

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

455B.101 Definitions.

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

1. "*Department*" means the department of natural resources created under section 455A.2.
2. "*Director*" means the director of the department or a designee.
3. "*Commission*" means the environmental protection commission created under section 455A.6.

[C66, § 455B.2(10); C71, § 136B.2(6), 455B.2(10), 455C.1(2); C73, 75, 77, § 455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3); C79, § 455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3), 455B.110(7); C81, § 455B.1; 82 Acts, ch 1199, § 1, 96]

C83, § 455B.101

86 Acts, ch 1245, § 1884

455B.102 Department created. Repealed by 86 Acts, ch 1245, § 1899O.

455B.103 Director's duties.

The director shall:

1. Recommend to the commission the adoption of rules that are necessary for the effective administration of the department.
2. Recommend to the commission the adoption of rules to implement the programs and services assigned to it.
3. Contract, with the approval of the commission, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter, chapter 459, and chapter 459A. If the director finds that public agencies of this state cannot provide the laboratory, scientific field measurement and environmental evaluation services required by the department, the director may contract, with the approval of the commission, with any other public or private persons or agencies for such services or for scientific or technical services required to carry out the programs and services assigned to the department.
4. Conduct investigations of complaints received directly or referred by the commission created in section 455A.6 or other investigations deemed necessary. While conducting an investigation, the director may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter, chapter 459, chapter 459A, or the rules or standards adopted under this chapter, chapter 459, or chapter 459A. However, the owner or person in charge shall be notified.
 - a. If the owner or occupant of any property refuses admittance thereto, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.
 - b. In the application the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence

tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

d. In making inspections and searches pursuant to the authority of this division, the director must execute the warrant:

(1) Within ten days after its date.

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808, 809, and 809A.

(3) Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

5. Accept, receive and administer grants or other funds or gifts from public or private agencies, including the federal government, for the abatement, prevention, or control of pollution, or other environmental programs, subject to the approval of the commission.

6. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts relating to the control of pollution or the protection or enhancement of the environment. Any agreement is subject to the approval of the commission.

7. At the discretion of the director, enter into environmental covenants in accordance with chapter 455I and accept or maintain such other real property interests as shall be appropriate for the protection of human health and safety or the environment.

[C66, § 455B.14; C71, § 136B.4, 136B.5, 455B.14; C73, § 455B.3, 455B.12(12), 455B.13(3, 7), 455B.36, 455B.89(4); C75, 77, 79, § 455B.3, 455B.12(12), 455B.13(6); C81, § 455B.3]

C83, § 455B.103

84 Acts, ch 1158, § 1; 86 Acts, ch 1245, § 1885, 1886, 1899; 96 Acts, ch 1133, § 45; 2005 Acts, ch 102, §1; 2005 Acts, ch 136, §20

455B.103A General permits storm water discharge air contaminant sources.

1. If a permit is required pursuant to this chapter, chapter 459, or chapter 459A for storm water discharge or an air contaminant source and a facility to be permitted is representative of a class of facilities which could be described and conditioned by a single permit, the director may issue, modify, deny, or revoke a general permit for all of the following conditions:

a. If adoption of a general permit is proposed, the terms, conditions, and limitations of the permit shall be drafted into a notice of intended action and adopted in accordance with the provisions of chapter 17A as a

rule of the department. The same process of adoption shall be used for modification of a general permit.

b. Following the effective date of a general permit, a person proposing to conduct activities covered by the general permit shall provide a notice of intent to conduct a covered activity on a form provided by the department. A person shall also provide public notice of intent to conduct activities covered under the general permit by publishing notice in two newspapers with the largest circulation in the area in which the facility is located. Notice of the discontinuation of a permitted activity shall be provided in the same manner.

c. If the department finds that a proposed activity is not covered by a general permit, the department shall notify the affected person and shall provide the person with a permit application if the practice is one which could be authorized by individual permit.

d. A person holding an existing permit is subject to the terms of the existing permit until it expires. If the person holding an existing permit continues the activity beyond the expiration date of the existing permit, an applicable, approved general permit shall become effective.

e. A variance or alteration of the terms and conditions of a general permit shall not be granted. If a variance or modification of an operation authorized by a general permit is desired, the applicant shall apply for an individual permit.

f. The department shall perform on-site inspections and review monitoring data to assess the effectiveness of general permits. If a significant adverse environmental problem exists for an individual facility or class of facilities due to regulation under a general permit, the facility or class of facilities shall be required to obtain individual permits.

g. The department shall establish a procedure for the filing of complaints by persons believing themselves to be adversely affected by the environmental impact of the discharge of a facility operating under a general permit under this section.

2. General permits are not subject to the requirements applicable to individual permits.

3. Three years after the adoption of a general permit by rule, the department shall assess the activities which have been conducted under the general permit and determine whether any significant adverse environmental consequences have resulted.

4. An applicant to be covered under a general permit shall pay a permit fee, as established by rule of the commission, which is sufficient in the aggregate to defray the costs of the permit program. Moneys collected shall be remitted to the department.

5. The enforcement provisions of division II of this chapter and chapter 459, subchapter II, apply to general permits for air contaminant sources. The enforcement provisions of division III, part 1, of this chapter, chapter 459, subchapter III, and chapter 459A apply to general permits for storm water discharge.

91 Acts, ch 121, §1; 92 Acts, ch 1239, § 46; 93 Acts, ch 137, §1; 2005 Acts, ch 136, §21, 22

455B.104 Departmental duties permits assistance.

1. The department shall either approve or deny a permit to a person applying for a permit under this chapter within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this subsection shall not apply to applications for permits which are issued under division II or division IV, parts 2 through 7.

2. The department shall assist persons applying for assistance to establish and operate renewable fuel production facilities pursuant to the value-added agricultural products and processes financial assistance program established in section 15E.111.

93 Acts, ch 176, §44; 94 Acts, ch 1119, §30; 98 Acts, ch 1209, § 10, 53; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

455B.105 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of programs under its jurisdiction. The commission shall appoint advisory committees to advise the commission and the director in carrying out their respective powers and duties.
2. Advise, consult, and cooperate with other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities.
3. Adopt, modify, or repeal rules necessary to implement this chapter, chapter 459, and chapter 459A, and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter, chapter 459, and chapter 459A. Rules adopted by the executive committee before January 1, 1981, shall remain effective until modified or rescinded by action of the commission.
4. Issue orders and directives necessary to insure integration and coordination of the programs administered by the department.
5. Make a concise annual report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs administered by the department and include recommendations for legislative action which may be required to protect or enhance the environment or to modernize the operation of the department or any of the programs or services assigned to the department and recommendations for the transfer of powers and duties of the department as deemed advisable by the commission. The annual report shall conform to the provisions of section 7A.3.
6. Approve all contracts and agreements under this chapter, chapter 459, and chapter 459A between the department and other public or private persons or agencies.
7. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.
8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter, chapter 22, chapter 459, or chapter 459A, necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

9. Upon request of at least four members of the commission before adopting or modifying a rule, the director shall prepare and publish with the notice required under section 17A.4, subsection 1, paragraph "a", a comprehensive estimate of the economic impact of the proposed rule or modification.

10. Appoint a water coordinator who shall coordinate requests from the public for information or assistance relating to the administration of water resources laws and programs and the resolution of water-related problems.

11. *a.* Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter, chapter 459, and chapter 459A relating to permits, conditional permits, and general permits. The commission may also adopt, by rule, a schedule of fees for permit and conditional permit applications and a schedule of fees which may be periodically assessed for administration of permits and conditional permits. In determining the fee schedules, the commission shall consider:

(1) The state's reasonable cost of reviewing applications, issuing permits and conditional permits, and checking compliance with the terms of the permits.

(2) The relative benefits to the applicant and to the public of permit and conditional permit review, issuance, and monitoring compliance.

It is the intention of the legislature that permit fees shall not cover any costs connected with correcting violation of the terms of any permit and shall not impose unreasonable costs on any municipality.

(3) The typical costs of the particular types of projects or activities for which permits or conditional permits are required, provided that in no circumstances shall fees be in excess of the actual costs to the department.

b. Except as otherwise provided in this chapter and chapter 459, fees collected by the department under this subsection shall be remitted to the treasurer of state and credited to the general fund of the state.

[C50, 54, 58, 62, 66, § 455A.9; C71, § 136B.4(7), 455A.9; C73, 75, 77, 79, § 455A.9, 455B.5, 455B.7, 455B.12(6); C81, § 455A.9, 455B.5; 82 Acts, ch 1199, § 4, 5, 96]

C83, § 455B.105

83 Acts, ch 136, § 1; 83 Acts, ch 137, § 1; 86 Acts, ch 1245, § 1887, 1899; 89 Acts, ch 72, § 3; 91 Acts, ch 121, §2; 94 Acts, ch 1198, §47; 2003 Acts, ch 44, §65; 2004 Acts, ch 1101, §61; 2005 Acts, ch 136, §23, 24

455B.106 Appeal board. Repealed by 86 Acts, ch 1245, § 1899O.

455B.107 Warrants by director of department of administrative services.

The director of the department of administrative services shall draw warrants on the treasurer of state for all disbursements authorized by the provisions of this chapter and chapter 459, upon itemized and verified vouchers bearing the approval of the director of the department of natural resources.

[C73, 75, 77, 79, 81, § 455B.8]

C83, § 455B.107

86 Acts, ch 1245, § 1899; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §62

455B.108 Office facilities.

The department of administrative services shall provide the department with appropriate office facilities.

[C73, 75, 77, 79, 81, § 455B.9]

C83, § 455B.108

2003 Acts, ch 145, §286

455B.109 Schedule of fines violations.

1. The commission shall establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than ten thousand dollars for violations of this chapter* or rules, permits or orders adopted or issued under this chapter.* In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following:

a. The costs saved or likely to be saved by noncompliance by the violator.

b. The gravity of the violation.

c. The degree of culpability of the violator.

d. The maximum penalty authorized for that violation under this chapter.* Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under this subsection.

2. When the commission establishes a schedule for violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

3. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

4. *a.* Except as provided in paragraph "b", civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state.

b. The following provisions shall apply to animal feeding operations:

(1) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving animal feeding operations under chapter 459, subchapter II, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

(2) Civil penalties assessed by the department and interest on the penalties, arising out of violations

committed by animal feeding operations under chapter 459, subchapter III, which may be assessed pursuant to section 455B.191 or 459.604, shall also be deposited in the animal agriculture compliance fund.

(3) Civil penalties assessed by the department and interest on the civil penalties, arising out of violations involving open feedlot operations under chapter 459A, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

5. This section does not require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

84 Acts, ch 1159, § 1; 86 Acts, ch 1245, § 1899; 92 Acts, ch 1111, § 1; 95 Acts, ch 195, §12; 2002 Acts, ch 1137, §2, 71; 2005 Acts, ch 136, §25

*Sections formerly contained in this chapter were transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137; see also § 459.601459.604

455B.110 Animal feeding operations investigations and enforcement actions. Transferred to §459.601; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262.

455B.111 Citizen actions.

1. Except as provided in subsection 2, a person with standing as provided in subsection 3 may commence a civil action in district court on the person's own behalf against any of the following:

a. A person, including the state of Iowa, for violating any provision of this chapter; chapter 459, subchapters I, II, III, IV, and VI;* chapter 459A; or a rule adopted pursuant to this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A.

b. The director, the commission, or any official or employee of the department where there is an alleged failure to perform any act or duty under this chapter; chapter 459, subchapters I, II, III, IV, and VI;* chapter 459A; or a rule adopted pursuant to this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A, which is not a discretionary act or duty.

2. An action shall not be commenced pursuant to subsection 1, paragraph "a", unless the person commencing the action has provided the director and the alleged violator with a written notice at least sixty days prior to commencing the action. The written notice shall specify the nature of the violation and that legal action is contemplated under this section if the violation is not abated and, if necessary, remedial action is not taken. The state may intervene in such an action as a matter of right. In addition, an action shall not be commenced pursuant to subsection 1, paragraph "a", if the department or the state has commenced and is actively prosecuting a civil action or is actively negotiating an out-of-court settlement to require abatement of the violation and, if necessary, remediation of damages. However, any person may intervene as a matter of right in such an action.

3. A person shall have standing to commence an action pursuant to subsection 1 or to intervene in an action pursuant to subsection 2 if the person is adversely affected by the alleged violation or the alleged failure to perform a duty or act.

4. In an action commenced pursuant to subsection 1, the court may award costs of litigation, including reasonable attorney and expert witness fees, to any party.

5. This section does not restrict any right under statutory or common law of a person or class of person to seek enforcement of provisions of this chapter; chapter 459, subchapters I, II, III, IV, and VI;* chapter 459A; or a rule adopted pursuant to this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A, or

seek other relief permitted under the law.

86 Acts, ch 1245, § 1888; 2005 Acts, ch 136, §26, 27

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.112 Actions by attorney general.

In addition to the duty to commence legal proceedings at the request of the director or commission under this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A, the attorney general may institute civil or criminal proceedings, including an action for injunction, to enforce the provisions of this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A, including orders or permits issued or rules adopted under this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A.

86 Acts, ch 1245, § 1889; 2005 Acts, ch 136, §28

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.113 Certification of laboratories.

1. The director shall certify laboratories which perform laboratory analyses of samples required to be submitted by the department by this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A, or by rules adopted in accordance with this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A, or by permits or orders issued under this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A.

2. The commission shall adopt rules regarding content of laboratory certification application forms, which shall be furnished by the department.

The commission shall adopt rules regarding reciprocity agreements with other states that have equivalent laboratory certification requirements.

3. The director may charge a fee for processing of an application. The application fee is nonrefundable. In establishing the fee, the director shall take into account the administrative costs incurred and the cost of enforcement of this section. Fees collected shall be retained by the department.

4. A laboratory shall submit an application, every other year, accompanied by the fee determined by the director.

88 Acts, ch 1120, § 1; 2005 Acts, ch 136, §29

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.114 Laboratory certificates.

1. Upon determination by the director that an applicant for certification has the necessary competence, equipment, and capability to perform the laboratory analytical procedures required, the director shall issue a certificate of competency to the laboratory. The certificate shall indicate the analytical parameters and procedures which the laboratory is certified to conduct.

2. The director may suspend or revoke the certificate of competency of a laboratory upon determination of the director that the laboratory no longer fulfills the requirements for certification.

88 Acts, ch 1120, § 2

455B.115 Analysis by certified laboratory required.

Laboratory analysis of samples as required by this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A; or by rules adopted, or by permits or orders issued pursuant to this chapter; chapter 459, subchapters I, II, III, IV, and VI;* or chapter 459A shall be conducted by a laboratory certified by the director as having the necessary competence, equipment, and capabilities to perform the analysis. Analytical results from laboratories not certificated shall not be accepted by the director.

88 Acts, ch 1120, § 3; 2005 Acts, ch 136, §30

*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

455B.116 Pollution hotline program.

The department shall establish a toll-free telephone number to allow citizens to report incidents resulting in pollution of the environment or damage to natural resources. The department shall receive and evaluate the reports and refer them to the appropriate state or local jurisdiction for initial investigation. The agency receiving a referral shall investigate the complaint, attempt to resolve the problem, and upon completion of the investigation, report to the department on the disposition of each complaint indicating how the problem was resolved.

The department shall use moneys appropriated to the waste volume reduction and recycling fund for the purpose of implementation of the program and shall use the moneys appropriated under section 455E.11 for the program to provide financial assistance to counties for investigation of complaints.

89 Acts, ch 272, § 27

455B.117 Results of environmental tests public records.

The results of any test, which test is relative to the purview of the department, and which test is conducted or performed by an independent entity at the request of a government body, as defined in section 22.1, or an agent or attorney for a government body, are public records pursuant to chapter 22.

A government body shall not be required to provide such test results to any person under this section until the agency head and agency's governing body have received a copy of the test results. A government body shall not be required to provide such test results if the confidentiality of such information is protected pursuant to section 22.7. However, following receipt of test results by an agency head and the agency's governing body, the agency head or agency's governing body shall not take action regarding such test results unless the test results have been made public knowledge for a period of not less than seven days.

89 Acts, ch 242, § 1

455B.118 through 455B.130 Reserved.

455B.131 Definitions.

When used in this division II, unless the context otherwise requires:

1. "*Air contaminant*" means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.
2. "*Air contaminant source*" means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but is not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other waterborne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

An air contaminant source does not include a fire truck or other fire apparatus operated by an organized fire department.

3. "*Air pollution*" means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.
4. "*Atmosphere*" means all space outside of buildings, stacks or exterior ducts.
5. "*Earthen waste slurry storage basin*" means an uncovered and exclusively earthen cavity which, on a regular basis, receives waste discharges from a confinement animal feeding operation if accumulated wastes from the basin are completely removed at least twice each year.
6. "*Emission*" means a release of one or more air contaminants into the outside atmosphere.
7. "*Major stationary source*" means a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department or the administrator of the United States environmental protection agency.
8. "*Person*" means an individual, partnership, copartnership, cooperative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, an agency or department of the federal government or any other legal entity, or a legal representative, agent, officer, employee or assigns of such entities.
9. "*Political subdivision*" means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.
10. "*Potential to emit*" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department.
11. "*Schedule and timetable of compliance*" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

[C71, § 136B.2; C73, 75, 77, 79, 81, § 455B.10]

C83, § 455B.131

85 Acts, ch 44, §1; 86 Acts, ch 1245, § 1899B; 90 Acts, ch 1153, § 1; 93 Acts, ch 137, §2

455B.132 Executive agency.

The department shall be the agency of the state to prevent, abate, or control air pollution.

[C73, 75, 77, 79, 81, § 455B.11]

C83, § 455B.132

455B.133 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the abatement, control, and prevention of air pollution in this state, recognizing varying requirements for different areas in the state. The plans may include emission limitations, schedules and timetables for compliance with the limitations, measures to prevent the significant deterioration of air quality and other measures as necessary to assure attainment and maintenance of ambient air quality standards.
2. Adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution. The rules may include those that are necessary to obtain approval of the state implementation plan under section 110 of the federal Clean Air Act as amended through January 1, 1991.
3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare and to reduce emissions contributing to acid rain pursuant to Title IV of the federal Clean Air Act Amendments of 1990.
4. Adopt, amend, or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. This does not prohibit the commission from adopting a standard for a source or class of sources for which the United States environmental protection agency has not promulgated a standard. This also does not prohibit the commission from adopting an emission standard or limitation for infectious medical waste treatment or disposal facilities which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. The commission shall not adopt an emission standard or limitation for infectious medical waste treatment or disposal facilities prior to January 1, 1995, which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act, as amended through January 1, 1991, for a hospital, or a group of hospitals, licensed under chapter 135B which has been operating an infectious medical waste treatment or disposal facility prior to January 1, 1991.
 - a. (1) The commission shall establish standards of performance unless in the judgment of the commission it is not feasible to adopt or enforce a standard of performance. If it is not feasible to adopt or enforce a standard of performance, the commission may adopt a design, equipment, material, work practice or operational standard, or combination of those standards in order to establish reasonably available control technology or the lowest achievable emission rate in nonattainment areas, or in order to establish best available control technology in areas subject to prevention of significant deterioration review, or in order to adopt the emission limitations promulgated by the administrator of the United States environmental protection agency under section 111 or 112 of the federal Clean Air Act as amended through January 1, 1991.

(2) If a person establishes to the satisfaction of the commission that an alternative means of emission limitation will achieve a reduction in emissions of an air pollutant at least equivalent to the reduction in emissions of the air pollutant achieved under the design, equipment, material, work practice or operational standard, the commission shall amend its rules to permit the use of the alternative by the source for purposes of compliance with this paragraph with respect to the pollutant.

(3) A design, equipment, material, work practice or operational standard promulgated under this paragraph shall be promulgated in terms of a standard of performance when it becomes feasible to promulgate and enforce the standard in those terms.

(4) For the purpose of this paragraph, the phrase "*not feasible to adopt or enforce a standard of performance*" refers to a situation in which the commission determines that the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

b. If the maximum standards for the emission of sulfur dioxide from solid fuels have to be reduced in an area to meet ambient air quality standards, a contract for coal produced in Iowa and burned by a facility in that area that met the sulfur dioxide emission standards in effect at the time the contract went into effect shall be exempted from the decreased requirement until the expiration of the contract period or December 31, 1983, whichever first occurs, if there is any other reasonable means available to satisfy the ambient air quality standards. To qualify under this subsection, the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

c. The degree of emission limitation required for control of an air contaminant under an emission standard shall not be affected by that part of the stack height of a source that exceeds good engineering practice, as defined in rules, or any other dispersion technique. This paragraph shall not apply to stack heights in existence before December 30, 1970, or dispersion techniques implemented before that date.

5. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

6. *a.* Require, by rules, notice of the construction of any air contaminant source which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or other information deemed necessary, for the installation of air contaminant sources and related control equipment. The rules shall allow the owner or operator of a major stationary source to elect to obtain a conditional permit in lieu of a construction permit. The rules relating to a conditional permit for an electric power generating facility subject to chapter 476A and other major stationary sources shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used unless authorized by subsection 4 of this section.

b. The commission may give technical advice pertaining to the construction or installation of the equipment or any other recommendation.

7. Commission rules establishing maximum permissible sulfate content shall not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

8. *a.* Adopt rules consistent with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, which require the owner or operator of an air contaminant source to obtain an operating permit prior to operation of the source. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be granted, modified, suspended, terminated, revoked, reissued, or denied. For sources subject to the provisions of Title IV of the federal Clean Air Act Amendments of 1990, permit conditions shall include emission allowances for sulfur dioxide emissions. The commission may impose fees, including fees upon regulated pollutants emitted from an air contaminant source, in an amount sufficient to cover all reasonable costs, direct and indirect, required to develop and administer the permit program in conformance with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. Affected units regulated under Title IV of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, shall pay operating permit fees in the same manner as other sources subject to operating permit requirements, except as provided in section 408 of the federal Act. The fees collected pursuant to this subsection shall be deposited in the air contaminant source fund created pursuant to section 455B.133B, and shall be utilized solely to cover all reasonable costs required to develop and administer the programs required by Title V of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, including the permit program pursuant to section 502 of the federal Act and the small business stationary source technical and environmental assistance program pursuant to section 507 of the federal Act.

b. Adopt rules allowing the department to issue a state operating permit to an owner or operator of an air contaminant source. The state operating permit granted under this paragraph may only be issued at the request of an air contaminant source and will be used to limit its potential to emit to less than one hundred tons per year of a criteria pollutant as defined by the United States environmental protection agency or ten tons per year of a hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants.

c. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous sources to the extent that the sources are representative of a class of facilities which can be identified and conditioned by a single permit.

9. Adopt rules allowing asphalt shingles to be burned in a fire set for the purpose of bona fide training of public or industrial employees in fire fighting methods only if a notice is provided to the director containing testing results indicating that the asphalt shingles do not contain asbestos. Each fire department shall be permitted to host two fires per year as allowed under this subsection.

10. Adopt rules allowing a city to conduct a controlled burn of a demolished building subject to the requirements that are in effect for the proper removal of all asbestos-containing materials prior to demolition and burning. The rules shall include provisions that a burn site have controlled access, that a burn site be supervised by representatives of the city at all times, and that the burning be conducted only when weather conditions are favorable with respect to surrounding property. For a burn site located outside of a city, the rules shall include a provision that a city may undertake not more than one such controlled burn per day and that a burn site be limited to an area located at least six-tenths of a mile from any inhabited building. For burn sites located within a city, the rules shall include a provision that a city may undertake not more than one such controlled burn in every six-tenths-of-a-mile-radius circle in each calendar year. The rules shall prohibit a controlled burn of a demolished building in Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City, or any other area where area-specific state implementation plans require the control of particulate matter.

