

## AGRICHEMICAL REMEDIATION

### **161.1 Title.**

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

2000 Acts, ch 1184, §1

### **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 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 are located, if any of the following apply:
  - 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 161.7.
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 apply:
  - 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. "*Remediation*" means the same as defined in section 455B.602.
15. "*Responsible person*" means the same as defined in section 455B.602.
16. "*Site*" means a fertilizer site or a pesticide site.

### **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.

2000 Acts, ch 1184, §3

#### **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 161.8.
2. Review and determine the eligibility of responsible persons under section 161.8 and claims under section 161.9, and approve administrative costs of the department paid from the fund. Of the moneys appropriated from the fund under section 161.7, 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 161.9.
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 161.8.

2000 Acts, ch 1184, §4

#### **161.5 Remediation standards.**

Remediation conducted pursuant to a plan of remediation incorporated within a remediation agreement as required in section 161.8 shall be performed according to standards adopted by the department of natural resources pursuant to section 455B.601.

2000 Acts, ch 1184, §5

#### **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 161.8.
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 161.8.

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 site cleanup 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.

2000 Acts, ch 1184, §6; 2002 Acts, ch 1119, §138

### **161.7 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 161.9 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 the department of administrative services 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.

2000 Acts, ch 1184, §7; 2003 Acts, ch 145, §286

### **161.8 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 161.9.

*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 161.9.

*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 contamination.

(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.

2000 Acts, ch 1184, §8; 2002 Acts, ch 1119, §139

### **161.9 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 161.8.

*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 161.8.

(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 161.8.

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.

2000 Acts, ch 1184, §9

#### **161.10 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.

2000 Acts, ch 1184, §10