common law. This may include a person causing, allowing, or otherwise participating in the activities or events which cause the contamination, persons who have failed to conduct their activities so as to prevent the release of contaminants into groundwater, persons who are obligated to abate a condition, or persons responsible for or a successor to such persons.

b. "Responsible person" does not include a person who caused contamination by acting in a manner unauthorized by the owner of the pesticide or fertilizer, including a person who trespasses upon a site.

9. "Site cleanup" means measures used to contain, reduce, or eliminate contamination present at a site including by using active site cleanup or passive site cleanup measures, or complying with a correction action required or recommended by the department of natural resources or the United States environmental protection agency.

Sec. 15. FULL-TIME EQUIVALENT POSITIONS. There is authorized for the fiscal year beginning July 1, 2000, and

ending June 30, 2001, the following full-time equivalent positions within the department of agriculture and land stewardship, in order to support administration of chapter 161, as enacted by this Act, in addition to any other full-time equivalent positions authorized by the Seventy-eighth General Assembly, 2000 Session, to support the department:
..... PTEs 2.00

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 466, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 5/5, 2000

THOMAS J. VILSACK
Governor