[C71, § 136B.4; C73, 75, 77, 79, 81, § 455B.12; 82 Acts, ch 1124, § 1]

C83, § 455B.133

91 Acts, ch 242, § 1; 91 Acts, ch 255, § 8; 92 Acts, ch 1163, § 8789; 93 Acts, ch 137, §3; 94 Acts, ch 1040, §1; 95 Acts, ch 2, §1; 2002 Acts, ch 1162, §45; 2002 Acts, 2nd Ex, ch 1003, §241, 262; 2004 Acts, ch 1138, §1

455B.133A Temporary air toxics fee imposed. Repealed by 95 Acts, ch 26, §4.

455B.133B Air contaminant source fund created.

An air contaminant source fund is created in the office of the treasurer of state under the control of the department. Moneys received from the fees assessed pursuant to section 455B.133, subsection 8, shall be deposited in the fund. Moneys in the fund shall be used solely to defray the costs related to the permit, monitoring, and inspection program, including the small business stationary source technical and environmental compliance assistance program required pursuant to the federal Clean Air Act Amendments of 1990, sections 502 and 507, Pub. L. No. 101-549. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Notwithstanding section 12C.7, any interest and earnings on investments from money in the fund shall be credited to the fund.

91 Acts, ch 255, § 10; 92 Acts, ch 1163, § 91, 92; 95 Acts, ch 26, §1, 2

455B.134 Director duties limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.
2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II and chapter 459, subchapter II.
3. Grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.
 - a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.
 - b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.
 - c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.
 - d. All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the

commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

e. A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Title IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

f. (1) Notwithstanding any other provision of division II of this chapter or chapter 459, subchapter II, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and chapter 459, subchapter II, and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter and chapter 459, subchapter II. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

[C71, § 136B.4, 136B.5; C73, 75, 77, 79, § 455B.12, 455B.13; C81, § 455B.13; 82 Acts, ch 1124, § 2, 3]

C83, § 455B.134

86 Acts, ch 1245, § 1899; 90 Acts, ch 1153, § 2, 3; 91 Acts, ch 255, §1113; 93 Acts, ch 137, §4; 95 Acts, ch 195, §14

Footnotes

For regulations establishing separation distances between anaerobic lagoons or earthen manure storage structures constructed or expanded on or after May 31, 1995, and various locations and objects, see chapter 459

For regulations governing the construction of earthen storage structures within agricultural drainage well areas, see chapter 460

455B.135 Limit on authority.

Nothing contained in this division II or chapter 459, subchapter II, shall be deemed to grant to the department or the director any authority or jurisdiction with respect to air pollution existing solely within residences; or solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91; or to affect the relations between employers and employees with respect to, or arising out of, any condition of air pollution.

[C71, § 136B.6; C73, 75, 77, 79, 81, § 455B.14]

C83, § 455B.135

86 Acts, ch 1245, § 1899, 1899B

455B.136 Assistance on demand.

The department and the director may request and receive assistance from any other agency, department, or educational institution of the state, or political subdivision thereof, when it is deemed necessary or beneficial by the department or the director. The department may reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C71, § 136B.7; C73, 75, 77, 79, 81, § 455B.15]

C83, § 455B.136

86 Acts, ch 1245, § 1899, 1899B

455B.137 Privileged information.

Information received by the department or any employees of the department through filed reports, inspections, or as otherwise authorized in this division II or chapter 459, subchapter II, concerning trade secrets, secret industrial processes, or other privileged communications, except emission data, shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of said division or of any rules promulgated thereunder, or as otherwise authorized or ordered by appropriate court action or proceedings. Nothing herein shall be construed to prevent the director from compiling or publishing analyses or summaries relating to the general condition of the atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

[C71, § 136B.8; C73, 75, 77, 79, 81, § 455B.16]

C83, § 455B.137

86 Acts, ch 1245, § 1899B

455B.138 Resolution of violations appeal.

1. When the director has evidence that a violation of any provision of division II of this chapter or chapter 459, subchapter II, or rule, standard or permit established or issued under division II or chapter 459, subchapter II, has occurred, the director shall notify the alleged violator and, by informal negotiation, attempt to resolve the problem. If the negotiations fail to resolve the problem within a reasonable period of time, the director shall issue an order directing the violator to prevent, abate or control the emissions or air pollution involved. The order shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action to prevent, abate or control the emissions of air pollution. The order may be appealed to the commission.

2. After the hearing on appeal, the commission may affirm, modify or rescind the order of the director.
3. The director shall keep a complete record of the hearings and proceeding and the record shall be open to public inspection, subject to section 455B.137. Upon request, a copy of the transcript shall be furnished to the violator or alleged violator at the violator's or alleged violator's expense.
4. An appeal to the commission under this section shall be conducted as a contested case under chapter 17A.

[C71, § 136B.9; C73, 75, 77, 79, 81, § 455B.17]

C83, § 455B.138

86 Acts, ch 1245, § 1899

455B.139 Emergency orders.

If the director has evidence that any person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, the director may, without notice, issue an emergency order requiring such person to reduce or discontinue immediately the emission of air contaminants. A copy of the emergency order shall be served by personal service. An emergency order issued by the director may be appealed to the commission. After hearing on appeal, the commission may affirm, modify or rescind the order of the director.

[C71, § 136B.9(5); C73, 75, 77, 79, 81, § 455B.18]

C83, § 455B.139

86 Acts, ch 1245, § 1899

455B.140 Judicial review.

Judicial review of actions of the commission or of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed.

[C71, § 136B.10; C73, 75, 77, 79, 81, § 455B.19]

C83, § 455B.140

86 Acts, ch 1245, § 1899; 2003 Acts, ch 44, §114

455B.141 Legal action.

If action to prevent, control, or abate air pollution is not taken in accordance with the rules established, or orders or permits issued by the department, or if the director has evidence that an emergency exists by reason of air pollution which requires immediate action to protect the public health or property, the attorney general, at the request of the director, shall commence legal action, in the name of the state, for an injunction to prevent any further or continued violation of such rule or order.

[C71, § 136B.11; C73, 75, 77, 79, 81, § 455B.20]

C83, § 455B.141

86 Acts, ch 1245, § 1899; 91 Acts, ch 255, §14

455B.142 Burden of proof.

In all proceedings with respect to any alleged violation of the provisions of this division II or chapter 459, subchapter II, or any rule established by the commission, the burden of proof shall be upon the department except in an action for an injunction as provided in section 455B.141.

[C71, § 136B.12; C73, 75, 77, 79, 81, § 455B.21]

C83, § 455B.142

455B.143 Variance.

Any person who owns or operates any plant, building, structure, process, or equipment may apply for a variance from the rules or standards adopted by the department by filing an application with the department. The application shall be accompanied by such information and data required by the department.

1. The director shall promptly investigate the application and approve or disapprove the application. The director may grant a variance if the director finds that:
 - a. The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety or property; and
 - b. Compliance with the rules or standards from which the variance is sought will produce serious hardship without equal or greater benefits to the public.
2. The applicant may request a review hearing before the department if the application is denied.
3. In determining under what conditions and to what extent a variance may be granted, the director shall give due recognition to the progress which the applicant has made toward eliminating or preventing air pollution. In such a case, the director shall consider the reasonableness of the request, conditioned upon such applicant effecting a partial abatement of the particular air pollution within a reasonable period of time, or the director may prescribe other requirements with which such applicant shall comply.
4. The director may grant a variance for a specified period of time, not exceeding one year, and the director may further specify that the applicant make periodic reports specifying the progress that has been made toward compliance with any rule for which the variance was granted. A variance may be extended from year to year by affirmative action of the director.
5. The director shall maintain a record of each variance granted specifying the reasons for its issuance or extension.

[C71, § 136B.13; C73, 75, 77, 79, 81, § 455B.22]

C83, § 455B.143

86 Acts, ch 1245, § 1899, 1899B

455B.144 Local control program.

1. Any political subdivision may conduct an air pollution control program within the boundaries of its jurisdiction, or may jointly conduct an air pollution control program with other political subdivisions of this

state or of other states, except that every joint program shall be established and administered as provided in chapter 28E. In conducting such programs, political subdivisions may adopt and enforce rules or standards to secure and maintain adequate air quality within their respective jurisdictions.

2. If the board of supervisors in any county establishes an air pollution control program and has obtained a certificate of acceptance, the agency implementing the program may regulate air pollution within the county including any incorporated areas therein until such incorporated areas obtain a certificate of acceptance as a joint or separate agency.

[C71, § 136B.14; C73, 75, 77, 79, 81, § 455B.23]

C83, § 455B.144

455B.145 Acceptance of local program.

When an air pollution control program conducted by a political subdivision, or a combination of them, is deemed upon review as provided in section 455B.134, to be consistent with the provisions of this division II or the rules established under this division, the director shall accept such program in lieu of state administration and regulation of air pollution within the political subdivisions involved. This section shall not be construed to limit the power of the director to issue state permits and to take other actions consistent with this division II or the rules established under this division that the director deems necessary for the continued proper administration of the air pollution programs within the jurisdiction of the local air pollution program.

1. In evaluating an air pollution control program, consideration shall be given to whether such program provides for the following:

a. Ordinances, rules and standards establishing requirements consistent with, or more strict than, those imposed by this division II or rules and standards adopted by the department.

b. Enforcement of such requirements by appropriate administrative and judicial process.

c. Administrative organization, staff, financial and other resources necessary to administer an efficient and effective program.

d. Location of emission monitoring devices in areas of the political subdivision in compliance with uniform state standards adopted by the department. The department shall adopt uniform state standards for the location of emission monitoring devices specifying such intervals and such procedures to provide a reasonably consistent measurement of emissions from air contaminant sources regardless of the political subdivision of the state in which the sources may be located.

2. Upon acceptance of a local air pollution control program, the director shall issue a certificate of acceptance to the appropriate local agency.

a. Any political subdivision desiring a certificate of acceptance shall apply to the department on forms prescribed by the director.

b. The director shall promptly investigate the application and approve or disapprove the application. The director may conduct a public hearing before action is taken to approve or disapprove. If the director disapproves issuing a certificate, the political subdivision may appeal the action to the department of inspections and appeals. At the hearing on appeal, the department of inspections and appeals shall decide whether the local program is substantially consistent with the provisions of this division II, or rules adopted thereunder, and whether the local program is being enforced. The burden of proof shall be upon the political subdivision.

c. If the director determines at any time that a local air pollution program is being conducted in a manner inconsistent with the substantive provisions of this division II or the rules adopted thereunder, the director shall notify the political subdivision, citing the deviations from the acceptable standards and the corrective measures to be completed within a reasonable amount of time. If the corrective measures are not implemented as prescribed, the director shall suspend in whole or in part the certificate of acceptance of such political subdivision and shall administer the regulatory provisions of said division in whole or in part within the political subdivision until the appropriate standards are met. Upon receipt of evidence that necessary corrective action has been taken, the director shall reinstate the suspended certificate of acceptance, and the political subdivision shall resume the administration of the local air pollution control program within its jurisdiction. In cases where the certificate of acceptance is suspended, the political subdivision may appeal the suspension to the department of inspections and appeals.

d. Nothing in this division II shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the first of January, 1973, except that any such program shall meet all requirements of said division.

[C71, § 136B.15; C73, 75, 77, 79, 81, § 455B.24]

C83, § 455B.145

86 Acts, ch 1245, § 1899, 1899B; 87 Acts, ch 33, §1

Former sections in chapter 455B, division II, relating to animal feeding operations transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137

455B.146 Civil action for compliance local program actions.

If any order, permit, or rule of the department is being violated, the attorney general shall, at the request of the department or the director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed ten thousand dollars per day for each day such violation continues, or both such injunctive relief and civil penalty. Notwithstanding sections 331.302 and 331.307, a city or county which maintains air pollution control programs authorized by certificate of acceptance under this division may provide civil penalties consistent with the amount established for such penalties under this division.

[C71, § 136B.16; C73, 75, 77, 79, 81, § 455B.25]

C83, § 455B.146

86 Acts, ch 1245, § 1899, 1899B; 91 Acts, ch 251, §1

Former sections in chapter 455B, division II, relating to animal feeding operations transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137

455B.146A Criminal action penalties.

1. A person who knowingly violates any provision of division II of this chapter, any permit, rule, standard, or order issued under division II of this chapter, or any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor. A conviction for a violation is punishable by a fine of not more than ten thousand dollars for each day of violation or by imprisonment for not more than two years, or both. If the conviction is for a second or subsequent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than four years, or by both.

2. *a.* A person who knowingly makes any false statement, representation, or certification of any application, record, report, plan, or other document filed or required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter, or who knowingly fails to notify or report as required by division II of this chapter or by any permit, rule, standard, or order issued under division II of this chapter, or by any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent violation committed by a person under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

b. A person who knowingly fails to pay any fee owed the state under any provision of division II of this chapter, or any permit, rule, standard, or order issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than six months, or by both. If the conviction is for a second or subsequent violation under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than one year, or by both.

3. A person who negligently releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent negligent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

4. *a.* A person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who knows at the time that the conduct places another person in imminent danger of death or serious bodily injury shall, upon conviction, if the person committing the violation is an individual or a government entity, be punished by a fine of not more than fifty thousand dollars per violation or by imprisonment for not more than two years, or by both. However, if the person committing the violation is other than an individual or a government entity, upon conviction the person shall be punished by a fine of not more than one million dollars per violation. If the conviction is for a second or subsequent violation under this paragraph, the conviction is punishable by a fine or imprisonment, or both, as consistent with federal law.

b. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury the following shall apply:

(1) The defendant is deemed to have knowledge only if the defendant possessed actual awareness or held an actual belief.

(2) Knowledge possessed by a person other than the defendant, and not by the defendant personally, is not attributable to the defendant. In establishing a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative action to be shielded from relevant information.

c. It is an affirmative defense that the conduct was freely consented to by the person endangered and that the danger and conduct were reasonably foreseeable hazards of either of the following:

(1) An occupation, a business, or a profession.

(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person was made aware of the risks involved prior to providing consent. An affirmative defense under this subparagraph shall be established by a preponderance of the evidence.

d. All general defenses, affirmative defenses, and bars to prosecution that are applicable with respect to other criminal offenses apply under paragraph "a". All defenses and bars to prosecution shall be determined by the courts in accordance with the principles of common law as interpreted, taking into consideration the elements of reason and experience. The concepts of justification and legal excuse, as applicable, may be developed, taking into consideration the elements of reason and experience.

e. As used in this subsection, "*serious bodily injury*" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

5. *a.* Notwithstanding this section, a source required to obtain a permit for construction or modification of a source prior to the date on which the state received delegation of the federal operating permit program which failed to timely file for the permit is subject to the civil penalty for noncompliance in effect at the time.

b. This subsection does not provide an exception from application of the penalties established under this section for failure of a person to file a timely and complete application for a federal construction permit.

c. This subsection does not provide an exception from application of the penalties established in this section for a person who does not file a timely and complete application for a required permit once notified, in writing, by the department of the noncompliance. A person who does not comply following notification of noncompliance is subject to the criminal penalties established under this section.

93 Acts, ch 137, §5

Former sections in chapter 455B, division II, relating to animal feeding operations transferred to chapter 459 pursuant to legislative directive in 2002 Acts, ch 1137

455B.147 Failure procedure.

1. If the director fails to take action within sixty days after an application for a variance is made, or if the department fails to enter a final order or determination within sixty days after the final argument in hearing on appeal, the person seeking the action may treat the failure to act as a grant of the requested variance, or of a finding favorable to the respondent in hearing on appeal, as the case may be.

2. The section shall not apply to an application for a conditional permit for an electrical power generating facility subject to chapter 476A.

[C71, § 136B.17; C73, 75, 77, 79, 81, § 455B.26]

C83, § 455B.147

86 Acts, ch 1245, § 1899, 1899B; 93 Acts, ch 137, §6

455B.148 Fees. Repealed by 83 Acts, ch 136, § 8. See § 455B.105(12).

455B.149 Energy or economic emergency.

1. Upon application by the owner or operator of a fuel- burning stationary source, and after notice and

opportunity for public hearing, the commission may petition the president, under section 110, subsection "f," paragraph 1 of the federal Clean Air Act as amended through January 1, 1991, for a determination that a national or regional energy emergency exists. If the president determines an emergency exists, the commission may suspend any requirement of this division or a rule or permit issued under this division. A temporary emergency suspension under this subsection shall be issued only if there exists in the vicinity of the source a temporary emergency involving high levels of unemployment or loss of necessary energy supplies for residential buildings and if the unemployment or loss can be totally or partially alleviated by the suspension. Only one suspension may be issued for a source on the basis of the same set of circumstances or on the basis of the same emergency. A suspension shall remain in effect for a maximum of four months. The commission may include in a suspension a provision directing the director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 455B.138, if the source is unable to comply with the schedule or increment solely because of the conditions on the basis of which the suspension was issued.

2. If a plan revision has been submitted to the administrator of the United States environmental protection agency under section 110 of the federal Clean Air Act as amended through January 1, 1991, and if the commission determines that the revision meets the requirements of that section and the revision is necessary to prevent the closing of an air contaminant source for one year or more and to prevent substantial increases in unemployment which would result from the closing, and if the administrator has not approved or disapproved within the required four-month period, the commission may issue a temporary emergency suspension of the part of the applicable implementation plan which is proposed to be revised with respect to the source. The determination under this subsection shall not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved. A temporary emergency suspension issued under this subsection shall remain in effect for a maximum of four months. A temporary emergency suspension under this subsection may include a provision directing the director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 119 of the federal Clean Air Act as in effect prior to August 7, 1977, or section 113, subsection "d" of the federal Clean Air Act as amended through January 1, 1991, upon a finding that the source is unable to comply with the schedule or increment solely because of the conditions on the basis of which a suspension was issued under this subsection.

[C81, § 455B.29]

C83, § 455B.149

86 Acts, ch 1245, § 1899; 92 Acts, ch 1163, § 93

455B.150 Compliance advisory panel.

A compliance advisory panel shall be created, pursuant to Title V, section 507(e) of the federal Clean Air Act Amendments of 1990, to review and report on the effectiveness of the small business technical assistance program required by the federal Clean Air Act Amendments of 1990, Pub. L. No. 101- 549.

93 Acts, ch 137, §7

455B.151 Moratorium commercial waste incinerators. Repealed by 2004 Acts, ch 1101, § 95.

455B.152 through 455B.160 Reserved.

455B.161 Definitions. Transferred to §459.102; 2002 Acts, ch 1137, §68, 71; 2002 Acts, ch 1138, §5; 2002 Acts, 2nd Ex, ch 1003, §260, 262.

455B.161A Confinement feeding operations special terms. Transferred to §459.201; 2002 Acts, ch 1137,

§68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262.

455B.162 Animal feeding operations new construction and expansion. Transferred to §455B.202, 459.204, or 459.206; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262.

455B.163 Separation distance requirements for animal feeding operations expansion of prior constructed operations. Transferred to §459.203; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262.

455B.164 Distance measurements. Repealed by 2002 Acts, ch 1137, § 69, 71. See § 459.201.

455B.165 Separation distance requirements exemptions. Transferred to §459.205; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262.

455B.166 through 455B.170 Reserved.

455B.171 Definitions.

When used in this part 1 of division III, unless the context otherwise requires:

1. *"Abandoned well"* means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.
2. *"Construction"* of a water well means the physical act or process of making the water well including, but not limited to, siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.
3. *"Contractor"* means a person engaged in the business of well construction or reconstruction or other well services.
4. *"Credible data"* means scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including quality control and quality assurance procedures. Data dated more than five years before the department's date of listing or other determination under section 455B.194, subsection 1, shall be presumed not to be credible data unless the department identifies compelling reasons as to why the data is credible.
5. *"Disposal system"* means a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge. *"Disposal system"* includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.
6. *"Effluent standard"* means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation.
7. *"Federal Water Pollution Control Act"* means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. § 12511376, as amended through December 31, 1985.
8. *"Historical data"* means data collected more than five years before the department's date of listing or other determination under section 455B.194, subsection 1.
9. *"Industrial waste"* means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource.

10. "*Manure*" means the same as defined in section 459.102.

11. "*Manure sludge*" means the solid or semisolid residue produced during the treatment of manure in an anaerobic lagoon.

12. "*Maximum contaminant level*" means the maximum permissible level of any physical, chemical, biological, or radiological substance in water which is delivered to any user of a public water supply system.

13. "*Naturally occurring condition*" means any condition affecting water quality which is not caused by human influence on the environment including, but not limited to, soils, geology, hydrology, climate, wildlife influence on the environment, and water flow with specific consideration given to seasonal and other natural variations.

14. "*New source*" means any building, structure, facility, or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

15. "*Other waste*" means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

16. "*Person*" means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, "*person*" does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

17. "*Point source*" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

18. "*Pollutant*" means sewage, industrial waste, or other waste.

19. "*Private sewage disposal system*" means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

20. "*Private water supply*" means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

21. "*Production capacity*" means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

22. "*Public water supply system*" means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and

any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

23. "*Reconstruction*" of a water well means replacement or removal of all or a portion of the casing of the water well.

24. "*Schedule of compliance*" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

25. "*Section 303(d) list*" means any list required under 33 U.S.C. § 1313(d).

26. "*Section 305(b) report*" means any report required under 33 U.S.C. § 1315(b).

27. "*Semi-public sewage disposal system*" means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under section 1288 of the federal Water Pollution Control Act (33 U.S.C. § 1288).

28. "*Septage*" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

29. "*Sewage*" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

30. "*Sewage sludge*" means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. "*Sewage sludge*" includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum septage, portable toilet pumpings, type III marine device pumpings as defined in 33 C.F.R. part 159, and sewage sludge products. "*Sewage sludge*" does not include grit, screenings, or ash generated during the incineration of sewage sludge.

31. "*Sewer extension*" means pipelines or conduits constituting main sewers, lateral sewers, or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

32. "*Sewer system*" means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices, and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this part of this division.

33. "*Toilet unit*" means a portable or fixed tank or vessel holding untreated human waste without secondary wastewater treatment that is emptied for disposal. "*Toilet unit*" does not include a portable or fixed tank or vessel holding untreated human waste that is part of a recreational vehicle or marine vessel.

34. "*Total maximum daily load*" means the same as in the federal Water Pollution Control Act.

35. "*Treatment works*" means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.

36. "*Viable*" means a disposal system or a public water supply system which is self-sufficient and has the

financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

37. *"Water of the state"* means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

38. *"Water pollution"* means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.

39. *"Water supply distribution system extension"* means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

40. *"Water well"* means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. *"Water well"* does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

[C66, 71, § 455B.2; C73, 75, 77, 79, 81, § 455B.30; 82 Acts, ch 1050, § 1, 2, ch 1199, § 6, 7, 8, 96]

C83, § 455B.171

83 Acts, ch 137, § 2; 84 Acts, ch 1121, § 1, 2; 85 Acts, ch 176, §1; 86 Acts, ch 1144, § 1; 86 Acts, ch 1237, § 29; 91 Acts, ch 224, § 3; 92 Acts, ch 1041, § 1; 93 Acts, ch 42, §1; 95 Acts, ch 195, §20; 96 Acts, ch 1079, § 13; 97 Acts, ch 137, § 1, 2; 98 Acts, ch 1209, §22; 2000 Acts, ch 1068, §9; 2000 Acts, ch 1232, §72; 2002 Acts, ch 1137, §25, 68, 71; 2002 Acts, ch 1138, §3, 5; 2002 Acts, 2nd Ex, ch 1003, §249, 260, 262; 2003 Acts, ch 44, §66; 2005 Acts, ch 153, §1

Former subsections 7, 33, and 44 transferred to §459.102 in Code 2003 pursuant to directive; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

New subsections 38A and 38B, enacted in 2002 Acts, ch 1138, §3, transferred to §459.102 in Code 2003 pursuant to directive in 2002 Acts, ch 1138, §5

455B.172 Jurisdiction of department and local boards.

1. The department is the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.
2. The department shall carry out the responsibilities of the state related to private water supplies and private sewage disposal systems for the protection of the environment and the public health and safety of the citizens of the state.
3. Each county board of health shall adopt standards for private water supplies and private sewage disposal facilities. These standards shall be at least as stringent but consistent with the standards adopted by the commission. If a county board of health has not adopted standards for private water supplies and private

sewage disposal facilities, the standards adopted by the commission shall be applied and enforced within the county by the county board of health.

4. Each county board of health shall regulate the private water supply and private sewage disposal facilities located within the county board's jurisdiction, including the enforcement of standards adopted pursuant to this section.

5. The department shall maintain jurisdiction over and regulate the direct discharge to a water of the state. The department shall retain concurrent authority to enforce state standards for private water supply and private sewage disposal facilities within a county, and exercise departmental authority if the county board of health fails to fulfill board responsibilities pursuant to this section.

The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic tanks, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code adopted pursuant to section 103A.7. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. The department may contract for the delegation of the authority for inspection of land application sites, record reviews, and equipment inspections to a county board of health. In the event of entering into such a contract, the department shall retain concurrent authority over such activities. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. A license application shall include registration applications for each vehicle used by the applicant for purposes of collecting septage from private sewage disposal facilities and each vehicle used by the applicant for purposes of applying septage to land. Septic disposal management plans shall be submitted to the department and approved annually as a condition of licensing and shall also be filed annually with the county board of health in the county where a proposed septage application site is located. The septic disposal management plan shall include, but not be limited to, the sites of septage application, the anticipated volume of septage applied to each site, the area of each septage application site, the type of application to be used at each site, the volume of septage expected to be collected from private sewage disposal facilities, and a list of registered vehicles collecting septage from private sewage disposal facilities and applying septage to land. The annual license or license renewal fee for a person commercially cleaning private sewage disposal facilities shall be established by the department based on the volume of septage that is applied to land. A septic management fund is created in the state treasury under the control of the department. Annual license and license renewal fees collected pursuant to this section shall be deposited in the septic management fund and are appropriated to the department for purposes of contracting with county boards of health to conduct land application site inspections, record reviews, and septic cleaning equipment inspections. A person violating this section or the rules adopted pursuant to this section as determined by the department is subject to a civil penalty of not more than two hundred fifty dollars. The department shall adopt rules related to, but not limited to, recordkeeping requirements, application procedures and limitations, contamination issues, loss of septage, failure to file a septic disposal management plan, application by vehicles that are not properly registered, wrongful application, and violations of a septic disposal management plan. Each day that a violation continues constitutes a separate offense. The penalty shall be assessed for the duration of time commencing with the time the violation begins and ending with the time the violation is corrected. The septic disposal management plan may be examined to determine the duration of the violation. Moneys collected by the department from the imposition of civil penalties shall be deposited in the general fund of the state. Moneys collected by a county board of health from the imposition of civil penalties shall be deposited in the general fund of the county.

6. *a.* The department shall by rule adopt standards for the commercial cleaning of toilet units and for the disposal of waste from toilet units. Waste from toilet units shall be disposed of at a wastewater treatment facility and shall not be applied to land. The department may contract for the delegation of the authority for

inspection of record reviews and equipment inspections for such units to a county board of health. In the event of entering into such a contract, the department shall retain concurrent authority over such activities.

b. A person shall not commercially clean toilet units or dispose of waste from such units unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. A license application shall include registration applications for each vehicle used by the applicant for purposes of collecting waste from toilet units and each vehicle used by the applicant for purposes of transporting waste from toilet units to a wastewater treatment facility. The annual license or license renewal fee for a person commercially cleaning toilet units shall be established by the department based on the number of trucks or vehicles used by the licensee for purposes of commercial cleaning of toilet units and for the disposal of waste from the toilet units. For purposes of this subsection, "*vehicle*" includes a trailer.

c. A toilet unit fund is created in the state treasury under the control of the department. Annual license and license renewal fees collected pursuant to this subsection shall be deposited in the toilet unit fund and are appropriated to the department for purposes of contracting with county boards of health to conduct record reviews and toilet unit cleaning equipment inspections.

d. A person violating this section or the rules adopted pursuant to this section as determined by the department is subject to a civil penalty of not more than five hundred dollars. Each day that a violation continues constitutes a separate offense. The penalty shall be assessed for the duration of time commencing with the time the violation begins and ending with the time the violation is corrected. Moneys collected by the department from the imposition of civil penalties shall be deposited in the general fund of the state. Moneys collected by a county board of health from the imposition of civil penalties shall be deposited in the general fund of the county.

7. *a.* The department is the state agency to regulate the construction, reconstruction and abandonment of all of the following water wells:

(1) Those used as part of a public water supply system as defined in section 455B.171.

(2) Those used for the withdrawal of water for which a permit is required pursuant to section 455B.268, subsection 1.

(3) Those used for the purpose of monitoring groundwater quantity and quality required or installed pursuant to directions or regulations of the department.

b. A local board of health is the agency to regulate the construction, reconstruction and abandonment of water wells not otherwise regulated by the department. The local board of health shall not adopt standards relative to the construction, reconstruction and abandonment of wells less stringent than those adopted by the department.

8. The department is the state agency to regulate the registration or certification of water well contractors pursuant to section 455B.187 or section 455B.190A.

9. Pursuant to chapter 28E, the department may delegate its authority for regulation of the construction, reconstruction and abandonment of water wells specified in subsection 7 or the registration of water well contractors specified in subsection 8 to boards of health or other agencies which have adequate authority and ability to administer and enforce the requirements established by law or rule.

10. Any county ordinance related to sewage sludge which is in effect on March 1, 1997, shall not be preempted by any provision of section 455B.171, 455B.174, 455B.183, or 455B.304.

[C66, 71, § 455B.3; C73, § 455B.31; C75, 77, 79, 81, § 135.20, 455B.31; 82 Acts, ch 1199, § 9]

C83, § 455B.172

83 Acts, ch 137, § 3; 84 Acts, ch 1121, § 3; 85 Acts, ch 176, §2; 87 Acts, ch 225, § 112, 113; 90 Acts, ch 1243, § 1; 91 Acts, ch 224, §4; 97 Acts, ch 137, § 3; 2004 Acts, ch 1086, §74; 2004 Acts, ch 1167, §11; 2005 Acts, ch 153, §2, 3

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.
2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division or chapter 459, subchapter III, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code, whichever period ends first.

3. Establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions, including the viability of a system pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system, or for the discharge of any pollutant. The rules specifying the conditions under which the director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Cooperate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.
5. Establish, modify or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.
6. Adopt rules relating to inspection, monitoring, recordkeeping, and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.
7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be coordinated with disaster emergency plans.
8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature, and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73, and D-3139-73 of ASTM (American society for testing and materials) international. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.
9. Adopt, modify, or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration or certification of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include, but are not limited to, establishing fees for registration or certification of water well contractors, requiring the submission of well driller's logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration or certification program.
10. Adopt, modify, or repeal rules relating to the business plan which disposal systems and public water supply systems must file with the department pursuant to section 455B.174, and adopt, modify, or repeal

rules establishing a methodology and timetable by which nonviable systems shall take action to become viable or make alternative arrangements in providing treatment or water supply services.

11. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

12. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in chapter 459, subchapter III.

[C97, § 2565; C24, 27, 31, 35, 39, § 2220; C46, 50, 54, 58, 62, § 136.3(2,c); C66, 71, § 136.3(2,c), 455B.9; C73, 75, § 455B.32, 455B.65; C77, 79, 81, § 455B.32; 82 Acts, ch 1199, § 10, 96]

C83, § 455B.173

83 Acts, ch 136, § 2; 85 Acts, ch 176, § 3; 86 Acts, ch 1245, § 1899A; 87 Acts, ch 225, § 114; 89 Acts, ch 125, § 1; 90 Acts, ch 1255, § 23; 91 Acts, ch 224, § 5; 92 Acts, ch 1041, § 2, 3; 95 Acts, ch 61, §1; 95 Acts, ch 195, §21, 22; 98 Acts, ch 1209, §23, 53; 99 Acts, ch 45, §1; 2000 Acts, ch 1058, §43; 2004 Acts, ch 1086, §106; 2004 Acts, ch 1167, §12

455B.174 Director's duties.

The director shall:

1. Conduct investigations of alleged water pollution or of alleged violations of this part of this division or chapter 459, subchapter III, or any rule adopted or any permit issued pursuant thereto upon written request of any state agency, political subdivision, local board of health, twenty-five residents of the state, as directed by the department, or as may be necessary to accomplish the purposes of this part of this division or chapter 459, subchapter III.
2. Conduct periodic surveys and inspection of the construction, operation, self-monitoring, recordkeeping and reporting of all public water supply systems and all disposal systems except as provided in section 455B.183.
3. Take any action or actions allowed by law which, in the director's judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or chapter 459, subchapter III, or of any rule or standard established or permit issued pursuant thereto.
4. *a.* Approve or disapprove the plans and specifications for the construction of disposal systems or public water supply systems except for those sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system except for sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The director shall also issue, revoke, suspend, modify, or deny permits for the discharge of any pollutant, or for the use or disposal of sewage sludge. The permits shall contain conditions and schedules of compliance as necessary to meet the requirements of this part of this division or chapter 459, subchapter III, the federal Water Pollution Control Act and the federal Safe Drinking Water Act. A permit issued under this chapter for the use or disposal of sewage sludge is in addition to and must contain references to any other permits required under this chapter. The director shall not issue or renew a permit to a disposal system or a public water supply system which is not viable. If the director has reasonable grounds to believe that a disposal system or public water supply system is not viable, the department may require the system to submit a business plan as a means of determining viability. This plan shall include the following components:

(1) A facilities plan which describes proposed new facilities and the condition of existing facilities, rehabilitation and replacement needs, and future needs to meet the requirements of the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

(2) A management plan which consists of an administrative plan describing methods to assure performance of functions necessary to administer the system, including credentials of management personnel; and an operation and maintenance plan describing how all operating and maintenance duties necessary to the system's proper function will be accomplished.

(3) A financial plan which describes provisions for assuring that adequate revenues will be available to meet cash flow requirements, based on the full cost of providing the service, adequate initial capitalization, and access to additional capital for contingencies.

If, upon submission and review of the business plan, the department determines that the disposal system or public water supply system is not viable, the director may require the system to take actions to become viable within a time period established pursuant to section 455B.173, or to make alternative arrangements in providing treatment or water supply services as determined by rule.

b. In addition to the requirements of paragraph "a", a permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and effluent standards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act. All applications for discharge permits are subject to public notice and opportunity for public participation including public hearing as the department may by rule require. The director shall promptly notify the applicant in writing of the director's action and, if the permit is denied, state the reasons for denial. The applicant may appeal to the commission from the denial of a permit or from any condition in any permit if the applicant files notice of appeal with the director within thirty days of the notice of denial or issuance of the permit. The director shall notify the applicant within thirty days of the time and place of the hearing.

c. Copies of all forms or other paper instruments required to be filed during on-site inspections or investigations shall be given to the owner or operator of the disposal system or public water supply system being investigated or inspected before the inspector or investigator leaves the site. Any other report, statement, or instrument shall not be filed with the department unless a copy is sent by ordinary mail to the owner or operator of the disposal system or public water supply system within ten working days of the filing. If an inspection or investigation is done in cooperation with another state department, the department involved and the areas inspected shall be stated.

d. The director shall also issue or deny conditional permits for the construction of disposal systems for electric power generating facilities subject to chapter 476A. All applications for conditional permits shall be subject to such notice and opportunity for public participation as may be required by the department and as may be consistent with chapter 476A and any agreement pursuant thereto under chapter 28E. The applicant or an intervenor may appeal to the department from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or the department upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the department. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawing and an application for a construction permit for a disposal system that will meet the effluent limitations in the conditional permit.

e. If a public water supply has a groundwater source that contains petroleum, a fraction of crude oil, or their degradation products, or is located in an area deemed by the department as likely to be contaminated by such materials, and after consultation with the public water supply system and consideration of all applicable rules relating to remediation, the department may require the public water supply system to replace that

groundwater source in order to receive a permit to operate. The requirement to replace the source shall only be made by the department if the public water supply system is fully compensated for any additional design, construction, operation, and monitoring costs from the Iowa comprehensive petroleum underground storage tank fund created by chapter 455G or from any other funds that do not impose a financial obligation on the part of the public water supply system. Funds available to or provided by the public water supply system may be used for system improvements made in conjunction with replacement of the source. The department cannot require a public water supply system to replace its water source with a less reliable water source or with a source that does not meet federal primary, secondary, or other health-based standards unless treatment is provided to ensure that the drinking water meets these standards. Nothing in this paragraph shall affect the public water supply system's right to pursue recovery from a responsible party.

5. Conduct random inspections of work done by city and county public works departments to ensure such public works departments are complying with this part of this division. If a city or county public works department is not complying with section 455B.183 in reviewing plans and specifications or in granting permits or both, the department shall perform these functions in that jurisdiction until the city or county public works department is able to perform them. Performance of these functions in a jurisdiction by a local public works department shall not be suspended or revoked until after notice and opportunity for hearing as provided in chapter 17A.

The department shall give technical assistance to city and county public works departments upon request of such local public works departments.

[C97, § 2565; C24, 27, 31, 35, 39, § **2191**; C46, 50, 54, 58, 62, § 135.11(7); C66, 71, § 135.11(7), 455B.9455B.11, 455B.15, 455B.17; C73, 75, § 455B.33, 455B.37, 455B.66; C77, 79, 81, § 455B.33; 82 Acts, ch 1050, § 3]

C83, § 455B.174

83 Acts, ch 137, § 4; 86 Acts, ch 1245, § 1899, 1899B; 92 Acts, ch 1041, § 4; 96 Acts, ch 1079, § 14; 97 Acts, ch 137, §4; 2004 Acts, ch 1175, §260; 2005 Acts, ch 19, §57

455B.175 Violations.

If there is substantial evidence that any person has violated or is violating any provision of this part of this division or chapter 459, subchapter III, or of any rule or standard established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act, chapter 17A, by filing with the director within thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the director; or
2. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a hearing before the commission or by a court; or
3. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604.

[C66, 71, § 455B.12, 455B.15, 455B.17; C73, 75, § 455B.34, 455B.37; C77, 79, 81, § 455B.34]

C83, § 455B.175

83 Acts, ch 137, § 5; 86 Acts, ch 1245, § 1899; 2003 Acts, ch 44, §114

455B.176 Criteria considered.

In establishing, modifying, or repealing water quality standards the commission shall base its decision upon data gathered from sources within the state regarding the following:

1. The protection of the public health;
2. The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the affected water of the state;
3. The character and uses of the land area bordering the affected water of the state;
4. The uses which have been made, are being made, or may be made of the affected water of the state for public, private, or domestic water supplies, irrigation; livestock watering; propagation of wildlife, fish, and other aquatic life; bathing, swimming, boating, or other recreational activity; transportation; and disposal of sewage and wastes;
5. The extent of contamination resulting from natural causes including the mineral and chemical characteristics;
6. The extent to which floatable or settleable solids may be permitted;
7. The extent to which suspended solids, colloids, or a combination of solids with other suspended substances may be permitted;
8. The extent to which bacteria and other biological organisms may be permitted;
9. The amount of dissolved oxygen that is to be present and the extent of the oxygen demanding substances which may be permitted;
10. The extent to which toxic substances, chemicals or deleterious conditions may be permitted.
11. The economic costs and benefits. The goal shall be a reasonable balance between total costs to the people and to the economy, and the resultant benefits to the people of Iowa.

[C66, 71, § 455B.13; C73, 75, 77, 79, 81, § 455B.35]

C83, § 455B.176

455B.177 Declaration of policy.

1. The general assembly finds and declares that because the federal Water Pollution Control Act provides for a permit system to regulate the discharge of pollutants into the waters of the United States and provides that permits may be issued by states which are authorized to implement that Act, it is in the interest of the people of Iowa to enact this part of this division in order to authorize the state to implement the federal Water Pollution Control Act, and federal regulations and guidelines issued pursuant to that Act.
2. The general assembly further finds and declares that because the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended by Pub. L. No. 104- 182, provides for the implementation of the Act by

states which have adequate authority to do so, it is in the interest of the people of Iowa to implement the provisions of the federal Safe Drinking Water Act and federal regulations and guidelines issued pursuant to the Act.

[C77, 79, 81, § 455B.36; 82 Acts, ch 1050, § 4]

C83, § 455B.177

96 Acts, ch 1079, §15; 97 Acts, ch 4, §5

455B.178 Judicial review.

Except as provided in section 455B.191, subsection 6, judicial review of any order or other action of the commission or of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or such final order was entered.

[C66, 71, § 455B.18; C73, 75, 77, 79, 81, § 455B.39]

C83, § 455B.178

86 Acts, ch 1245, § 1899; 2003 Acts, ch 44, §114

455B.179 Trade secrets protected.

Upon a satisfactory showing by any person to the director that public disclosure of any record, report, permit, permit application, or other document or information or part thereof would divulge methods or processes entitled to protection as a trade secret, any such record, report, permit, permit application, or other document or part thereof other than effluent data and analytical results of monitoring of public water supply systems, shall be accorded confidential treatment. Notwithstanding the provisions of chapter 22, a person in connection with duties or employment by the department shall not make public any information accorded confidential status; however, any such record or other information accorded confidential status may be disclosed or transmitted to other officers, employees, or authorized representatives of this state or the United States concerned with carrying out this part of this division; chapter 459, subchapter III; or chapter 459A; or when relevant in any proceeding under this part of this division; chapter 459, subchapter III; or chapter 459A.

[C66, 71, § 455B.17; C73, 75, § 455B.37; C77, 79, 81, § 455B.40]

C83, § 455B.179

86 Acts, ch 1245, § 1899; 96 Acts, ch 1079, § 16; 2005 Acts, ch 136, §31

455B.180 Stay order.

The granting of a stay may be conditioned upon the furnishing by the appellant of such reasonable security as the court may direct. A stay may be vacated on application of the department or any other party after hearing by the court.

[C66, 71, § 455B.20; C73, 75, 77, 79, 81, § 455B.41]

C83, § 455B.180

455B.181 Variances and exemptions.

The director may, after public notice and hearing, grant exemptions from a maximum contaminant level or treatment technique, or both. The director may also grant a variance from drinking water standards for public water supply systems when the characteristics of the raw water sources, which are available to a system, cannot meet the requirements with respect to maximum contaminant level of the standards despite application of the best treatment techniques which are generally available and if the director determines that the variance will not result in an unreasonable risk to the public health. A schedule of compliance may be prescribed by the director, at the time the variance or exemption is granted. The director shall also require the interim measures to minimize the contaminant levels of systems subject to the variance or exemption as may reasonably be implemented. The director may also issue variances from other rules of the department if necessary and appropriate. The director shall submit variances granted regarding a wastewater treatment facility to the commission for the commission's review within thirty days of the granting of a variance. The denial of a variance or exemption may be appealed to the commission.

[C77, 79, 81, § 455B.42]

C83, § 455B.181

86 Acts, ch 1245, § 1899, 1899B; 87 Acts, ch 29, §1

455B.182 Failure constitutes contempt.

Failure to obey any order issued by the department with reference to a violation of this part of this division; chapter 459, subchapter III; or chapter 459A; or any rule promulgated or permit issued pursuant thereto shall constitute prima facie evidence of contempt. In such event the department may certify to the district court of the county in which such alleged disobedience occurred the fact of such failure. The district court after notice, as prescribed by the court, to the parties in interest shall then proceed to hear the matter and if it finds that the order was lawful and reasonable it shall order the party to comply with the order. If the person fails to comply with the court order, that person shall be guilty of contempt and shall be fined not to exceed five hundred dollars for each day that the person fails to comply with the court order. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of any waters of the state or related to public water supply systems and a conviction under this section shall not be a bar to prosecution under any other penal statute.

[C66, 71, § 455B.24; C73, 75, 77, 79, 81, § 455B.44]

C83, § 455B.182

2005 Acts, ch 136, §32

455B.183 Written permits required.

1. It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department:

a. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section, the use or disposal of sewage sludge, and private sewage disposal systems. Unless federal law or regulation requires the review and approval of plans and specifications, a permit shall be issued for the construction, installation, or modification of a public water supply system or part of a system if a qualified, registered engineer certifies to the department that the plans for the system or part of the system

meet the requirements of state and federal law or regulations. The permit shall state that approval is based only upon the engineer's certification that the system's design meets the requirements of all applicable state and federal laws and regulations and the review of the department shall be advisory.

b. The construction or use of any new point source for the discharge of any pollutant into any water of the state.

c. The operation of any waste disposal system or public water supply system or any part of or extension or addition to the system. This provision does not apply to a pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal; a semipublic sewage disposal system, the construction of which has been approved by the department and which does not discharge into water of the state; or a private sewage disposal system which does not discharge into a water of the state. Sludge from a semipublic or private sewage disposal system shall be disposed of in accordance with the rules adopted by the department pursuant to chapter 17A. The exemption of this paragraph shall not apply to any industrial waste discharges.

2. Upon adoption of standards by the commission pursuant to section 455B.173, subsections 5 to 8, plans and specifications for sewer extensions and water supply distribution system extensions covered by this section shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, registered engineer who reviews the plans and specifications using the specific state standards known as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems that have been formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. The local agency shall issue a written permit to construct if all of the following apply:

a. The submitted plans and specifications are in substantial compliance with departmental rules and the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems.

b. The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, the extension will have a capacity of less than five percent of the system or will serve fewer than two hundred fifty dwelling units.

c. The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972.

d. The proposed water supply distribution system extension will not exceed the production capacity of any public water supply system constructed after 1972.

3. After issuing a permit, the city or county public works department shall notify the director of such issuance by forwarding a copy of the permit to the director. In addition, the local agency shall submit quarterly reports to the director including such information as capacity of local treatment plants and production capacity of public water supply systems as well as other necessary information requested by the director for the purpose of implementing this chapter.

4. Plans and specifications for all other waste disposal systems and public water supply systems, including sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. Plans and specifications for public water supply systems and water supply distribution system extensions must be certified by a registered engineer as provided in subsection 1, paragraph "a". The construction of any such waste disposal system or public water supply system shall be in accordance with standards formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. If it is necessary or desirable to make material changes in the plans or specifications, revised plans or specifications

together with reasons for the proposed changes must be submitted to the department for a supplemental written permit. The revised plans and specifications for a public water supply system must be certified by a registered engineer as provided in subsection 1, paragraph "a".

5. Prior to the adoption of statewide standards, the department may delegate the authority to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 1, paragraph "c", the governmental subdivisions agree to comply with all state and federal regulations and submit plans for the review of plans and specifications including a complete set of local standard specifications for such improvements.

6. The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems or which otherwise violate state or federal requirements.

7. The department shall exempt any public water supply system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation if these regulations apply to contaminants which the department determines are harmless or beneficial to the health of consumers and if the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers.

[C66, 71, § 455B.25; C73, 75, 77, 79, 81, § 455B.45; 82 Acts, ch 1199, § 11, 96]

C83, § 455B.183

83 Acts, ch 137, § 6; 84 Acts, ch 1099, § 1; 84 Acts, ch 1121, § 4; 86 Acts, ch 1245, § 1899, 1899B; 97 Acts, ch 4, § 6; 97 Acts, ch 137, § 5, 6; 2003 Acts, ch 44, §67

455B.183A Water quality protection fund.

1. A water quality protection fund is created in the state treasury under the control of the department. The fund consists of moneys appropriated to the fund by the general assembly, moneys deposited into the fund from fees described in subsection 2, moneys deposited into the fund from fees collected pursuant to sections 455B.187 and 455B.190A, and other moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the fund. The fund is divided into the public water supply system account and the private water supply system account. Moneys in the public water supply system account are appropriated to the department for purposes of carrying out the provisions of this division, which relate to the administration, regulation, and enforcement of the federal Safe Drinking Water Act, and to support the program to assist supply systems, as provided in section 455B.183B. Moneys in the private water supply system account are appropriated to the department for the purpose of supporting the programs established to protect private drinking water supplies as provided in sections 455B.187, 455B.188, 455B.190, and 455B.190A.

2. The commission shall adopt fees as required pursuant to section 455B.105 for permits required for public water supply systems as provided in sections 455B.174 and 455B.183. Fees paid pursuant to this section shall not be subject to the sales or services tax. The fees shall be for each of the following:

a. The construction, installation, or modification of a public water supply system. The amount of the fees may be based on the type of system being constructed, installed, or modified.

b. The operation of a public water supply system, including any part of the system. The commission shall

adopt a fee schedule which shall be based on the total number of persons served by public water supply systems in this state. However, a public water supply system shall be assessed a fee of at least twenty-five dollars. A public water supply system not owned or operated by a community and serving a transient population shall be assessed a fee of twenty-five dollars. The commission shall calculate all fees in the schedule to produce total revenues equaling three hundred fifty thousand dollars for each fiscal year, commencing with the fiscal year beginning July 1, 1995, and ending June 30, 1996. For each fiscal year, the fees shall be deposited into the public water supply system account. By May 1 of each year, the department shall estimate the total revenue expected to be collected from the overpayment of fees, which are all fees in excess of the amount of the total revenues which are expected to be collected under the current fee schedule, and the total revenue expected to be collected from the payment of fees during the next fiscal year. The commission shall adjust the fees if the estimate exceeds the amount of revenue required to be deposited in the account pursuant to this paragraph.

3. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of the department of administrative services, drawn upon the written requisition of the department.

4. Section 8.33 does not apply to moneys in the fund. Moneys earned as income, including interest from the fund, shall remain in the fund until expended.

5. On or before November 15 of each fiscal year, the department shall transmit to the department of management and the legislative services agency information regarding the fund and accounts, including all of the following:

a. The balance of unobligated and unencumbered moneys in each account as of November 1.

b. A summary of revenue deposited in and expenditures from each account during the current fiscal year.

c. Estimates of revenues expected to be deposited into the public water supply system account during the current fiscal year, and an estimate of the expected balance of unobligated and unencumbered moneys in the account on June 30 of the current fiscal year.

94 Acts, ch 1198, §48; 95 Acts, ch 216, §39; 2003 Acts, ch 30, §1; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286; 2005 Acts, ch 29, §1, 2

455B.183B Program to assist supply systems.

1. The state of Iowa declares its intention to retain its jurisdiction to enforce areas provided under the federal Safe Drinking Water Act as delegated to the state by the United States.

2. The department shall establish a program to assist supply systems, in order to provide assistance to ensure safe public water supplies. The department in administering the program shall provide technical advice and perform vulnerability and viability studies of public water supply systems.

3. Whenever practical, the department may enter into a contract with a person qualified to provide assistance services under this section, if the agreement for the services is cost-effective and the quality of the services ensures compliance with state and federal law. A person entering into a contract with the department for the purpose of providing the services shall be deemed to be an agent of the department, and shall have the same authority as provided to the department, unless the contract specifies otherwise. The department shall review assistance services performed by a person under a contract to ensure that quality cost-effective service is being provided.

4. The program shall be supported by moneys deposited in the public water supply system account created in

the water quality protection fund established pursuant to section 455B.183A.

94 Acts, ch 1198, §49

455B.183C Personnel department of management.

Notwithstanding any limitation upon the department's number of full-time equivalent positions as defined in section 8.36A, any point limitation on personnel, or any other limitation upon the number of personnel or their employment classification, imposed by the department of management, the department may employ the number of full-time equivalent positions which equals the number of positions allocated by the general assembly to the department for each applicable fiscal year in order to carry out the provisions of this division relating to the administration, regulation, and enforcement of the federal Safe Drinking Water Act and the program to assist supply systems, but only to the extent that moneys used to support the positions derive from moneys deposited in the water quality protection fund, as provided in section 455B.183A. If a specific number of full-time equivalent positions are not allocated by the general assembly, the department may fill any number of positions required to administer the program, to the extent the positions are supported by the fund.

94 Acts, ch 1198, §50

455B.184 Disposal system plans.

The department may also require the owner of a disposal system, discharging pollutants into any water of the state, or of a public water supply system to file with it complete plans of the whole or any part of such system and any other information and records concerning the installation and operation of such system.

[C66, 71, § 455B.26; C73, 75, 77, 79, 81, § 455B.46]

C83, § 455B.184

455B.185 Data from departments.

The commission and the director may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the commission or the director to properly carry out their activities and effectuate the purposes of this part 1 of division III; chapter 459, subchapter III; or chapter 459A. The department shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C66, 71, § 455B.27; C73, 75, 77, 79, 81, § 455B.47]

C83, § 455B.185

86 Acts, ch 1245, § 1899; 2005 Acts, ch 136, §33

455B.186 Prohibited actions.

1. A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. A pollutant whether treated or untreated shall not be discharged into any state-owned natural or artificial lake.

2. A pesticide shall not be applied to any water of this state which has been classified by the department as a class "A" or class "C", high quality, or high quality resource water, except that this section shall not be construed to prohibit the application of such a pesticide by a certified applicator who is trained in aquatic applications and who has received a permit from the department.

[C66, 71, § 455B.28; C73, 75, 77, 79, 81, § 455B.48]

C83, § 455B.186

86 Acts, ch 1245, § 1899; 90 Acts, ch 1167, § 1

455B.187 Water well construction.

A contractor shall not engage in well construction or reconstruction without first being certified as required in this part and department rules adopted pursuant to this part. Water wells shall not be constructed, reconstructed, or abandoned by a person except as provided in this part or rules adopted pursuant to this part. Within thirty days after construction or reconstruction of a well, a contractor shall provide well information required by rule to the department and the Iowa geological survey.

A landowner or the landowner's agent shall not drill for or construct a new water well without first obtaining a permit for this activity from the department. The department shall not issue a permit to any person for this activity unless the person first registers with the department all wells, including abandoned wells, on the property. The department may delegate the authority to issue a permit to a county board of supervisors or the board's designee. In the event of such delegation, the department shall retain concurrent authority. The commission shall adopt rules pursuant to chapter 17A to implement this paragraph.

The director may charge a fee for permits issued pursuant to this section. All fees collected pursuant to this section shall be deposited into the private water supply system account within the water quality protection fund created in section 455B.183A.

Notwithstanding the provisions of this section, a county board of supervisors or the board's designee may grant an exemption from the permit requirements to a landowner or the landowner's agent if an emergency drilling is necessary to meet an immediate need for water. The exemption shall be effective immediately upon approval of the county board of supervisors or the board's designee. The board of supervisors or the board's designee shall notify the director within thirty days of the granting of an exemption.

In the case of property owned by a state agency, a person shall not drill for or construct a new water well without first registering with the department the existence of any abandoned wells on the property. The department shall develop a prioritized closure program and time frame for the completion of the program, and shall adopt rules to implement the program.

85 Acts, ch 176, §4; 87 Acts, ch 225, §304; 91 Acts, ch 224, §6; 2003 Acts, ch 30, §2; 2003 Acts, ch 44, §68

455B.188 Provision for emergency replacement of water wells.

Rules adopted to implement section 455B.172, subsection 7, paragraph "b"; section 455B.173, subsection 9; and section 455B.187 shall specifically provide for the immediate replacement or reconstruction of water wells in response to the sudden and unforeseen loss or serious impairment of a well for its intended use. These provisions shall include the granting of emergency authorizations and registration of well contractors pursuant to section 455B.187 and may include the granting of variances and exemptions from technical standards as appropriate.

85 Acts, ch 176, §5

455B.189 Reserved.

455B.190 Abandoned wells properly plugged.

1. As used in this section:

- a. "*Class 1 well*" means a well one hundred feet or less in depth and eighteen inches or more in diameter.
- b. "*Class 2 well*" means a well more than one hundred feet in depth or less than eighteen inches in diameter or a bedrock well.
- c. "*Class 3 well*" means a sandpoint well or a well fifty feet or less in depth constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.
- d. "*Department*" means the department of natural resources.
- e. "*Designated agent*" means a person other than the state, designated by a county board of supervisors to review and confirm that a well has been properly plugged.
- f. "*Filling materials*" means agricultural lime. Filling materials may also include other materials, including soil, sand, gravel, crushed stone, and pea gravel as approved by the department.
- g. "*Owner*" means the titleholder of the land where a well is located.
- h. "*Plug*" means the closure of an abandoned well with plugging materials which will permanently seal the well from contamination by surface drainage, or permanently seal off the well from contamination into an aquifer.
- i. "*Plugging materials*" means filling and sealing materials.
- j. "*Sealing materials*" means bentonite. Sealing materials may also include neat cement, sand cement grout, or concrete as approved by the department.
- k. "*Well*" means an abandoned well as defined in section 455B.171.

2. All wells shall be properly plugged in accordance with the schedule established by the department. The department shall develop a prioritized closure program and a time frame for the completion of the program and shall adopt rules to implement the program. The schedule established by the department shall provide that to the fullest extent technically and economically feasible, all wells shall be properly plugged not later than July 1, 2000.

3. Wells shall be plugged as follows:

a. Class 1 wells shall be plugged by placing filling materials up to one foot below the static water level. At least one foot of sealing materials shall be placed on top of the filling materials up to the static water level, as a seal. Filling materials shall be added up to four feet below the ground surface. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The casing pipe shall be removed down to at least four feet below the ground surface and shall be capped with at least one foot of sealing materials. Obstructions shall be removed from the top four feet of the ground surface and the top four feet shall be backfilled with soil and graded.

b. Class 2 wells shall be plugged by placing filling materials at the bottom of the well up to four feet below the static water level. At least four feet of sealing material shall be added on top of the filling material up to

the original static water level. Filling materials shall be placed up to four feet below the ground surface and the well shall be capped with at least one foot of sealing material. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The upper four feet of the casing pipe below the ground surface shall be removed. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

c. Class 3 wells shall be plugged by pulling the casing and sandpoint out of the ground, and collapsing the hole. The well may also be plugged by placing sealing materials up to four feet below the ground surface and by removing the upper four feet of casing pipe below the ground surface. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

4. The department shall sponsor an advertising campaign directed to persons throughout the state by print and electronic media designed to notify owners of the deadline for plugging wells, penalties for noncompliance, and information about receiving assistance in plugging wells.

5. An owner may, independent of a contractor, plug a well pursuant to this section subject to review and confirmation by a designated agent of the county or a well driller registered with the department.

6. A person who fails to properly plug a well on property the person owns, in accordance with the program established by the department, or as reported by a designated agent or a registered or certified well contractor, is subject to a civil penalty of up to one hundred dollars per every five calendar days that the well remains unplugged or improperly plugged. However, the total civil penalty shall not exceed one thousand dollars. The penalty shall only be assessed after the one thousand dollar limit is reached. If the owner plugs the well in compliance with this section, including applicable departmental rules, before the date that the one thousand dollar limit is reached, the civil penalty shall not be assessed. The penalty shall not be imposed upon a person for improperly plugging a well until the department notifies the person of the improper plugging. The moneys collected shall be deposited in the financial incentive portion of the agriculture management account. The department of agriculture and land stewardship may provide by rule for financial incentive moneys, through expenditure of the moneys allocated to the financial-incentive-program portion of the agriculture management account, to reduce a person's cost in properly plugging wells abandoned prior to July 1, 1987.

87 Acts, ch 225, § 305; 89 Acts, ch 286, § 1; 91 Acts, ch 224, §7

455B.190A Well contractor certification program.

1. As used in this section:

a. "*Certified well contractor*" means a well contractor who has successfully passed an examination prescribed by the department to determine the applicant's qualifications to perform well drilling or pump services or both.

b. "*Examination*" means an examination for well contractors which includes, but is not limited to, relevant aspects of Iowa groundwater law, well construction, well maintenance, pump services, and well abandonment practices which protect groundwater and water supplies.

c. "*Groundwater*" means groundwater as defined in section 455E.2.

d. "*Pump services*" means the installation, repair, and maintenance of water systems.

e. "*Water systems*" means any part of the mechanical portion of a water well that delivers water from the well to a valve that separates the well from the plumbing system. "*Water systems*" includes the pump, drop pipe to the well, electrical wire from the pump to the electrical panel, piping from the well to the pressure tank, pitless unit or adaptor, and all related miscellaneous fittings necessary to operate the well pump. "*Water*

systems" does not include any outside piping to other buildings, and does not include the piping that carries the water in the remainder of the distribution system.

f. "Water well" or "well" means water well as defined in section 455B.171.

g. "Well contractor" means contractor as defined pursuant to section 455B.171, subsection 3.

h. "Well contractors' council" means the council established in subsection 3.

i. "Well services" means new well construction, well reconstruction, installation of pitless equipment, pump services, or well plugging.

2. The department shall establish a well contractor certification program which shall include all of the following provisions:

a. Specification of certification requirements, including minimum work experience levels, successful completion of an examination, and continuing education requirements.

b. A certified well contractor shall be present at the well site and in direct charge of the services whenever well services are provided.

c. A person shall not act as a well contractor on or after July 1, 1993, unless the person is certified by the department pursuant to this section.

d. Violation of the rules regarding the provision of well services are grounds for suspension or revocation of certification.

e. Provisional certification may be obtained by an applicant in instances of shortages of certified personnel if all of the following conditions are met:

(1) The applicant provides documentation of at least one year of work experience in well services performed under the direct supervision of a certified well contractor.

(2) The applicant successfully completes the examination.

(3) A certified well contractor who employs an applicant for well contractor certification cosigns the application for provisional certification. An employer who cosigns an application for provisional certification is jointly liable for a violation of the rules regarding well services by the provisionally certified well contractor and the violation is grounds for the suspension or revocation of certification of the certified well contractor and the provisionally certified well contractor.

f. The department shall develop continuing education requirements for certification of a well contractor in consultation with the well contractors' council.

g. The examination shall be developed by the department in consultation with the well contractors' council to determine the applicant's qualifications to perform well drilling or pump services or both. The examination shall be updated as necessary to reflect current groundwater law and well construction, maintenance, pump services, and abandonment practices. The examination shall be administered by the department or by a person designated by the department.

h. The department may provide for multiyear certification of well contractors.

3. *a. The department shall establish a well contractors' council.*

b. The membership of the council shall consist of the following members:

- (1) Two well drilling contractors.
- (2) Two pump installation contractors.
- (3) One citizen member of the Iowa groundwater association or its successor.
- (4) One citizen member of the Iowa environmental health association or its successor.
- (5) The director of public health or the director's designee.
- (6) The state geologist or the state geologist's designee.
- (7) The director of the state hygienic laboratory or the director's designee.

c. The council shall advise and assist the department in doing all of the following:

- (1) The development, review, and revision of the department's rules to implement this section.
- (2) The development, updating, and revision of the examination for well contractor certification.
- (3) The establishment, review, and revision of the continuing education requirements for certification.
- (4) The production and publication of the consumer information pamphlet.

d. The council shall meet as often as necessary to perform the council's duties. The department shall provide the council with staff assistance.

4. The department shall develop, in consultation with the well contractors' council, a consumer information pamphlet regarding well construction, well maintenance, well plugging, pump services, and Iowa groundwater laws. The department and the council shall review and revise the consumer information pamphlet as necessary. The consumer information pamphlet shall be supplied to well contractors, at cost, and well contractors shall supply one copy at no cost to potential customers prior to initiation of well services.

5. The department shall establish by rule and collect, in consultation with the well contractors' council, the following fees to be used to implement and administer the provisions of this section:

a. An annual certification fee to be paid by certified well contractors. The initial annual certification fee is one hundred fifty dollars. The fee may be increased by rule, as necessary, to reflect the costs of administration of the program. The department may establish a fee for multiyear certification.

b. The department may also charge and collect fees for testing, the provision of continuing education, and other fees related to and based on the actual costs of the well contractor certification program.

c. All fees collected pursuant to this subsection shall be deposited into the private water supply system account within the water quality protection fund created in section 455B.183A.

6. Rules adopted by the commission shall be developed in consultation with the council. If a majority of the council does not endorse the rules adopted by the commission, notice shall be sent to the administrative rules review committee indicating the council's position.

7. A well contractor who is engaged in performing pump services on or prior to June 30, 2004, and who

registers as a pump installer with the department by June 30, 2004, shall be deemed to have met the certification requirements of this section without examination. Beginning July 1, 2004, a pump installer seeking an initial well contractor certification shall meet the requirements for certification established in this section.

91 Acts, ch 224, §2; 2002 Acts, ch 1077, §15; 2003 Acts, ch 30, §3

455B.191 Penalties burden of proof.

1. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.
2. Any person who negligently or knowingly violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183, or who negligently or knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal and state requirements or permits, negligently or knowingly causes a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.183 is guilty of a serious misdemeanor for a negligent violation and is guilty of an aggravated misdemeanor for a knowing violation. A conviction for a negligent violation is punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both. A conviction for a knowing violation is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both; however, if the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both. As used in this section, "*hazardous substance*" means hazardous substance as defined in section 455B.381 or section 455B.411.
3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.
4. The attorney general shall, at the request of the director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.
5. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.
6. If the attorney general has instituted legal proceedings in accordance with this section, all related issues

which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

[C66, 71, § 455B.23, 455B.25; C73, § 455B.43, 455B.45, 455B.49; C75, § 455B.43, 455B.49; C77, 79, 81, § 455B.49]

C83, § 455B.187

C85, § 455B.191

86 Acts, ch 1245, § 1899A; 88 Acts, ch 1080, § 1, 2; 95 Acts, ch 195, §23; 98 Acts, ch 1209, §24; 2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

Former sections in chapter 455B, division III, applicable to animal feeding operations transferred to chapter 459, subchapter III, pursuant to legislative directive in 2002 Acts, ch 1137; see also §459.603

455B.192 Local government penalties.

Notwithstanding sections 331.302, 331.307, 364.3, and 364.22, a city or county may assess a civil penalty for a violation of this division which is equal to the amount the department has assessed for a violation under this division.

93 Acts, ch 137, §8

455B.193 Qualifications for collection of credible data.

For purposes of this part, all of the following shall apply:

1. Data is not credible data unless the data originates from studies and samples collected by the department, a professional designee of the department, or a qualified volunteer. For purposes of this subsection, "*professional designee*" includes governmental agencies other than the department, and a person hired by, or under contract for compensation with, the department to collect or study data.

2. All information submitted by a qualified volunteer shall be reviewed and approved or disapproved by the department. The qualified volunteer shall submit a site specific plan with data which includes information used to obtain the data, the sampling and analysis plan, and quality control and quality assurance procedures used in the monitoring process. The qualified volunteer must provide proof to the department that the water monitoring plan was followed. The department shall review all data collected by a qualified volunteer, verify the accuracy of the data collected by a qualified volunteer, and determine that all components of the water monitoring plan were followed.

3. The department shall retain all information submitted by a qualified volunteer submitting the information for a period of not less than ten years from the date of receipt by the department. All information submitted shall be a public record.

4. The department shall adopt rules establishing requirements for a person to become a qualified volunteer.

The department of natural resources shall develop a methodology for water quality assessments as used in the section 303(d) lists and assess the validity of the data.

2000 Acts, ch 1068, §10; 2000 Acts, ch 1232, §73

455B.194 Credible data required.

1. The department shall use credible data when doing any of the following:

a. Developing and reviewing any water quality standard.

b. Developing any statewide water quality inventory or other water assessment report.

c. Determining whether any water of the state is to be placed on or removed from any section 303(d) list.

d. Determining whether any water of the state is supporting its designated use or other classification.

e. Determining any degradation of a water of the state under 40 C.F.R. § 131.12.

f. Establishing a total maximum daily load for any water of the state.

2. Notwithstanding subsection 1, credible data shall not be required for any section 305(b) report and credible data shall not be required for the establishment of a designated use or other classification of a water of the state.

3. This section shall not be construed to require credible data as defined in section 455B.171, subsection 4, in order for the department to bring an enforcement action for an illegal discharge.

2000 Acts, ch 1068, §11

455B.195 Use or analysis of credible data.

1. For any use or analysis of credible data described in section 455B.194, subsection 1, all of the following shall apply:

a. The use of credible data shall be consistent with the requirements of the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

b. The data quality for removal of water of the state from any list of impaired waters including any section 303(d) list shall be the same as the data quality for adding a water to that list.

c. A water of the state shall not be placed on any section 303(d) list if the impairment is caused solely by violations of national pollutant discharge elimination system program permits or stormwater permits issued pursuant to section 455B.103A and the enforcement of the pollution control measures is required.

d. A water of the state shall not be placed on any section 303(d) list if the data shows an impairment, but existing technology-based effluent limits or other required pollution control measures are adequate to achieve applicable water quality standards.

e. If a pollutant causing an impairment is unknown, the water of the state may be placed on a section 303(d) list. However, the department shall continue to monitor the water of the state to determine the cause of impairment before a total maximum daily load is established for the water of the state and a water of the state listed with an unknown status shall retain a low priority for a total maximum daily load development until the cause of the impairment is determined unless the department, after taking into consideration the use of the water of the state and the severity of the pollutant, identifies compelling reasons as to why the water of the state should not have a low priority.

f. When evaluating the waters of the state, the department shall develop and maintain three separate listings including a section 303(d) list, a section 305(b) report, and a listing for which further investigative monitoring is necessary. The section 305(b) report shall be a summary of all potential impairments for which

credible data is not required. If credible data is not required for a section 305(b) report, the placement of a water of the state on any section 305(b) report alone is not sufficient evidence for the water of the state's placement on any section 303(d) list. When developing a section 303(d) list, the department is not required to use all data, but the department shall assemble and evaluate all existing and readily available water quality-related data and information. The department shall provide documentation to the regional administrator of the federal environmental protection agency to support the state's determination to list or not to list its waters.

g. The department shall take into consideration any naturally occurring condition when placing or removing any water of the state on any section 303(d) list, and establishing or allocating responsibility for a total maximum daily load.

h. Numerical standards shall have a preference over narrative standards. A narrative standard shall not constitute the basis for determining an impairment unless the department identifies specific factors as to why a numeric standard is not sufficient to assure adequate water quality.

i. If the department has obtained credible data for a water of the state, the department may also use historical data for that particular water of the state for the purpose of determining whether any trends exist for that water of the state.

2. This section shall not be construed to require or authorize the department to perform any act listed in section 455B.194, subsection 1, not otherwise required or authorized by applicable law.

2000 Acts, ch 1068, §12

455B.196 through 455B.199 Reserved.

455B.200 General. Transferred to §459.103; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.200A Permit requirements. Transferred to §459.303; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.200B Confinement feeding operations special terms. Transferred to §459.301; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.201 Minimum manure control. Transferred to §459.311; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.202 Confinement feeding operations pending actions and habitual violators. Transferred to §459.317; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.203 Manure management plan requirements. Transferred to §459.312; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.203A Manure applicators certification. Transferred to §459.315; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.203B Application requirements. Transferred to §459.313; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.204 Distance requirements. Transferred to §459.310; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.204A Disposal of manure within designated areas adoption of rules. Transferred to §459.314; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.205 Manure storage structures construction standards inspections. Transferred to §459.308; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.206 Exception to regulation. Transferred to §459.318; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.207 through 455B.210 Reserved.

455B.211 Definitions.

When used in this part 2 of division III, unless the context otherwise requires:

1. "*Certificate*" means the certificate of competence issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.
2. "*Operator*" means a person who has direct responsibility for the operation of a water treatment plant, water distribution system, or waste water treatment plant.
3. "*Water distribution system*" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.
4. "*Water supply system*" means the system of pipes, structures, and facilities through which a public water supply is obtained, treated and sold or distributed for human consumption or household use.
5. "*Water treatment plant*" means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.
6. "*Waste water treatment plant*" means the facility or group of units used for the treatment of waste water from public sewer systems and for the reduction and handling of solids removed from such wastes.

[C66, 71, § 136A.1; C73, 75, 77, 79, 81, § 455B.50]

C83, § 455B.211

86 Acts, ch 1245, § 1890

455B.212 Director's duties.

The director shall classify all water treatment plants, water distribution systems, and waste water treatment plants affecting the public welfare with regard to the size, type, character of water and waste water to be treated and other physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge, and experience that an operator must have to supervise the operation of the facilities to protect the public health and prevent pollution. The director may appoint advisory committees to advise the department in carrying out the requirements of this part.

[C66, 71, § 136A.2; C73, 75, 77, 79, 81, § 455B.51]

C83, § 455B.212

455B.213 Certification of operators.

1. *By director.* The director shall certify persons as to their qualifications to supervise the operation of treatment plants and water distribution systems after considering the recommendations of the commission.
2. *Applications.* Applications for certification shall be on forms prescribed and furnished by the department and shall not contain a recent photograph of the applicant. An applicant is not ineligible for certification because of age, citizenship, sex, race, religion, marital status, or national origin although the application may require citizenship information. The director may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of operation of waterworks or wastewater works. Character references may be required, but shall not be obtained from certificate holders.
3. *Disclosure of confidential information.* An employee of the department shall not disclose information relating to the following:
 - a. Criminal history or prior misconduct of the applicant.
 - b. Information relating to the contents of the examination to persons other than members of a board of certification of another state or their employees or an employee of the department.
 - c. Information relating to the examination results other than final scores except for information about the results of an examination which is given to the person who took the examination.
4. *Violation.* An employee of the department who willfully communicates or seeks to communicate such information, and a person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

A member of the commission who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days.

[C66, 71, § 136A.3; C73, 75, 77, 79, 81, § 455B.52]

C83, § 455B.213

86 Acts, ch 1245, § 1892, 1899; 88 Acts, ch 1134, § 85

455B.214 Board. Repealed by 86 Acts, ch 1245, § 1899O.

455B.215 Organization compensation and expenses. Repealed by 86 Acts, ch 1245, § 1899O.

455B.216 Examinations.

The director shall hold at least one examination each year for the purpose of examining candidates for certification at a time and place designated by the director. Any written examination may be given by the department. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. Those applicants whose competency is acceptable shall be recommended for certification. Applicants who fail the examination shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant

shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request in writing information from the department concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the director administers a uniform, standardized examination, the director is only required to provide the examination grade and the other information concerning the applicant's examination results which is available to the department.

[C66, 71, § 136A.7; C73, 75, 77, 79, 81, § 455B.56]

C83, § 455B.216

86 Acts, ch 1245, § 1893

455B.217 Operator's certificate.

When the director is satisfied that an applicant is qualified by examination or otherwise, the director shall issue a certificate attesting to the competency of the applicant as an operator. The certificate shall indicate the classification of works which the operator is qualified to supervise.

[C66, 71, § 136A.9; C73, 75, 77, 79, 81, § 455B.57]

C83, § 455B.217

86 Acts, ch 1245, § 1894

455B.218 Duration of certificates fee renewal.

Certificates shall be for the multiyear period determined by the director unless sooner revoked by the director, but the certificates remain the property of the department and the certificate shall so state. The fee for issuance of certificates as determined under section 455B.221 shall be prorated on a quarterly basis for any original certificate issued for a period of less than twelve months. A person who fails to renew a certificate prior to its expiration shall be allowed to renew it within thirty days following its expiration, but the director may assess a reasonable penalty as established by rule.

[C66, 71, § 136A.10; C73, 75, 77, 79, 81, § 455B.58]

C83, § 455B.218

86 Acts, ch 1245, § 1895

455B.219 Revocation or suspension.

The director may suspend or revoke the certificate of an operator, following a hearing before the director, when the operator is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the operator's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to operate a water treatment or wastewater treatment plant. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representation as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of division III of this chapter.

[C66, 71, § 136A.11; C73, 75, 77, 79, 81, § 455B.59]

C83, § 455B.219

86 Acts, ch 1245, § 1896

455B.220 Certificate without examination.

1. A certificate in appropriate classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate attained by examination and issued by the commissioner of public health.
2. A certificate of proper classification shall be issued without examination to any operator who, prior to January 1, 1973, held a valid certificate to operate a particular treatment plant or water distribution system. The certificate so issued shall be valid only for that particular treatment plant or system and shall remain in effect indefinitely unless revoked as provided in section 455B.219.
3. A certificate of proper classification may be issued without examination to operators of a water distribution system in which water is conveyed from a supply point to the premises of consumers without treatment which in some way alters the physical, chemical, or bacteriological quality of the water and which serves a population of not more than two hundred fifty persons. Renewals of those certificates issued shall be governed by the provisions of this part 2 of division III and rules promulgated pursuant to this part. Notwithstanding chapter 272C, continuing education requirements shall not be imposed as a condition of certificate renewal for certificates issued under this subsection.

[C66, 71, § 136A.12, 136A.13; C73, 75, 77, 79, 81, § 455B.60]

C83, § 455B.220

84 Acts, ch 1099, § 2

455B.221 Certification and examination fees.

The director may charge a fee for certificates issued under this part. The fee for the certificates and for renewal shall be based on the costs of administering and enforcing this part and paying the expenses of the department relating to certification. The department shall be reimbursed for all costs incurred. The director shall set a fee for the examination which shall be based upon the annual cost of administering the examinations. All fees collected shall be retained by the department for administration of the certification program.

[C66, 71, § 136A.14; C73, 75, 77, 79, 81, § 455B.61]

C83, § 455B.221

86 Acts, ch 1245, § 1897; 94 Acts, ch 1059, §1

455B.222 Rules.

The commission may adopt rules as are necessary to carry out this part.

[C66, 71, § 136A.15; C73, 75, 77, 79, 81, § 455B.62]

C83, § 455B.222

86 Acts, ch 1245, § 1898

455B.223 Competent operator required.

It shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency, operating a water treatment plant, water distribution system or wastewater treatment plant to operate same unless the competency of the operator to operate such plant or system is duly certified to by the director under the provisions of this part 2 of division III. It shall also be unlawful for any person to perform the duties of an operator, as defined herein, without being duly certified under the provisions of said part.

[C66, 71, § 136A.16; C73, 75, 77, 79, 81, § 455B.63]

C83, § 455B.223

455B.224 Simple misdemeanor.

Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, violating any provisions of this part 2 of division III or the rules adopted thereunder after written notice thereof by the executive director is guilty of a simple misdemeanor. Each day of operation in such violation of said part or any rules adopted thereunder shall constitute a separate offense. It shall be the duty of the appropriate county attorney to secure injunctions of continuing violations of any provisions of said part or the rules adopted thereunder.

[C66, 71, § 136A.17; C73, 75, 77, 79, 81, § 455B.64]

C83, § 455B.224

455B.225 to 455B.240 Reserved.

455B.241 Fund.

There is established a fund to be known as the "*sewage works construction fund*". All moneys appropriated to and deposited in the sewage works construction fund are hereby appropriated for and shall be used by the department in carrying out the purposes of this part 3 of division III.

When used in said part, and unless the context requires otherwise:

1. "*Construction*" means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of treatment works; preliminary planning to determine the economic and engineering feasibility of treatment works; the engineering, architectural, legal, fiscal, and economic investigations and studies,

surveys, designs, plans, working drawings, specifications, procedures, inspection, and supervision, and other action necessary in the construction of treatment works.

2. "*Eligible project*" means a project for construction of sewage treatment works:

a. For which approval of the director is required under this part 3 of division III.

b. Which is, in the judgment of the director, eligible for federal pollution abatement assistance, whether or not federal funds are then available for such purpose. Eligible projects shall be those which the construction contract therefor shall have been entered into subsequent to July 1, 1966.

c. Which conforms with applicable rules of the commission.

d. Which is, in the judgment of the director, necessary for the accomplishment of the state's policy of water purity.

3. "*Federal pollution abatement assistance*" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works pursuant to the federal Water Pollution Control Act as defined in section 455B.171.

4. "*Municipality*" means the city, sanitary district, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of such governmental bodies or corporations acting jointly, in connection with an eligible project.

5. "*Treatment works*" means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, interceptor sewer, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes, which qualify for federal grants pursuant to the federal Water Pollution Control Act as defined in section 455B.171, or any other federal Act or program.

[C71, § 455C.1; C73, 75, 77, 79, 81, § 455B.67; 82 Acts, ch 1050, § 5]

C83, § 455B.241

86 Acts, ch 1245, § 1899

455B.242 Grants of assistance.

The director may make grants as funds are available to any municipality to assist such municipality in the construction of sewage treatment works.

[C71, § 455C.2; C73, 75, 77, 79, 81, § 455B.68]

C83, § 455B.242

86 Acts, ch 1245, § 1899

455B.243 Acceptance of grants.

The director shall accept and administer all funds granted by the state pursuant to this part 3 of division III.

In allocating state grants under said part, the director shall give consideration to:

1. The public benefits to be derived by the construction.

2. The ultimate cost of constructing and maintaining the works.
3. The public interest and public necessity for the works.
4. The adequacy of the provisions made or proposed by the municipality for assuring proper and efficient operation and maintenance of the treatment works after the completion of construction thereof.
5. The applicant's readiness to start construction, including financing and planning.

[C71, § 455C.3; C73, 75, 77, 79, 81, § 455B.69]

C83, § 455B.243

86 Acts, ch 1245, § 1899

455B.244 Contracts.

The director may, in the name of the state, contract with any municipality concerning eligible projects, subject to the approval of the commission. The contract may include such provisions as may be agreed upon by the parties, and shall include, in substance, the following provisions:

1. An estimate of the reasonable cost of the project as determined by the director.
2. An agreement by the director to pay to the municipality, during the progress of construction or following completion of the construction as may be agreed upon by the parties, an amount as determined by appropriation of the general assembly.
3. An agreement by the municipality:
 - a.* To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to this part 3 of division III and pursuant to part 1 of this division III.
 - b.* To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the director.
 - c.* To operate and maintain the sewage treatment works in accordance with applicable provisions of part 1 of this division III and rules of the commission.
 - d.* To obtain approval of the director before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Iowa.
 - e.* To provide for the payment by the municipality of its share of the cost of the project.
4. A provision that, if federal assistance which was not included in the calculation of the state payment pursuant to subsection 2 becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of the additional federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

[C71, § 455C.4; C73, 75, 77, 79, 81, § 455B.70]

C83, § 455B.244

455B.245 Rules.

The commission may adopt such rules as are necessary for the effective administration of this part 3 of this division III.

[C71, § 455C.5; C73, 75, 77, 79, 81, § 455B.71]

C83, § 455B.245

455B.246 Review of contracts by attorney general.

All contracts entered into pursuant to this part 3 of division III shall be subject to approval of the attorney general as to form. All payments by the state pursuant to such contracts shall be made after review and by warrant of the director of the department of administrative services to the credit of the municipality and shall be used for the payment of costs of construction of an eligible project. However, if such costs have been paid by the municipality, then such payment may be used by the municipality for:

1. The payment of outstanding bonds or obligations incurred for any such eligible project.
2. Any improvement or extension of an eligible project.
3. Any other lawful municipal purpose determined to be necessary, reasonable, and in the interest of the public welfare.

[C71, § 455C.6; C73, 75, 77, 79, 81, § 455B.72]

C83, § 455B.246

2003 Acts, ch 145, §286

455B.247 to 455B.260 Reserved.

455B.261 Definitions.

As used in this part of division III, unless the context otherwise requires:

1. "*Aquifer*" means a water-bearing geologic formation which is capable of yielding a usable quantity of water to a well or spring and which transports and stores groundwater.
2. "*Aquifer storage and recovery*" means the injection and storage of treated water in an aquifer through a permitted well during times when treated water is available, and withdrawal of the treated water from the same aquifer through the same well during times when treated water is needed.
3. "*Basin*" means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries.
4. "*Beneficial use*" means the application of water to a useful purpose that inures to the benefit of the water user and subject to the user's dominion and control but does not include the waste or pollution of water.
5. "*Depleting use*" means the storage, diversion, conveyance, or other use of a supply of water if the use may impair rights of lower or surrounding users, may impair the natural resources of the state, or may injure the public welfare if not controlled.

6. "*Diffused waters*" means waters from precipitation and snowmelt which is not a part of any watercourse or basin including capillary soil water.

7. "*Established average minimum flow*" means the average minimum flow for a given watercourse at a given point determined and established by the commission. The "average minimum flow" for a given watercourse shall be determined by the following factors:

a. Average of minimum daily flows occurring during the preceding years chosen by the commission as more nearly representative of changing conditions and needs of a given drainage area at a particular time.

b. Minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area.

c. The minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest.

The determination shall be based upon available data, supplemented, when available data are incomplete, with whatever evidence is available.

8. "*Flood plains*" means the area adjoining a river or stream which has been or may be covered by flood water.

9. "*Floodway*" means the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any river or stream.

10. "*Groundwater*" means that water occurring beneath the surface of the ground.

11. "*Nonregulated use*" means any beneficial use of water by any person of less than twenty-five thousand gallons per day.

12. "*Permit*" means a written authorization issued by the department to a permittee which authorizes diversion, storage, including storage of treated water in an aquifer, or withdrawal of water limited as to quantity, time, place, and rate in accordance with this part or authorizes construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain in accordance with the principles and policies of protecting life and property from floods as specified in this part.

13. "*Permittee*" means a person who obtains a permit from the department authorizing the person to take possession by diversion, storage in an aquifer, or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for that purpose or a person who obtains a permit from the department authorizing construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or flood plain for a designated purpose.

14. "*Regulated use*" means any depleting use except a use specifically designated as a nonregulated use.

15. "*Surface water*" means the water occurring on the surface of the ground.

16. "*Waste*" means any of the following:

a. Permitting groundwater or surface water to flow, or taking it or using it in any manner so that it is not put to its full beneficial use.

b. Transporting groundwater from its source to its place of use in such a manner that there is an excessive

loss in transit.

c. Permitting or causing the pollution of a water-bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it.

17. "*Watercourse*" means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.1; 82 Acts, ch 1199, § 15, 96]

C83, § 455B.261

83 Acts, ch 137, § 7, 8; 85 Acts, ch 7, §1; 98 Acts, ch 1043, §1, 2

455B.262 Declaration of policy and planning requirements.

1. It is recognized that the protection of life and property from floods, the prevention of damage to lands from floods, and the orderly development, wise use, protection, and conservation of the water resources of the state by their considered and proper use is of paramount importance to the welfare and prosperity of the people of the state, and to realize these objectives, it is the policy of the state to correlate and vest the powers of the state in a single agency, the department, with the duty and authority to assess the water needs of all water users at five- year intervals for the twenty years beginning January 1, 1985, and ending December 31, 2004, utilizing a data base developed and managed by the Iowa geological survey, and to prepare a general plan of water allocation in this state considering the quantity and quality of water resources available in this state designed to meet the specific needs of the water users. The department shall also develop and the department shall adopt no later than June 30, 1986, a plan for delineation of flood plain and floodway boundaries for selected stream reaches in the various river basins of the state. Selection of the stream reaches and assignment of priorities for mapping of the selected reaches shall be based on consideration of flooding characteristics, the type and extent of existing and anticipated flood plain development in particular stream reaches, and the needs of local governmental bodies for assistance in delineating flood plain and floodway boundaries. The plan of flood plain mapping shall be for the period from June 30, 1986, to December 31, 2004. After the department adopts a plan of flood plain mapping, the department shall submit a progress report and proposed implementation schedule to the general assembly biennially. The department may modify the flood plain mapping plan as needed in response to changing circumstances.

2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.

3. Water occurring in a basin or watercourse, or other body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ensure the conservation and protection of the water resources of the state. These measures shall include the protection of specific surface and groundwater sources as necessary to ensure long-term availability in terms of quantity and quality to preserve the public health and welfare.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.2; 82 Acts, ch 1199, § 16, 96]

C83, § 455B.262

455B.263 Duties.

1. The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representatives of agriculture, industry, and public and other interests. The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis. This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.

2. The commission shall designate the official representative of this state on all comprehensive water resources planning groups for which state participation is provided. The commission shall coordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. This section does not limit or supplant the functions, duties, and responsibilities of other state or local agencies or institutions with regard to planning of water-associated projects within the particular area of responsibility of those state or local agencies or institutions.

3. The commission shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the commission deems the negotiations and agreements to be necessary for the achievement of the policies of this state relative to its water resources.

4. The commission, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the commission deems the negotiations to be necessary for the achievement of the policies of this state, however, an agreement reached pursuant to these negotiations does not bind the state until enacted into law by the general assembly.

5. A water user who benefits from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in the development, and a user who accepts benefits from the developments financed in whole or part by the state shall assume by contract the responsibility of repaying to the state the user's reasonable share of the state's obligations in accordance with a basis which will assure payment within the life of the development. An appropriation, diversion, or use shall not be made by a person of any waters of the state that have been stored or released from storage either under the authority of the state or pursuant to an agreement between the state and the federal government until the person has assumed by contract the person's repayment responsibility. However, this subsection does not infringe upon any vested property interests.

6. In its contracts with water users for the payment of state obligations incurred in the development of conservation storage for water supply, the commission shall include the terms deemed reasonable and necessary:

a. To protect the health, safety, and general welfare of the people of the state.

b. To achieve the purposes of this chapter.

c. To provide that the state is not responsible to any person if the waters involved are insufficient for

performance.

The commission may designate and describe any such contract, and describe the relationships to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of the contracts shall be commensurate with the investment and use concerned, but the commission shall not enter into any such contract for a term in excess of the maximum period provided for water use permits.

7. The commission shall procure flood control works and water resources projects from or by cooperation with any agency of the United States, by cooperation with the cities and other subdivisions of the state under the laws of the state relating to flood control and use of water resources, and by cooperation with the action of landowners in areas affected by the works or projects when the commission deems the projects to be necessary for the achievement of the policies of this state.

8. The commission shall promote the policies set forth in this part and shall represent this state in all matters within the scope of this part. The commission shall adopt rules pursuant to chapter 17A as necessary to transact its business and for the administration and exercise of its powers and duties.

9. In carrying out its duties, the commission may accept gifts, contributions, donations and grants, and use them for any purpose within the scope of this part.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.3, 455A.8, 455A.15, 455A.17; 82 Acts, ch 1199, § 17, 96]

C83, § 455B.263

83 Acts, ch 137, § 10; 85 Acts, ch 7, §3

455B.264 Jurisdiction water and flood plains.

1. The department has jurisdiction over the public and private waters in the state and the lands adjacent to the waters necessary for the purposes of carrying out this part. The department may construct flood control works or any part of the works. In the construction of the works, in making surveys and investigations, or in formulating plans and programs relating to the water resources of the state, the department may cooperate with an agency of another state or the United States, or with any other person.

2. Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use, the director shall investigate the effect of the use upon the natural flow of the watercourse, the effect of the use upon the owners of any land which might be affected by the use, the effect of the use upon prior users of the water source and contracts made under section 455B.263 and whether the use is consistent with the principles and policies of beneficial use.

3. Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit, or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the department shall investigate the effect of the construction or maintenance project on the efficiency and capacity of the floodway. In determining the effect of the proposal the department shall consider fully its effect on flooding of or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.18; 82 Acts, ch 1199, § 18, 96]

455B.265 Permits for diversion, storage, and withdrawal.

1. In its consideration of applications for permits, the department shall give priority in processing to persons in the order that the applications are received, except where the application of this processing priority system prevents the prompt approval of routine applications or where the public health, safety, or welfare will be threatened by delay. If the department determines after investigation that the diversion, storage, or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation, the department shall grant a permit. An application for a permit shall be approved or denied within ninety days from the date that the department receives the application. A renewal permit shall be approved or denied by the department within thirty days from the date that the department receives an application for renewal. Regardless of the request in the application, the director or the department on appeal may determine the duration and frequency of withdrawal and the quantity of water to be diverted, stored, or withdrawn pursuant to the permit. Each permit granted after July 1, 1986, shall include conditions requiring routine conservation practices, and requiring implementation of emergency conservation measures after notification by the department.

2. If an application is received by July 1, 1986, the department shall grant a permit for the continuation of a beneficial use of water that was a nonregulated use prior to July 1, 1985, and now requires a permit pursuant to section 455B.268. However, the permit is subject to conditions requiring routine and emergency conservation measures and to modification or cancellation under section 455B.271. Applications received after July 1, 1986 for those uses shall be determined pursuant to subsection 1.

3. Permits shall be granted for a period of ten years; however, permits for withdrawal of water may be granted for less than ten years if geological data on the capacity of the aquifer and the rate of its recharge are indeterminate, and permits for the storage of water may be granted for the life of the structure unless revoked by the department. A permit granted shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any extension of the permit or until an earlier date when the permit or its extension is canceled under section 455B.271. Upon application for a permit prior to the termination date specified in the permit, a permit may be renewed by the department for a period of ten years.

4. Permits for aquifer storage and recovery shall be granted for a period of twenty years or the life of the project, whichever is less, unless revoked by the department. The department shall adopt rules pursuant to chapter 17A relating to information an applicant for a permit shall submit to the department. At a minimum, the information shall include engineering, investigation, and evaluation information requisite to assure protection of the groundwater resource, and assurances that an aquifer storage and recovery site shall not unreasonably restrict other uses of the aquifer. Upon application and prior to the termination date specified in the original permit or a subsequent renewal permit, a renewal permit may be issued by the department for an additional period of twenty years. The department shall not authorize withdrawals of treated water from an aquifer storage and recovery site by anyone other than the permittee during the period of the original permit and each subsequent renewal permit. Treated water injected into an aquifer covered by a permit issued pursuant to this subsection is the property of the permittee.

5. Prior to the issuance of a new permit or modification of a permit under this section to a community public water supply, the department shall publish a notice of recommendation to grant a permit. The notice shall include a brief summary of the proposed permit and shall be published in a newspaper of general circulation within the county of the proposed water source as provided in section 618.3. If the newspaper of general circulation is not the newspaper of the nearest locality to the proposed water source that publishes a

newspaper, the notice shall also be published in the newspaper of the nearest locality to the proposed water source that publishes a newspaper and the department may charge the applicant for the expenses associated with publishing the notice in the second newspaper.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.20; 82 Acts, ch 1199, § 19, 96]

C83, § 455B.265

83 Acts, ch 137, § 12; 85 Acts, ch 7, §5; 86 Acts, ch 1245, § 1899A, 1899B; 90 Acts, ch 1094, § 1; 98 Acts, ch 1043, §3; 2005 Acts, ch 51, §1

455B.266 Priority allocation.

1. After any event described in paragraphs "a" through "d" of this subsection has occurred, the department shall investigate and, if appropriate, may implement the priority allocation plan provided in subsection 2. The department shall require existing permittees to implement appropriate emergency conservation measures. The pertinent public notice and hearing requirements of subsection 4 of this section and sections 455B.271 and 455B.278 shall apply to the implementation of the plan.

a. Receipt of a petition by twenty-five affected persons or a governmental subdivision requesting that the priority allocation plan be implemented due to a substantial local water shortage.

b. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent.

c. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

d. Determination by the department in conjunction with the homeland security and emergency management division of the department of public defense of a local crisis which affects availability of water.

2. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Uses of water primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies as defined in section 455B.171.

i. Uses of water for human consumption and sanitation supplied by a private water supply as defined in

section 455B.171.

3. Unless the governor has issued a proclamation described in subsection 1, paragraph "c", the department shall not impose a suspension of water use or a further restriction, other than conservation, on the uses of water provided in subsection 2, paragraphs "g" through "i" or on users of water pursuant to a contract with the state as provided in section 455B.263, subsections 5 and 6. If a contract with the state as provided in section 455B.263, subsections 5 and 6 was in effect prior to March 5, 1985, the department shall not impose a suspension of water use or a further restriction, other than conservation, on the users of water pursuant to that contract.

4. Suspension or restrictions of water usage applicable to otherwise nonregulated water users shall be by emergency order of the director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on such date unless stayed, modified or vacated at a hearing before the commission or by a court.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.21; 82 Acts, ch 1199, § 20, 96]

C83, § 455B.266

83 Acts, ch 137, § 13; 85 Acts, ch 7, §6; 86 Acts, ch 1136, § 1; 86 Acts, ch 1245, § 1899A, 1899B; 92 Acts, ch 1139, § 30; 2003 Acts, ch 179, §157

455B.267 Permits for beneficial use prohibitions.

1. The director or the commission may issue a permit for beneficial use of water in a watercourse if the established average minimum water flow is preserved.
2. A use of water shall not be authorized if it will impair the effect of this chapter or any other pollution control law of this state.
3. A permit shall not be issued or continued if it will impair the navigability of any navigable watercourse.
4. A permit to divert, store or withdraw water shall not be issued or continued if it will unreasonably impair the long-term availability of water from a surface or groundwater source in terms of quantity or quality, or otherwise adversely affect the public health or welfare.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.22455A.24; 82 Acts, ch 1199, § 21, 96]

C83, § 455B.267

85 Acts, ch 7, §7; 86 Acts, ch 1245, § 1899A

455B.268 When permit required.

1. A permit shall be required for the following:
 - a. Except for a nonregulated use, a person diverting, storing or withdrawing water from any surface or groundwater source.
 - b. A person who diverts water or any material from the surface directly into an underground watercourse or basin.

2. The commission may adopt, modify, or repeal rules pursuant to chapter 17A specifying the conditions under which the director may authorize specific nonrecurring minor uses of water for periods not to exceed one year through registration.

3. Notwithstanding any exemptions from permit requirements, nothing in this part exempts water users from requirements for reporting which the commission adopts by rule.

[C58, 62, 66, 71, 73, 75, 77, § 455A.25; C79, 81, § 455A.8, 455A.25; 82 Acts, ch 1199, § 22, 96]

C83, § 455B.268

85 Acts, ch 7, §8; 86 Acts, ch 1245, § 1899A

455B.269 Taking water prohibited.

1. A person shall not take water from a natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use except in compliance with the sections of this part which relate to the withdrawal, diversion, or storage of water. However, existing uses may be continued during the period of the pendency of an application for a permit.

2. A person, other than the aquifer storage and recovery permittee, shall not take treated water from a permitted aquifer storage and recovery site within this state.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.26; 82 Acts, ch 1199, § 23, 96]

C83, § 455B.269

83 Acts, ch 137, § 14; 98 Acts, ch 1043, §4

455B.270 Rights preserved.

The sections of this part which relate to the withdrawal, diversion, or storage of water do not deprive any person of the right to use diffused waters, to drain land by use of tile, open ditch, or surface drainage, or to construct an impoundment on the person's property or across a stream that originates on the person's property if provision is made for safe construction and for a continued established average minimum flow when the flow is required to protect the rights of water users below.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.27; 82 Acts, ch 1199, § 24, 96]

C83, § 455B.270

83 Acts, ch 137, § 15

455B.271 Modification or cancellation of permits.

Each permit issued under section 455B.265 is irrevocable for its term and for any extension of its term except as follows:

1. A permit may be modified or canceled by the department with the consent of the permittee.

2. Subject to appeal to the department of inspections and appeals, a permit may be modified or canceled by the director if any of the following occur:

- a. There is a breach of the terms of the permit.
 - b. There is a violation of the law pertaining to the permit by the permittee or the permittee's agents.
 - c. There is a circumstance of nonuse as provided in section 455B.272.
 - d. The department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, to require conservation measures or to prevent substantial injury to persons or property in any manner. Before the modification or cancellation is effective, the department shall give at least thirty days' written notice mailed to the permittee at the permittee's last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard on the proposal.
3. By written emergency order to the permittee, the department may suspend or restrict operations under a permit if the director finds it necessary in an emergency to protect the public health, to protect the public interest in waters against imminent danger of substantial injury in any manner or to an extent not expressly authorized by the permit, to implement the priority allocation system of section 455B.266, or to protect persons or property against imminent danger. The department may require the permittee to take measures necessary to prevent or remedy the injury. The emergency order shall state the effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the department or by a court.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.28; 82 Acts, ch 1199, § 25, 96]

C83, § 455B.271

83 Acts, ch 137, § 16; 85 Acts, ch 7, §9, 10; 86 Acts, ch 1245, § 1899A, 1899B

455B.272 Termination of permit.

The right of the permittee and the permittee's successors to the use of water shall terminate when the permittee or the permittee's successors fail for three consecutive years to use it for the specific beneficial purpose authorized in the permit and, after notification by the department of intent to cancel the permit for nonuse, the permittee or the permittee's successors fail to demonstrate adequate plans to use water within a reasonable time. However, nonuse of water due to adequate rainfall does not constitute grounds for cancellation of a permit to use water for irrigation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.29; 82 Acts, ch 1199, § 26, 96]

C83, § 455B.272

83 Acts, ch 137, § 17

455B.273 Disposal of permit.

A permittee may sell, transfer, or assign a permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but the permit does not constitute ownership or absolute rights of use of the waters. The waters remain subject to the principle of beneficial use and the orders of the director or commission.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.30; 82 Acts, ch 1199, § 27, 96]

C83, § 455B.273

455B.274 Unauthorized depleting uses.

If a person files a complaint with the department that another person is making a depleting use of water not expressly exempted as a nonregulated use under this part and without a permit to do so, the department shall cause an investigation to be made and if the facts stated in the complaint are verified the department shall order the discontinuance of the use.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.32; 82 Acts, ch 1199, § 28, 96]

C83, § 455B.274

455B.275 Prohibited acts powers of commission and executive director.

1. A person shall not permit, erect, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances.

2. The department may commence, maintain, and prosecute any appropriate action to enjoin or abate a nuisance, including any of the nuisances specified in subsection 1 and any other nuisance which adversely affects flood control.

3. A person shall file a written application with the department if the person desires to do any of the following:

a. Erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on any floodway or flood plains.

b. Erect, construct, maintain, or operate a dam on a navigable or meandered stream.

c. Erect, construct, maintain, or operate a dam on a stream for manufacturing or industrial purposes.

The application shall set forth information as required by rule of the commission. The department, after an investigation, shall approve or deny the application imposing conditions and terms as prescribed by the department.

4. The department may maintain an action in equity to enjoin a person from erecting or making or permitting to be made a structure, dam, obstruction, deposit, or excavation for which a permit has not been granted. The department may also seek judicial abatement of any structure, dam, obstruction, deposit, or excavation erected or made without a permit required under this part. The abatement proceeding may be commenced to enforce an administrative determination of the department in a contested case proceeding that a public nuisance exists and should be abated. The costs of abatement shall be borne by the violator. Notwithstanding section 352.11, a structure, dam, obstruction, deposit, or excavation on a floodway or flood plain in an agricultural area established under chapter 352 is not exempt from the sections of this part which relate to regulation of flood plains and floodways. As used in this subsection, "*violator*" includes a person contracted to erect or make a structure, dam, obstruction, deposit, or excavation in a floodway including stream straightening unless the project is authorized by a permit required under this part.

5. The department may remove or eliminate a structure, dam, obstruction, deposit, or excavation in a floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in the proceeding, the appraisers and the court shall

take into consideration whether the structure, dam, obstruction, deposit, or excavation is lawfully in or on the floodway in compliance with this part.

6. The department may require, as a condition of an approval order or permit granted pursuant to this part, the furnishing of a performance bond with good and sufficient surety, conditioned upon full compliance with the order or permit and the rules of the commission. In determining the need for and amount of bond, the department shall give consideration to the hazard posed by the construction and maintenance of the approved works and the protection of the health, safety, and welfare of the people of the state. This subsection does not apply to orders or permits granted to a governmental entity.

7. When approving a request to straighten a stream, the department may establish as a condition of approval a permanent prohibition against tillage of land owned by the person receiving the approval and lying within a minimum distance from the stream sufficient in the judgment of the director or commission to hold soil erosion to reasonable limits. The department shall record the prohibition in the office of the county recorder of the appropriate county and the prohibition shall attach to the land.

8. The commission shall establish, by rule, thresholds for dimensions and effects, and any structure, dam, obstruction, deposit, or excavation having smaller dimensions and effects than those established by the commission is not subject to regulation under this section. The thresholds shall be established so that only those structures, dams, obstructions, deposits, or excavations posing a significant threat to the well-being of the public and the environment are subject to regulation.

9. The commission or the department shall not initiate any administrative or judicial action to remove or eliminate any structure, dam, obstruction, deposit, or excavation in a floodway, or to remove or eliminate any stream straightening, or to place other restrictions on the use of land or water affected by the structure, dam, obstruction, deposit, excavation, or stream straightening if not initiated within five years after the department becomes aware of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening. After ten years from the completion of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening, the prohibition of this subsection applies to, but is not limited to, any administrative or judicial abatement or action in condemnation that the commission or department may initiate under this section unless action is required to protect the public safety, in which case this section is not intended to limit the department from taking actions otherwise authorized by law.

[C50, 54, § 455A.19; C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.33; 82 Acts, ch 1199, § 29, 96]

C83, § 455B.275

83 Acts, ch 137, § 18; 86 Acts, ch 1144, § 2; 88 Acts, ch 1196, § 1, 2; 90 Acts, ch 1108, § 4

Footnotes

Nuisances in general, chapter 657

In addition to prospective application, 1988 amendments to subsection 4 and new subsection 9 apply to all knowledge possessed by department for at least five years before July 1, 1988, and to all projects completed earlier than ten years before July 1, 1988; 88 Acts, ch 1196, § 3

See also 83 Acts, ch 137, § 30

Validity of permits or licenses issued before July 1, 1990, under chapter 469, Code 1989; rights and obligations governed by §

455B.276 Flood plains encroachment limits.

The commission may establish and enforce rules for the orderly development and wise use of the flood plains of any river or stream within the state and alter, change, or revoke the rules. The commission shall determine the characteristics of floods which reasonably may be expected to occur and may establish by order encroachment limits, protection methods, and minimum protection levels appropriate to the flooding characteristics of the stream and to reasonable use of the flood plains. The order shall fix the length of flood plains to be regulated at any practical distance, the width of the zone between the encroachment limits so as to include portions of the flood plains adjoining the channel, which with the channel, are required to carry and discharge the flood waters or flood flow of the river or stream, and the design discharge and water surface elevations for which protection shall be provided for projects outside the encroachment limits but within the limits of inundation. Plans for the protection of projects proposed for areas subject to inundation shall be reviewed as plans for flood control works within the purview of section 455B.277. An order establishing encroachment limits shall not be issued until notice of the proposed order is given and opportunity for public hearing given for the presentation of protests against the order. In establishing the limits, the commission shall avoid to the greatest possible degree the evacuation of persons residing in the area of a floodway, the removal of residential structures occupied by the persons in the area of a floodway, and the removal of structures erected or made prior to July 4, 1965, which are located on the flood plains of a river or stream but not within the area of a floodway.

The commission shall cooperate with and assist local units of government in the establishment of encroachment limits, flood plain regulations, and zoning ordinances relating to flood plain areas within their jurisdiction. Encroachment limits, flood plain regulations, or flood plain zoning ordinances proposed by local units of government shall be submitted to the department for review and approval prior to adoption by the local units of government. Changes or variations from an approved regulation or ordinance as it relates to flood plain use are subject to approval by the commission prior to adoption. Individual applications, plans, and specifications and individual approval orders shall not be required for works on the flood plains constructed in conformity with encroachment limits, flood plain regulations, or zoning ordinances adopted by the local units of government and approved by the commission.

[C50, 54, § 455A.21; C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.35; 82 Acts, ch 1199, § 30, 96]

C83, § 455B.276

83 Acts, ch 137, § 19

455B.277 Flood control works coordinated.

All flood control works in the state, which are established and constructed after April 16, 1949, shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. A person shall not construct or install works of any nature for flood control until the proposed works and the plans and specifications for the works are approved by the department. The department shall consider all the pertinent facts relating to the proposed works which will affect flood control and water resources in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, or adversely affect or interfere with an approved local water resources plan. In the event of disapproval, the department shall set forth the objectionable features so that the proposed works and the plans and specifications for the proposed works may be corrected or adjusted to obtain approval.

This section applies to drainage districts, soil and water conservation districts, the natural resource commission, political subdivisions of the state, and private persons undertaking projects relating to flood control.

[C50, 54, § 455A.22; C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.36; 82 Acts, ch 1199, § 31, 96]

C83, § 455B.277

83 Acts, ch 137, § 20; 88 Acts, ch 1134, § 86

455B.278 Permit application procedures.

1. The commission shall adopt, modify, or repeal rules establishing procedures by which permits required under this part shall be issued, suspended, revoked, modified, or denied. The rules shall include provisions for application, public notice and opportunity for public hearing, and contested cases. Public notice of a decision by the director to issue a permit shall be given in a manner designed to inform persons who may be adversely affected by the permitted project or activity.

2. Action by the department upon an application for a permit required under this part may be appealed to the commission by the applicant or any affected person within thirty days of the department's action. A hearing before the commission or its designee is a contested case. The hearings and judicial review of decisions of the commission shall be carried out in accordance with chapter 17A. Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located. If the commission, the district court, or the supreme court determines that the action of the commission shall be stayed, the petitioner shall file an appropriate bond approved by the court.

[C50, 54, § 455A.23; C58, 62, 66, 71, 73, 75, 77, 79, 81, § 455A.19, 455A.37; 82 Acts, ch 1199, § 32, 96]

C83, § 455B.278

83 Acts, ch 136, § 3; 83 Acts, ch 137, § 21

455B.279 Violation.

1. The director may issue any order necessary to secure compliance with or prevent a violation of this part or the rules adopted pursuant to this part. Within thirty days of issuance, the order may be appealed to the commission by filing a notice of appeal with the director. The appeal shall be conducted as a contested case pursuant to chapter 17A and the commission may affirm, modify, or revoke the order. The department may request legal services as required from the attorney general, including any legal proceeding necessary to obtain compliance with this part and rules and orders issued under this part.

2. A person who violates a provision of this part or a rule or order adopted or promulgated or the conditions of a permit issued pursuant to this part is subject to a civil penalty not to exceed five hundred dollars for each day that a violation occurs.

[C50, 54, § 455A.26; C58, 62, 66, 71, 73, 75, 77, § 455A.39; C79, 81, § 455A.33(7), 455A.39; 82 Acts, ch 1199, § 33, 96]

C83, § 455B.279

83 Acts, ch 137, § 22; 86 Acts, ch 1144, § 3

455B.280 Coordination with water resource districts. Repealed by 86 Acts, ch 1245, § 668. Repeal

effective July 1, 1988.

455B.281 Compensation for well interference.

If an investigation by the department, using information provided by the applicant or permittee and the complainant, discloses that a proposed or existing permitted use or combination of such uses is causing or will cause the delivery system to fail in a well which supplies water for a nonregulated use, the department may condition issuance or continuation of a permit upon payment by the permittee of compensation for all or a portion of the cost of a replacement water supply system or remedial measures necessitated by the interference. However, such condition may be imposed only after the parties demonstrate to the department that a good faith effort to negotiate a mutually agreeable compensation has been made and has failed.

Determination of the amount of compensation for the well interference shall be made a part of the determination of the department in accordance with section 455B.265 or 455B.271. The department may require the submission of itemized estimates of the cost of remedial repairs or a replacement water supply system. In determining appropriate compensation, the department shall consider the age and condition of the affected well or pumping system and its reasonableness as a method of obtaining groundwater in light of the history of development of groundwater in the surrounding area. When compensation is required for all or part of the cost of construction of a replacement water supply system or reconstruction of an affected well, the construction or reconstruction must comply with applicable well construction standards. A permittee is not required to pay compensation before having an opportunity to do test pumping authorized by the department and supervised by the department or designee.

The determination of the department shall be subject to administrative and judicial review and shall be the exclusive remedy for such interference.

85 Acts, ch 7, §11

455B.282 to 455B.290 Reserved.

455B.291 Definitions.

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

1. "*Administration funds*" means the water pollution control works administration fund and the drinking water facilities administration fund.
2. "*Authority*" means the Iowa finance authority established in section 16.2.
3. "*Clean Water Act*" means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as published in 33 U.S.C. § 12511376.
4. "*Cost*" means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the director as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.
5. "*Drinking water facilities administration fund*" means the drinking water facilities administration fund established in section 455B.295.
6. "*Drinking water facilities revolving loan fund*" means the drinking water facilities revolving loan fund established in section 455B.295.
7. "*Eligible entity*" means a person eligible under the provisions of the Clean Water Act, the Safe Drinking

Water Act, and the commission rules to receive loans for projects from either of the revolving loan funds.

8. "*Loan recipient*" means an eligible entity that has received a loan from either of the revolving loan funds.

9. "*Municipality*" means a city, county, sanitary district, state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of the governmental bodies or corporations acting jointly, in connection with a project.

10. "*Program*" means the Iowa water pollution control works and drinking water facilities financing program created pursuant to section 455B.294.

11. "*Project*" means one of the following:

a. In the context of water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in section 212 of the Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those sections.

b. In the context of drinking water facilities, the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, or equipping of waterworks, water mains, extensions, or treatment facilities useful for providing potable water to residents served by a water system, including the acquisition of real property needed for any of the foregoing purposes, and such other purposes and programs as may be authorized under the Safe Drinking Water Act.

12. "*Revolving loan funds*" means the water pollution control works revolving loan fund and the drinking water facilities revolving loan fund.

13. "*Safe Drinking Water Act*" means Title XIV of the federal Public Health Service Act, commonly known as the "Safe Drinking Water Act", 42 U.S.C. § 300f et seq., as amended by the Safe Drinking Water Amendments of 1996, Pub. L. No. 104-182.

14. "*Water pollution control works administration fund*" means the water pollution control works administration fund established in section 455B.295.

15. "*Water pollution control works revolving loan fund*" means the water pollution control works revolving loan fund established in section 455B.295.

16. "*Water system*" means any community water system or nonprofit noncommunity water system, each as defined in the Safe Drinking Water Act, that is eligible under the rules of the department to receive a loan under the program for the purposes of undertaking a project.

88 Acts, ch 1217, § 10; 89 Acts, ch 83, § 54; 95 Acts, ch 98, §1; 97 Acts, ch 4, §7; 2002 Acts, ch 1019, §1

455B.292 Findings.

The general assembly finds that the proper construction, rehabilitation, operation, and maintenance of modern and efficient wastewater treatment works, other water pollution control works, and drinking water facilities are essential to protecting and improving the state's water quality and the health of its citizens; that protecting and improving water quality is an issue of concern to the citizens of the state; that in addition to protecting and improving the state's water quality, adequate wastewater treatment and water pollution control works and drinking water facilities are essential to economic growth and development; that during the last

several years the amount of federal grant money available to states and local governments for assistance in constructing and improving wastewater treatment works and safe drinking water facilities has sharply diminished and will likely continue to diminish; and that it is proper for the state to encourage local governments, individuals, and other entities to undertake water pollution control and drinking water projects through the establishment of a state mechanism to provide loans at the lowest reasonable rates.

88 Acts, ch 1217, §11; 97 Acts, ch 4, §8; 2002 Acts, ch 1019, §2

455B.293 Policy.

It is the policy of this state that it is in the public interest to establish a water pollution control works and drinking water facilities financing program and revolving loan funds and administration funds to make loans available from the state to eligible entities for the purpose of undertaking projects. This section shall be broadly construed to effect and accomplish that purpose.

88 Acts, ch 1217, §12; 97 Acts, ch 4, §9; 2002 Acts, ch 1019, §3

455B.294 Establishment of the Iowa water pollution control works and drinking water facilities financing program.

The Iowa water pollution control works and drinking water facilities financing program is established for the purpose of making loans available to eligible entities to finance all or part of the costs of projects. The program shall be a joint and cooperative undertaking of the department and the authority. The department and the authority may enter into and provide any agreements, documents, instruments, certificates, data, or information necessary in connection with the operation, administration, and financing of the program consistent with this part, the Safe Drinking Water Act, the Clean Water Act, the rules of the department and the commission, the rules of the authority, and other applicable federal and state law. The authority and the department may act to conform the program to the applicable guidance and regulations adopted by the United States environmental protection agency.

88 Acts, ch 1217, §13; 97 Acts, ch 4, §10; 2002 Acts, ch 1019, §4

455B.295 Funds and accounts.

1. Four separate funds are established in the state treasury, to be known as the water pollution control works revolving loan fund, the water pollution control works administration fund, the drinking water facilities revolving loan fund, and the drinking water facilities administration fund.
2. Each of the revolving loan funds shall include sums appropriated to the revolving loan funds by the general assembly, sums transferred by action of the governor under section 455B.296, subsection 3, sums allocated to the state expressly for the purposes of establishing each of the revolving loan funds under the Clean Water Act and the Safe Drinking Water Act, all receipts by the revolving loan funds, and any other sums designated for deposit to the revolving loan funds from any public or private source. All moneys appropriated to and deposited in the revolving loan funds are appropriated and shall be used for the sole purpose of making loans to eligible entities to finance all or part of the cost of projects. The moneys appropriated to and deposited in the water pollution control works revolving loan fund shall not be used to pay the nonfederal share of the cost of projects receiving grants under the Clean Water Act. The moneys in the revolving loan funds are not considered part of the general fund of the state, are not subject to appropriation for any other purpose by the general assembly, and in determining a general fund balance shall not be included in the general fund of the state but shall remain in the revolving loan funds to be used for their respective purposes. The revolving loan funds are separate dedicated funds under the administration and control of the authority and subject to section

16.31. Moneys on deposit in the revolving loan funds shall be invested by the treasurer of state in cooperation with the authority, and the income from the investments shall be credited to and deposited in the appropriate revolving loan funds.

3. The administration funds shall include sums appropriated to the administration funds by the general assembly, sums allocated to the state for the express purposes of administering the programs, policies, and undertakings authorized by the Clean Water Act and the Safe Drinking Water Act, and all receipts by the administration funds from any public or private source. All moneys appropriated to and deposited in the administration funds are appropriated for and shall be used and administered by the department to pay the costs and expenses associated with the program, including administration of the program, as may be determined by the department.

4. The department and the authority may establish and maintain other funds or accounts determined to be necessary to carry out the purposes of this part and shall provide for the funding, administration, investment, restrictions, and disposition of the funds and accounts. The department and the authority may combine administration of the revolving loan funds, and cross collateralize the same, and the administration funds to the extent permitted by the Clean Water Act, the Safe Drinking Water Act, and other applicable federal law.

88 Acts, ch 1217, §14; 97 Acts, ch 4, §11; 2002 Acts, ch 1019, §5

455B.296 Intended use plans capitalization grants accounting.

1. Each fiscal year beginning July 1, 1988, the department may prepare and deliver intended use plans and enter into capitalization grant agreements with the administrator of the United States environmental protection agency under the terms and conditions set forth in the Clean Water Act and the Safe Drinking Water Act and federal regulations adopted pursuant to the Acts and may accept capitalization grants for each of the revolving loan funds in accordance with payment schedules established by the administrator. All payments from the administrator shall be deposited in the appropriate revolving loan funds.

2. The department and the authority shall establish fiscal controls and accounting procedures during appropriate accounting periods for payments and disbursements received and made by the revolving loan funds, the administration funds, and other funds established pursuant to section 455B.295, subsection 4, and to fund balances at the beginning and end of the accounting periods.

3. Upon receipt of the joint recommendation of the department and the authority with respect to the amounts to be so reserved and transferred, and subject in all respects to the applicable provisions of the Clean Water Act, Safe Drinking Water Act, and other applicable federal law, the governor may direct that the recommended portion of a capitalization grant made in respect of one of the revolving loan funds in any year be reserved for the transfer to the other revolving loan fund. The authority and the department may effect the transfer of any funds reserved for such purpose, as directed by the governor, and shall cause the records of the program to reflect the transfer. Any sums so transferred shall be expended in accordance with the intended use plan for the applicable revolving loan fund.

88 Acts, ch 1217, §15; 97 Acts, ch 4, §12; 2002 Acts, ch 1019, §6

455B.297 Loans to eligible entities.

Moneys deposited in the revolving loan funds shall be used for the primary purpose of making loans to eligible entities to finance the cost of projects in accordance with the intended use plans developed by the department under section 455B.296. The loan recipients and the purpose, amount, interest rate, and repayment terms of the loans shall be determined by the director, in accordance with rules adopted by the commission, in compliance with and subject to the terms and conditions of the Clean Water Act, the Safe Drinking Water Act, and other applicable federal law, as applicable, and any resolution, agreement,

indenture, or other document of the authority, and rules adopted by the authority, relating to any bonds, notes, or other obligations issued for the program which may be applicable to the loan.

88 Acts, ch 1217, §16; 97 Acts, ch 4, §13; 2002 Acts, ch 1019, §7

455B.298 Powers and duties of the director.

The director shall:

1. Process and review loan applications to determine if an application meets the eligibility requirements set by the rules of the department.
2. Approve loan applications of eligible entities which satisfy the rules adopted by the commission, and the intended use plans developed by the department under section 455B.296.
3. Process and review all documents relating to projects and the extending of loans.
4. Prepare and process, in coordination with the authority, documents relating to the extending of loans, the sale and issuance of bonds, notes, or other obligations of the authority relating to the program, and the administration of the program.
5. Include in the budget prepared pursuant to section 455A.4, subsection 1, paragraph "c", an annual budget for the administration of the program and the use and disposition of amounts on deposit in the administration funds.
6. Charge each loan recipient a loan origination fee and an annual loan servicing fee. The amount of the loan origination fees and the loan servicing fees established shall be relative to the amount of a loan made from the revolving loan fund. The director shall deposit the receipts from the loan origination fees and the loan servicing fees in the appropriate administration fund.
7. Consult with and receive the approval of the authority concerning the terms and conditions of loan agreements as to the financial integrity of the loan.
8. Perform other acts and assume other duties and responsibilities necessary for the operation of the program.

88 Acts, ch 1217, §17; 97 Acts, ch 4, §14; 2002 Acts, ch 1019, §8

455B.299 Adoption of rules.

The commission shall adopt rules pursuant to chapter 17A appropriate for the administration of this part.

88 Acts, ch 1217, §18

455B.300 Reserved.

455B.301 Definitions.

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. "*Actual cost*" means the operational, remedial and emergency action, closure, postclosure, and monitoring costs of a sanitary disposal project for the lifetime of the project.
2. "*Beverage*" means wine as defined in section 123.3, subsection 37, alcoholic liquor as defined in section

123.3, subsection 5, beer as defined in section 123.3, subsection 7, wine cooler or drink, tea, potable water, soda water and similar carbonated soft drinks, mineral water, fruit juice, vegetable juice, or fruit or vegetable drinks, which are intended for human consumption.

3. "*Beverage container*" means a sealed glass, plastic, or metal bottle, can, jar, or carton containing a beverage.

4. "*Biodegradable*" means degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gasses and organic compounds.

5. "*Closure*" means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed sanitary landfill, including, but not limited to, application of final cover, grading and seeding of final cover, installation of an adequate monitoring system, and construction of ground and surface water diversion structures, if necessary.

6. "*Closure plan*" means the plan which specifies the methods and schedule by which an operator will complete or cease disposal operations of a sanitary disposal project, prepare the area for long-term care, and make the area suitable for other uses.

7. "*Degradable*" means capable of decomposing by biodegradation, photodegradation, or chemical process into harmless component parts after exposure to natural elements for not more than three hundred sixty-five days.

8. "*Financial assurance instrument*" means an instrument submitted by an applicant to ensure the operator's financial capability to provide reasonable and necessary response during the lifetime of the project and for the thirty years following closure, and to provide for the closure of the facility and postclosure care required by rules adopted by the commission in the event that the operator fails to correctly perform closure and postclosure care requirements. The form may include the establishment of a secured trust fund, use of a cash or surety bond, or the obtaining of an irrevocable letter of credit.

8A. "*Incinerator*" means any enclosed device using controlled flame combustion that does not meet the criteria for classification as a boiler and is not listed as an industrial furnace. "*Incinerator*" does not include thermal oxidizers used for the treatment of gas emissions.

9. "*Leachate*" means fluid that has percolated through solid waste and which contains contaminants consisting of dissolved or suspended materials, chemicals, or microbial waste products from the solid waste.

10. "*Lifetime of the project*" means the projected period of years that a landfill will receive waste, from the time of opening until closure, based on the volume of waste to be received projected at the time of submittal of the initial project plan and the calculated refuse capacity of the landfill based upon the design of the project.

11. "*Manufacturer*" means a person who by labor, art, or skill transforms raw material into a finished product or article of trade.

12. "*Photodegradable*" means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

13. "*Postclosure*" and "*postclosure care*" mean the time and actions taken for the care, maintenance, and monitoring of a sanitary disposal project after closure that will prevent, mitigate, or minimize the threat to public health, safety, and welfare and the threat to the environment posed by the closed facility.

14. "*Postclosure plan*" means the plan which specifies the methods and schedule by which the operator will

perform the necessary monitoring and care for the area after closure of a sanitary disposal project.

15. *"Private agency"* means a private agency as defined in section 28E.2.

16. *"Public agency"* means a public agency as defined in section 28E.2.

17. *"Resource recovery system"* means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.

18. *"Sanitary disposal project"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

19. *"Sanitary landfill"* means a sanitary disposal project where solid waste is buried between layers of earth.

20. *"Solid waste"* means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 90. However, this division does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards.

[C71, § 406.2; C73, 75, 77, 79, 81, § 455B.75]

C83, § 455B.301

85 Acts, ch 241, §1, 2; 86 Acts, ch 1175, § 1; 87 Acts, ch 225, §404; 88 Acts, ch 1182, § 1; 90 Acts, ch 1168, § 50; 91 Acts, ch 252, § 4; 92 Acts, ch 1182, § 1

455B.301A Declaration of policy.

1. The protection of the health, safety, and welfare of Iowans and the protection of the environment require the safe and sanitary disposal of solid wastes. An effective and efficient solid waste disposal program protects the environment and the public, and provides the most practical and beneficial use of the material and energy values of solid waste. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and a reduction in the reliance upon land disposal of solid waste are encouraged. In the promotion of these goals, the following waste management hierarchy in descending order of preference, is established as the solid waste management policy of the state:

a. Volume reduction at the source.

b. Recycling and reuse.

c. Other approved techniques of solid waste management including, but not limited to, combustion with energy recovery, combustion for waste disposal, and disposal in sanitary landfills.

2. In the implementation of the solid waste management policy, the state shall:

a. Establish and maintain a cooperative state and local program of project planning, and technical and

financial assistance to encourage comprehensive solid waste management.

b. Utilize the capabilities of private enterprise as well as the services of public agencies to accomplish the desired objectives of an effective solid waste management program.

87 Acts, ch 225, §405; 94 Acts, ch 1177, §1

455B.302 Duty of cities and counties agreements liens.

Every city and county of this state shall provide for the establishment and operation of a comprehensive solid waste reduction program consistent with the waste management hierarchy under section 455B.301A, and a sanitary disposal project for final disposal of solid waste by its residents. Comprehensive programs and sanitary disposal projects may be established either separately or through co-operative efforts for the joint use of the participating public agencies as provided by law.

Cities and counties may execute with public and private agencies contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same. Any agreement executed with a private agency for the operation of a sanitary disposal project shall provide for the posting of a sufficient surety bond by the private agency conditioned upon the faithful performance of the agreement. A city or county may at any time during regular working hours enter upon the premises of a sanitary disposal project, including the premises of a sanitary landfill, in order to inspect the premises and monitor the operations and general administration of the project to ensure compliance with the agreement and with state and federal laws. This includes the right of the city or county to enter upon the premises of a former sanitary disposal project which has been closed, including the premises of a former sanitary landfill, owned by a private agency, for the purpose of providing required postclosure care.

A city or county which provides closure or postclosure care on the premises of a sanitary landfill owned by a private agency, shall have a lien upon the property to secure payment for the amount of materials and labor expended by the city or county to perform the required closure or postclosure care on the premises. The lien shall be recordable and collectable in the same manner as provided in section 424.11. The lien shall attach at the time the city or county incurs expenses to provide closure or postclosure care on the premises of the sanitary landfill. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only upon filing a notice of the lien with the recorder of the county in which the property is located. Upon payment, the city or county shall release the lien. If no lien has been recorded at the time the property is sold or transferred, the property shall not be subject to a lien or claim for any closure or postclosure costs incurred by the city or county.

[C71, § 406.3; C73, 75, 77, 79, 81, § 455B.76]

C83, § 455B.302

88 Acts, ch 1169, § 4; 89 Acts, ch 272, § 28; 94 Acts, ch 1044, §1

455B.303 Administrator's duties.

The director shall administer the provisions of this part 1 of division IV subject to the rules established by the commission.

Local boards of health shall co-operate in the enforcement of the provisions of said part and the director may seek their aid and delegate administrative duties of the department to the local boards of health in matters relating to solid waste, refuse disposal plants, and sanitary disposal projects.

The director may issue, modify, or deny variances from the rules of the commission. The applicant may appeal the decision of the director to the commission.

[C71, § 406.4; C73, 75, 77, 79, 81, § 455B.77]

C83, § 455B.303

86 Acts, ch 1245, § 1899

455B.304 Rules established.

1. The commission shall establish rules for the proper administration of this part 1 of division IV which shall reflect and accommodate as far as is reasonably possible the current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of this part, and which shall take into consideration the factors, including others which it deems proper, such as existing physical conditions, topography, soils and geology, climate, transportation, and land use, and which shall include but are not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of this part.

2. The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307. The rules adopted under this subsection shall be generally consistent with those rules of the department existing on January 1, 1982, regarding the land application of municipal sewage sludge except that they may provide for different methods of application for wet sludge and dry sludge.

3. The commission shall adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill. The rules shall prohibit land burial or disposal by land application of wet sewer sludge at a sanitary landfill.

4. The commission shall adopt rules requiring that each sanitary disposal project established pursuant to section 455B.302 and permitted pursuant to section 455B.305 install and maintain a sufficient number of groundwater monitoring wells to adequately determine the quality of the groundwater and the impact the sanitary disposal project, if any, is having on the groundwater adjacent to the sanitary disposal project site.

5. The commission shall adopt rules requiring a schedule of monitoring of the quality of groundwater adjacent to the sanitary disposal project from the groundwater monitoring wells installed in accordance with this section during the period the sanitary disposal project is in use. Schedules of monitoring may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operation characteristics, and volumes and types of wastes handled at the sanitary disposal project site.

6. The commission shall, by rule, require continued monitoring of groundwater pursuant to this section for a period of thirty years after the sanitary disposal project is closed. The commission may prescribe a lesser period of monitoring duration and frequency in consideration of the potential or lack thereof for groundwater contamination from the sanitary disposal project. The commission may extend the thirty-year monitoring

period on a site-specific basis by adopting rules specifically addressing additional monitoring requirements for each sanitary disposal project for which the monitoring period is to be extended.

7. The commission shall adopt rules which may require the installation of shafts to relieve the accumulation of gas in a sanitary disposal project.

8. The commission shall adopt rules which establish closure, postclosure, leachate control and treatment, and financial assurance standards and requirements and which establish minimum levels of financial responsibility for sanitary disposal projects.

9. The commission shall adopt rules which establish the minimum distance between tiling lines and a sanitary landfill in order to assure no adverse effect on the groundwater.

10. The commission shall adopt rules for the distribution of grants to cities, counties, central planning agencies, and public or private agencies working in cooperation with cities or counties, for the purpose of solid waste management. The rules shall base the awarding of grants on a project's reflection of the solid waste management policy and hierarchy established in section 455B.301A, the proposed amount of local matching funds, and community need.

11. By July 1, 1990, a sanitary landfill disposal project operating with a permit shall have a trained, tested, and certified operator. A certification program shall be devised or approved by rule of the department.

12. The commission shall adopt rules for the certification of operators of solid waste incinerators. The criteria for certification shall include, but is not limited to, an operator's technical competency and operation and maintenance of solid waste incinerators.

13. Notwithstanding the provisions of this chapter regarding the requirement of the equipping of a sanitary landfill with a leachate control system and the establishment and continuation of a postclosure account, the department shall adopt rules which provide for an exemption from the requirements to equip a publicly owned sanitary landfill with a leachate control system and to establish and maintain a postclosure account if the sanitary landfill operator is a public agency, if the sanitary landfill has closed or will close by July 1, 1992, and will no longer accept waste for disposal after that date, and if at the time of closure of the sanitary landfill monitoring of the groundwater does not reveal the presence of leachate. The department shall require postclosure groundwater monitoring and shall establish the requirements for the implementation of leachate collection and control in cases in which leachate is found during postclosure monitoring. The department shall provide for a closure completion period following the date of closure of a sanitary landfill. Notwithstanding the provisions of this paragraph, the public agency shall retain financial responsibility for closure and postclosure requirements applicable to sanitary disposal projects.

14. The commission shall adopt rules providing for the land application of soils resulting from the remediation of underground storage tank releases in the state.

15. The commission shall adopt rules which require all sanitary disposal projects in which the tonnage fee pursuant to section 455B.310 is imposed, to install scales and utilize these scales to calculate payment of the tonnage fee.

16. The commission shall adopt rules which prohibit the land application of petroleum contaminated soils on flood plains.

17. The commission shall adopt rules to establish a special waste authorization program. For purposes of this subsection, "*special waste*" means any industrial process waste, pollution control waste, or toxic waste which presents a threat to human health or the environment or a waste with inherent properties which make the disposal of the waste in a sanitary landfill difficult to manage. Special waste does not include domestic,

office, commercial, medical, or industrial waste that does not require special handling or limitations on its disposal. Special waste does not include hazardous wastes which are regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 69216934, hazardous wastes as defined in section 455B.411, subsection 3, or hazardous wastes included in the list compiled in accordance with section 455B.464.

18. The commission shall adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

[C71, § 406.5; C73, 75, 77, 79, 81, § 455B.78; 82 Acts, ch 1112, § 1, 2]

C83, § 455B.304

85 Acts, ch 58, § 1; 86 Acts, ch 1174, § 13; 87 Acts, ch 225, § 406408; 89 Acts, ch 272, § 29; 90 Acts, ch 1235, § 16; 90 Acts, ch 1255, § 27; 90 Acts, ch 1260, § 25; 92 Acts, ch 1215, § 5; 94 Acts, ch 1177, §2; 95 Acts, ch 61, §2; 95 Acts, ch 215, §3; 97 Acts, ch 137, §7; 98 Acts, ch 1193, §1

455B.305 Issuance or renewal of permits by director.

1. The director shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects.

A permit shall be issued by the director or at the director's direction, by a local board of health, for each sanitary disposal project operated in this state. The permit shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating the project. Each sanitary disposal project shall be inspected annually by the department or a local board of health. The permits issued pursuant to this section are in addition to any other licenses, permits or variances authorized or required by law, including, but not limited to, chapter 335. A permit may be suspended or revoked by the director if a sanitary disposal project is found not to meet the requirements of part 1 or rules issued under part 1. The suspension or revocation of a permit may be appealed to the department.

2. Beginning July 1, 1988, the director shall not issue a permit for the construction or operation of a new sanitary disposal project unless the permit applicant, in conjunction with all local governments using the sanitary disposal project, has filed a plan as required by section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of section 455B.306.

3. Beginning July 1, 1988, the director shall not renew or reissue a permit which had been initially issued prior to that date for a sanitary disposal project, unless the permit applicant, in conjunction with all local governments using the sanitary disposal project, has filed a plan as required by section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of section 455B.306.

4. Beginning July 1, 1994, the director shall not renew or reissue a permit which had been initially issued or renewed prior to that date for a sanitary disposal project, unless and until the permit applicant, in conjunction with all local governments using the sanitary disposal project, documents that steps are being taken to begin implementing the plan filed pursuant to section 455B.306. For those sections for which the department has not developed rules, the permit shall contain conditions and a schedule for meeting all applicable requirements of section 455B.306. However, a permit may be issued for the construction and operation of a new sanitary disposal project in accordance with subsection 2.

5. Beginning July 1, 1997, the director shall not renew or reissue a permit which had been renewed or reissued prior to that date for a sanitary landfill, unless and until the permit applicant, in conjunction with all

local governments using the landfill, documents that alternative methods of solid waste disposal other than use of a sanitary landfill have been implemented as set forth in the plan filed pursuant to section 455B.306. However, the director may issue a permit for the construction and operation of a new sanitary landfill in accordance with subsection 2 and a permit may be renewed or reissued for a sanitary landfill which had received an initial permit but the permit had not been previously renewed or reissued prior to July 1, 1997 in accordance with subsection 3.

After July 1, 1997, however, no new landfill permits shall be issued unless the applicant, in conjunction with all local governments which will use the landfill, certifies that the landfill is needed as a part of an alternative disposal method, or unless the applicant provides documentation which satisfies the director that alternatives have been studied and are not either technically or economically feasible. The decision of the director is subject to review by the commission at its next meeting.

6. Beginning July 1, 1992, the director shall not issue a permit for a sanitary landfill unless the sanitary landfill is equipped with a leachate control system. Beginning July 1, 1994, the director shall not renew or reissue a permit for an existing sanitary landfill unless the sanitary landfill is equipped with a leachate control system. During the period from July 1, 1992, through June 30, 1994, the director may require an existing sanitary landfill to install a leachate control system if leachate from the sanitary landfill is adversely impacting the public health or safety or the environment. During the period from July 1, 1992, through June 30, 1994, the director shall require an existing sanitary landfill to install a leachate control system if the sanitary landfill has not submitted a completed hydrogeological plan to the department. The director may exempt a permit applicant from these requirements if the director determines that certain conditions regarding, but not limited to, existing physical conditions, topography, soil, geology, and climate, are such that a leachate control system is unnecessary. The director may exempt a permit applicant from the requirements of this subsection if the permittee certifies that a risk assessment of the site indicates that a current or potential threat to environmental health does not exist such that an exposed individual has no greater than a one in one million risk of developing cancer and for noncarcinogens a hazard index of less than one. The director shall use the United States environmental protection agency's risk assessment guidance for the superfund as a basis for determining whether to grant the exemption. The exemption in this subsection shall apply only to sanitary landfill cells in existence prior to July 1, 1992, or the vertical expansion above a cell in which waste was deposited prior to July 1, 1992. A sanitary landfill permittee desiring an exemption shall apply to the director and certify a completion date for a risk assessment study by December 1, 1994. If an exemption is not granted, or if the risk assessment study concludes that a leachate control system is required, a permittee shall certify a completion date and increments of progress for the installation of a leachate control system. The department shall retain the discretion to approve or disapprove a risk assessment study or a proposed completion date under this subsection. If a schedule for a risk assessment study or the installation of a leachate control system is approved by the department and satisfactory progress is being made toward completion of the study or the installation of the leachate control system, the permittee shall not be subject to penalties for failure to meet the requirements of this subsection.

7. The director shall not issue or renew a permit for a transfer station operating as part of an agreement between two planning areas pursuant to section 455B.306, subsection 2, until the applicant, in conjunction with all local governments using the transfer station, documents that alternative methods of solid waste disposal other than final disposal in a sanitary landfill have been implemented as set forth in the plan filed pursuant to section 455B.306.

[C71, § 406.6; C73, 75, 77, 79, 81, § 455B.79]

C83, § 455B.305

83 Acts, ch 136, § 4; 86 Acts, ch 1175, § 2; 86 Acts, ch 1245, § 1899, 1899B; 87 Acts, ch 225, § 409, 410; 89 Acts, ch 272, § 30; 92 Acts, ch 1215, § 6; 94 Acts, ch 1177, §3; 2005 Acts, ch 31, §1

455B.305A Local approval of sanitary landfill and infectious waste incinerator projects.

1. Prior to the siting of a proposed, new sanitary landfill, incinerator, or infectious medical waste incinerator, a city, county, or private agency, shall submit a request for local siting approval to the city council or county board of supervisors which governs the city or county in which the proposed site is to be located. The requirements of this section do not apply to the expansion of an existing sanitary landfill owned by a private agency which disposes of waste which the agency generates on property owned by the agency. The city council or county board of supervisors shall approve or disapprove the site for each sanitary landfill, or incinerator, or infectious medical waste incinerator.

Prior to the siting of a proposed new sanitary landfill or incinerator by a private agency disposing of waste which the agency generates on property owned by the agency which is located outside of the city limits and for which no county zoning ordinance exists, the private agency shall cause written notice of the proposal, including the nature of the proposed facility, and the right of the owner to submit a petition for formal siting of the proposed site, to be served either in person or by mail on the owners and residents of all property within two miles in each direction of the proposed local site area. The owners shall be identified based upon the authentic tax records of the county in which the proposed site is to be located. The private agency shall notify the county board of supervisors which governs the county in which the site is to be located of the proposed siting, and certify that notices have been mailed to owners and residents of the impacted area. Written notice shall be published in the official newspaper, as selected by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, and a description of the right of persons to comment on the request. If two hundred fifty or a minimum of twenty percent, whichever is less, of the owners and residents of property notified submit a petition for formal review to the county board of supervisors or if the county board of supervisors, on the board's own motion, requires formal review of the proposed siting, the private agency proposal is subject to the formal siting procedures established pursuant to this section.

2. An applicant for siting approval shall submit information to the city council or county board of supervisors to demonstrate compliance with the requirements prescribed by this chapter regarding a sanitary landfill or infectious waste incinerator. Siting approval shall be granted only if the proposed project meets all of the following criteria:

a. The project is necessary to accommodate the solid waste management needs of the area which the project is intended to serve.

b. The project is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.

c. The project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council or county board of supervisors shall consider the advice of the appropriate planning and zoning commission regarding the application.

d. The plan of operations for the project is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

e. The traffic patterns to or from the project are designed in order to minimize the impact on existing traffic flows.

f. Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council or county board of supervisors.

g. The department of natural resources has been consulted by the city council or board of supervisors prior to the approval.

3. No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request to be served either in person or by restricted certified mail on the owners of all property within the proposed local site area not solely owned by the applicant, and on the owners of all property within one thousand feet in each direction of the lot line of the proposed local site property if the proposed local site is within the city limits, or within two miles in each direction of the lot line of the proposed local site property if the proposed local site is outside of the city limits. The owners shall be identified based upon the authentic tax records of the county in which the project is to be located.

Written notice shall be published in the official newspaper of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on the request.

4. An applicant shall file a copy of its request with the department and with the city council or the county board of supervisors in which the proposed site is located. The request shall include the substance of the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed project. All documents or other materials pertaining to the proposed project on file with the city council or county board of supervisors shall be made available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction.

Any person may file written comment with the city council or county board of supervisors concerning the appropriateness of the proposed site for its intended purpose. The city council or county board of supervisors shall consider any comment received or postmarked not later than thirty days after the date of the last public hearing.

5. At least one public hearing shall be held by the city council or county board of supervisors no sooner than ninety days but no later than one hundred twenty days from receipt of the request for siting approval. A hearing shall be preceded by published notice in an official newspaper of the county of the proposed site, including in any official newspaper located in the city of the proposed site.

6. Decisions of the city council or the county board of supervisors shall be in writing, specifying the reasons for the decision. The written decision of the city council or the county board of supervisors shall be available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction. Final action shall be taken by the city council or the county board of supervisors within one hundred eighty days after the filing of the request for site approval.

At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council or the county board of supervisors and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection 9. The time limitation for final action on an amended application shall be extended for an additional ninety days.

7. Construction of a project which is granted local siting approval under this section shall commence within one calendar year from the date upon which it was granted or the permit shall be nullified.

8. The local siting approval, criteria, and other procedures provided for in this section are the exclusive local siting procedures. Local zoning, ordinances, or other local land use requirements may be considered in such siting decisions.

9. A city council or a county board of supervisors shall charge an applicant for siting approval, under this section, a fee to cover the reasonable and necessary costs incurred by the city or county in the siting approval process.

10. An applicant shall not file a request for local siting approval which is substantially the same as a request which was denied within the preceding two years pursuant to a finding against the applicant under the established criteria.

90 Acts, ch 1191, § 1; 92 Acts, ch 1182, § 2, 3; 94 Acts, ch 1023, §55

455B.305B Appeal from decision. Repealed by 90 Acts, ch 1191, § 8.

455B.306 Plans filed.

1. A city, county, and a private agency operating or planning to operate a sanitary disposal project shall file with the director one of two types of comprehensive plans detailing the method by which the city, county, or private agency will comply with this part 1. The first type is a comprehensive plan in which solid waste is disposed of in a sanitary landfill within the planning area. The second type is a comprehensive plan in which all solid waste is consolidated at and transported from a transfer station for disposal at a sanitary landfill in another comprehensive planning area.

All cities and counties shall also file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents.

For the purposes of this section, a public agency managing the waste stream for cities or counties pursuant to chapter 28E, shall file one comprehensive plan on behalf of its members, which constitutes full compliance by the public agency's members with the filing requirements of this section. If both a public agency managing the waste stream for a city or county pursuant to chapter 28E, and one or more of the public agency's member cities or counties file a comprehensive plan under this subsection, the director shall, following notice to the agency, make a determination that any plan filed by a member city or county is compatible with the comprehensive plan of the chapter 28E public agency. If the director determines that the comprehensive plan of a city or county is not compatible with the comprehensive plan of a chapter 28E public agency, the director shall require the city or county to provide justification for approval of the comprehensive plan based upon the innovative nature of the comprehensive plan, the urgency of implementation, or other unique features of the comprehensive plan of the city or county, and that the plan otherwise complies with the provisions of this chapter.

This subsection does not prevent the director from approving pilot projects which otherwise comply with the provisions of this chapter. The director shall review each comprehensive plan submitted and may reject, suggest modification, or approve the proposed plan. The director shall aid in the development of comprehensive plans for compliance with this part. The director shall make available to a city, county, and private agency appropriate forms for the submission of comprehensive plans and may hold hearings for the purpose of implementing this part. The director and governmental agencies with primary responsibility for the development and conservation of energy resources shall provide research and assistance, when cities and counties operating or planning to operate sanitary disposal projects request aid in planning and implementing resource recovery systems.

A comprehensive plan filed by a private agency operating or planning to operate a sanitary disposal project required pursuant to section 455B.302 shall be developed in cooperation and consultation with the city or county responsible to provide for the establishment and operation of a sanitary disposal project.

A completed plan for the control and treatment of leachate, submitted to meet the requirements of section

455B.305, subsection 6, shall be reviewed by the director, and the director shall reject, suggest modifications, or approve the completed plan within six months of submittal of the plan. If no action is taken within the six-month period, the plan shall be considered approved. However, the director may require updating of the plan at the time of renewal or reissuance of a previously issued permit.

2. A planning area that closes all of the municipal solid waste sanitary landfills located in the planning area and chooses to use a municipal solid waste sanitary landfill in another planning area that complies with all requirements under subtitle D of the federal Resource Conservation and Recovery Act, with all solid waste generated within the planning area being consolidated at and transported from a permitted transfer station, may elect to retain autonomy as a planning area and shall not be required to join the planning area where the landfill being used for final disposal of solid waste is located. If a planning area makes the election under this subsection, the planning area receiving the solid waste from the planning area making the election shall not be required to include the planning area making the election in a comprehensive plan provided no services are shared between the two planning areas other than the acceptance of solid waste for sanitary landfill. The planning area receiving the solid waste shall only be responsible for the permitting, planning, and waste reduction and diversion programs in the planning area receiving the solid waste. If the department determines that solid waste cannot reasonably be consolidated and transported from a particular transfer station, the department may establish permit conditions to address the transport and disposal of the solid waste. An election may be made under this subsection only if the two comprehensive planning areas enter into an agreement pursuant to chapter 28E that includes, at a minimum, all of the following:

a. A detailed methodology of the manner in which solid waste will be tracked and reported between the two planning areas.

b. A detailed methodology of the manner in which the receiving sanitary landfill will collect, remit, and report tonnage fees, pursuant to section 455B.310, paid by the planning area that is transporting the solid waste. The methodology shall include both the remittances of tonnage fees to the state and the retained tonnage fees.

3. The plan required by subsection 1 for sanitary disposal projects shall be filed with the department at the time of initial application for the construction and operation of a sanitary disposal project and at a minimum shall be updated and refiled with the department at the time of each subsequent application for renewal or reissuance of a previously issued permit. The department may, consistent with rules of the commission, require filing or updating of a plan at other times.

4. A city or county required to file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents and which seeks approval of the inclusion of refuse-derived fuel as a component of its percentage of waste reduction, shall file an annual report with the director regarding the percentage of reduction attributable to refuse-derived fuel and the justification for such inclusion. The director shall approve or reject the inclusion. The percentage of reduction attributable to refuse-derived fuel and allowable for inclusion shall not exceed fifty percent.

5. A comprehensive plan filed pursuant to this section shall incorporate and reflect the waste management hierarchy of the state solid waste management policy and shall at a minimum address the following general topics:

a. The extent to which solid waste is or can be recycled.

b. The economic and technical feasibility of using other existing sanitary disposal project facilities in lieu of initiating or continuing the sanitary landfill currently used.

c. The expected environmental impact of alternative solid waste disposal methods, including the use of

sanitary landfills.

d. A specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact.

6. The comprehensive plan shall provide details of a local recycling program which shall contain a methodology for meeting the state volume reduction goal pursuant to section 455D.3, and a methodology for implementing a program of separation of wastes including but not limited to glass, plastic, paper, and metal.

7. In addition to the above requirements, the following specific areas must be addressed in detail in a comprehensive plan filed in conjunction with the issuance, renewal, or reissuance of a permit for a sanitary disposal project:

a. A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure adopted by rule by the commission. The plan shall include, but is not limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting these costs. The postclosure plan shall reflect the thirty-year time period requirement for postclosure responsibility.

b. A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of control and treatment in order to meet the requirements of section 455B.305, subsection 6.

c. A financial plan detailing the actual cost of the sanitary disposal project and including the funding sources of the project. In addition to the submittal of the financial plan filed pursuant to this subsection, the operator of an existing sanitary landfill shall submit an annual financial statement to the department.

d. An emergency response and remedial action plan including established provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment, and the identification of possible occurrences that may endanger human health and environment.

e. A description of the planning area and service area to be served by the city, county, or private agency under the comprehensive plan. Except as provided in subsection 2, a comprehensive plan shall not include a planning area or service area, any part of which is included in another comprehensive plan.

8. When a proposed plan is subject to review and approval by several state and local agencies, if the plan is substantially modified after approval by an agency, the plan shall be resubmitted as a new proposal to all other agencies to ensure that all agencies have approved the same plan.

9. In addition to the comprehensive plan filed pursuant to subsection 1, a person operating or proposing to operate a sanitary disposal project shall provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility beginning July 1, 1988.

a. The financial assurance instrument shall meet all requirements adopted by rule by the commission, and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Following the cessation of operation or closure of a sanitary disposal project, neither the guarantor nor the operator shall cancel, revoke, or disburse the financial assurance instrument or allow the instrument to terminate until the operator is released from closure, postclosure, and monitoring responsibilities.

b. The operator shall maintain closure, and postclosure accounts. The commission shall adopt by rule the amounts to be contributed to the accounts based upon the amount of solid waste received by the facility. The accounts established shall be specific to the facility.

(1) Money in the accounts shall not be assigned for the benefit of creditors with the exception of the state.

(2) Money in an account shall not be used to pay any final judgment against a licensee arising out of the ownership or operation of the site during its active life or after closure.

(3) Conditions under which the department may gain access to the accounts and circumstances under which the accounts may be released to the operator after closure and postclosure responsibilities have been met, shall be established by the commission.

c. The commission shall adopt by rule the minimum amounts of financial responsibility for sanitary disposal projects.

d. Financial assurance instruments may include instruments such as cash or surety bond, a letter of credit, a secured trust fund, or a corporate guarantee.

e. The annual financial statement submitted to the department pursuant to subsection 7, paragraph "c", shall include the current amounts established in each of the accounts and the projected amounts to be deposited in the accounts in the following year.

10. If a city, county, or private agency does not incorporate the elements of the solid waste hierarchy of the state solid waste management policy in a proposed initial or adopted comprehensive plan, the city council or county board of supervisors governing the city or county in which the sanitary landfill is proposed to be located or is located shall hold a public hearing to address the basis for not including any of the elements in the plan.

11. A city council or county board of supervisors governing the area in which a sanitary disposal project is proposed to be located or is located shall hold a public hearing to address the issue of including or not including local curbside recycling in the comprehensive plan.

[C71, § 406.7; C73, 75, 77, 79, 81, § 455B.80]

C83, § 455B.306

86 Acts, ch 1175, § 3; 86 Acts, ch 1245, § 1899; 87 Acts, ch 225, § 411414; 89 Acts, ch 272, § 31, 32; 90 Acts, ch 1255, § 24; 92 Acts, ch 1213, § 1; 92 Acts, ch 1215, § 79; 2004 Acts, ch 1078, §1; 2005 Acts, ch 31, §24

455B.306A Annexation of territory expansion of services.

1. A city which annexes an area pursuant to chapter 368, or plans to operate or expand solid waste collection services into an area where the collection of solid waste is presently being provided by a private entity, shall notify the private entity by certified mail at least sixty days before its annexation or expansion of its intent to provide solid waste collection services in the area.

2. A city shall not commence alternative solid waste collection in such an area for one year from the effective date of the annexation or one year from the effective date of the notice that the city intends to operate or expand solid waste collection services in the area, unless the city contracts with the private entity to continue the services for that period.

3. A private entity providing solid waste collection services pursuant to this section shall provide solid waste collection services in the area in accordance with the city's comprehensive plan.

92 Acts, ch 1174, § 6

455B.307 Dumping where prohibited penalty.

1. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director unless the agency has been granted a permit by the department which allows the dumping or depositing of solid waste on land owned or leased by the agency. The department shall adopt rules regarding the permitting of this activity which shall provide that the public interest is best served, but which may be based upon criteria less stringent than those regulating a public sanitary disposal project provided that the rules adopted meet the groundwater protection goal specified in section 455E.4. The comprehensive plans for these facilities may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operations characteristics, and volumes and types of waste handled at the disposal site. The director may issue temporary permits for dumping or disposal of solid waste at disposal sites for which an application for a permit to operate a sanitary disposal project has been made and which have not met all of the requirements of part 1 of this division and the rules adopted by the commission if a compliance schedule has been submitted by the applicant specifying how and when the applicant will meet the requirements for an operational sanitary disposal project and the director determines the public interest will be best served by granting such temporary permit.

2. The director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules adopted pursuant to the part. The attorney general shall, on request of the department, institute any legal proceedings necessary in obtaining compliance with an order of the commission or the director or prosecuting any person for a violation of the provisions of the part or rules issued pursuant to the part.

3. Any person who violates any provision of part 1 of this division or any rule or any order adopted or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty, not to exceed five thousand dollars for each day of such violation.

[C71, § 406.9; C73, 75, 77, 79, 81, § 455B.82]

C83, § 455B.307

86 Acts, ch 1245, § 1899; 87 Acts, ch 225, § 415; 88 Acts, ch 1169, § 5; 89 Acts, ch 281, § 1

455B.307A Discarding of solid waste prohibitions penalty.

1. For the purposes of this section, "*discard*" means to place, cause to be placed, throw, deposit, or drop.

2. A person shall not discard solid waste onto or in any water or land of the state, or into areas or receptacles provided for such purposes which are under the control of or used by a person who has not authorized the use of the receptacle by the person discarding the solid waste.

3. A person who violates this section is subject to a civil penalty not to exceed five hundred dollars for each violation.

92 Acts, ch 1215, § 10

455B.307B Illegal dumping enforcement officer.

1. For purposes of this section, "*officer*" means the illegal dumping enforcement officer in a county.
2. The board of supervisors of each county may annually appoint an illegal dumping enforcement officer for the county. The board of supervisors may appoint the officer from recommendations by the county board of health or may select a person outside the recommendations made by the county board of health. The board of supervisors shall appoint a person who is a citizen of the United States, is of good moral character, and has not previously been convicted of a felony.
3. An illegal dumping enforcement officer shall take an oath of office prescribed by the board of supervisors. An officer's appointment shall be effective March 1 and shall continue for a term at the discretion of the board of supervisors.
4. An illegal dumping enforcement officer, subject to direction and control by the county board of supervisors, shall only be empowered to enforce the provisions of sections 455B.307A and 455B.363 and local littering ordinances. An officer shall not have the duty to enforce any other traffic or criminal laws of the state, county, or a municipality. An officer may enter upon any public land in the county, excluding land within the limits of cities, unless otherwise authorized by a city, and any private property with the permission of the landowner at any time for the performance of the officer's duties, and may hire the labor and equipment necessary subject to the approval of the board of supervisors.
5. A person shall not willfully obstruct, resist, impede, or interfere with an illegal dumping enforcement officer in connection with the officer's enforcement of sections 455B.307A and 455B.363 and local littering ordinances. A person shall not willfully retaliate or discriminate in any manner against an officer as a reprisal for any act or omission of the officer. A person violating this subsection is guilty of a simple misdemeanor.

2004 Acts, ch 1128, §1

455B.308 Appeal from order.

Any person aggrieved by an order of the director may appeal the order by filing a written notice of appeal with the director within thirty days of the issuance of the order. The director shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The hearing may be held before the commission or its designee. A complete record shall be made of the proceedings. The director shall issue the findings in writing to the aggrieved person within thirty days of the conclusion of the hearing. Judicial review may be sought of actions of the commission in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Act, petitions for judicial review may be filed in the district court of the county where the acts in issue occurred.

[C71, § 406.10; C73, 75, 77, 79, 81, § 455B.83]

C83, § 455B.308

86 Acts, ch 1245, § 1899; 2003 Acts, ch 44, §114

455B.309 Groundwater fund. Repealed by 87 Acts, ch 225, §116. See §455E.11.

455B.310 Tonnage fee imposed appropriations exemptions.

1. Except as provided in subsection 5, the operator of a sanitary landfill shall pay a tonnage fee to the department for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill during the preceding reporting period. The department shall determine by rule the volume which is equivalent to a ton of waste.

2. The tonnage fee is four dollars and twenty-five cents per ton of solid waste.

3. If a sanitary landfill required to pay a tonnage fee under this section has an updated comprehensive plan approved by the department, the sanitary landfill operator shall retain, in addition to the ninety-five cents retained pursuant to subsection 4, twenty-five cents of the tonnage fee per ton of solid waste in the fiscal year beginning July 1, 1998, and every year thereafter. In the fiscal year beginning July 1, 1999, and every year thereafter, any planning area which meets the statewide average, as determined by the department on July 1, 1999, shall retain, in addition to the twenty-five cents retained pursuant to this subsection, ten cents of the tonnage fee per ton of solid waste regardless of whether the planning area subsequently fails to meet the statewide average. Any tonnage fees retained pursuant to this subsection shall be used for waste reduction, recycling, or small business pollution prevention purposes. Any tonnage fee retained pursuant to this subsection shall be taken from that portion of the tonnage fee which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph "a", subparagraph (1).

4. If a planning area achieves the fifty percent waste reduction goal provided in section 455D.3, ninety-five cents of the tonnage fee shall be retained by a city, county, or public or private agency. If the fifty percent waste reduction goal has not been met, one dollar and twenty cents of the tonnage fee shall be retained by a city, county, or public or private agency. Moneys retained by a city, county, or public or private agency shall be used as follows:

a. To meet comprehensive planning requirements of section 455B.306, the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, and the preparation of a financial plan.

b. If a planning area achieves the fifty percent waste reduction goal provided in section 455D.3, forty-five cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. If the fifty percent waste reduction goal has not been met, seventy cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. The funds shall be distributed to a city, county, or public agency served by the sanitary disposal project. Fees collected by a private agency which provides for the final disposal of solid waste shall be remitted to the city, county, or public agency served by the sanitary disposal project. However, if a private agency is designated to develop and implement the comprehensive plan pursuant to section 455B.306, fees under this paragraph shall be retained by the private agency.

c. For other environmental protection activities.

d. Each sanitary landfill owner or operator shall submit a return to the department identifying the use of all fees retained under this section including the manner in which the fees were distributed. A planning area entering into an agreement pursuant to section 455B.306, subsection 2, shall submit such information to the department and a planning area receiving the solid waste under such an agreement shall, in addition, submit evidence to the department demonstrating that required retained fees were returned in a timely manner to other planning areas under the agreement. The return shall be submitted concurrently with the return required under subsection 7.

5. Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, cement kiln dust, foundry sand, and solid waste materials approved by the department for lining or capping, or for construction berms, dikes, or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this section. However, solid waste disposal facilities under this subsection are subject to the fees imposed pursuant to section 455B.105, subsection 11, paragraph "a". Notwithstanding the provisions of section 455B.105,

subsection 11, paragraph "b", the fees collected pursuant to this subsection shall be deposited in the solid waste account as established in section 455E.11, subsection 2, paragraph "a", to be used by the department for the regulation of these solid waste disposal facilities.

6. All tonnage fees received by the department under this section shall be deposited in the solid waste account of the groundwater protection fund created under section 455E.11.

7. Fees imposed by this section shall be paid to the department on a quarterly basis with payment due by no more than ninety days following the quarter during which the fees were collected. The payment shall be accompanied by a return which shall identify the amount of fees to be allocated to the landfill alternative financial assistance program, the amount of fees, in terms of cents per ton, retained for meeting waste reduction and recycling goals under section 455D.3, and additional fees imposed for failure to meet the twenty-five percent waste reduction and recycling goal under section 455D.3. Sanitary landfills serving more than one planning area shall submit separate reports for each planning area.

8. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section or who fails or refuses to provide the return required by this section shall be assessed a penalty of two percent of the fee due for each month the fee or return is overdue. The penalty shall be paid in addition to the fee due.

9. Foundry sand used by a sanitary landfill as daily cover, road base, or berm material or for other purposes defined as beneficial uses by rule of the department is exempt from imposition of the tonnage fee under this section. Sanitary landfills shall use foundry sand as a replacement for earthen material, if the foundry sand is generated by a foundry located within the state and if the foundry sand is provided to the sanitary landfill at no cost to the sanitary landfill.

85 Acts, ch 241, §4; 86 Acts, ch 1175, § 5; 87 Acts, ch 225, § 416418; 88 Acts, ch 1169, § 68; 90 Acts, ch 1070, § 1; 91 Acts, ch 257, § 25; 92 Acts, ch 1215, § 11, 12; 92 Acts, ch 1239, §47; 92 Acts, ch 1244, § 44; 93 Acts, ch 176, §45; 95 Acts, ch 80, §1; 98 Acts, ch 1018, §1; 98 Acts, ch 1193, §2; 2001 Acts, ch 124, §1, 6; 2005 Acts, ch 31, §5, 6

455B.311 Grants.

The director, with the approval of the commission, may make grants to cities, counties, or central planning agencies representing cities and counties or combinations of cities, counties, or central planning agencies from funds reserved under and for the purposes specified in section 455E.11, subsection 2, paragraph "a", subject to all of the following conditions:

1. Application for grants shall be in a form and contain information as prescribed by rule of the department.
2. Grants shall only be awarded to a city or a county; however, a grant may be made to a central planning agency representing more than one city or county or combination of cities or counties for the purpose of planning and implementing regional solid waste management facilities or may be made to private or public agencies working in cooperation with a city or county. The department shall award grants, in accordance with the rules adopted by the commission, based upon a proposal's reflection of the solid waste management policy and hierarchy established in section 455B.301A. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants may be awarded at a maximum cost-share level of ninety percent with a preference given for regional or shared projects and a preference given to projects involving environmentally fragile areas which are particularly subject to groundwater contamination. Grants shall be awarded in a manner which will distribute the grants geographically throughout the state.
3. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants for less than a county-wide planning area

shall be limited to twenty-five percent state funds, for a single-county planning area the state funds shall be limited to fifty percent, and for a two-county planning area the state funds shall be limited to seventy-five percent. For each additional county above a two-county planning area, the maximum allowable state funds shall be increased by an additional five percent, up to a maximum of ninety percent state funds.

4. Grants shall not be awarded to a city, county, or central planning agency if the entity has not submitted a completed hydrogeological plan to the department.

5. A city, county, or central planning agency on behalf of a city or county may not receive more than one grant under this section in any three-year period.

6. The director, with the approval of the commission, may deny a grant application if in the judgment of the director the applicant could not reasonably be expected to adequately and properly complete the plan for which the grant is requested or the applicant could not reasonably be expected to implement a planned sanitary disposal project.

86 Acts, ch 1175, § 6; 87 Acts, ch 225, § 115, 419; 92 Acts, ch 1215, § 13

455B.312 Waste abatement program.

1. If the department receives a complaint that certain products or packaging when disposed of are incompatible with an alternative method of managing solid waste and with the solid waste management policy, the director shall investigate the complaint. If the director determines that the complaint is well-founded, the department shall inform the manufacturer of the product or packaging and attempt to resolve the matter by informal negotiations.

2. If informal procedures fail to result in resolution of the matter, the director shall hold a hearing between the affected parties. Following the hearing, if it is determined that removal of the product or packaging is critical to the utilization of the alternative method of disposing of solid waste, the director shall issue an order setting out the requirements for an abatement plan to be prepared by the manufacturer within the time frame established in the order.

If an acceptable plan is not prepared, the plan is not implemented, or the problem otherwise continues unabated, the attorney general shall take actions authorized by law to secure compliance.

87 Acts, ch 225, §420

455B.313 Beverage container connectors prohibition.

1. A distributor as defined in section 455C.1, subsection 9, shall not sell or offer to sell any beverage container if the beverage container is connected to another beverage container by a device constructed of a material which is not biodegradable or photodegradable.

2. A distributor violating subsection 1 is guilty of a serious misdemeanor.

88 Acts, ch 1182, §2

455B.314 Incineration at sanitary disposal projects.

Beginning January 1, 1990, a sanitary disposal project that includes incineration as a part of its disposal process shall separate from the materials to be incinerated recyclable and reusable materials, materials which will result in uncontrolled toxic or hazardous air emissions when burned, and hazardous or toxic materials which are not rendered nonhazardous or nontoxic by incineration. The removed materials shall be recycled,

reused, or treated and disposed in a manner approved by the department. Separation of waste includes magnetic separation.

89 Acts, ch 272, § 33

455B.315 Radioactive materials prohibited deposit in sanitary landfills.

A person shall not dispose of, and a sanitary landfill shall not accept for final disposal, radioactive materials, as defined as of January 1, 1990, pursuant to section 136C.1.

90 Acts, ch 1191, § 3

455B.316 Penalty.

A person who knowingly makes a false statement or representation in a plan filed pursuant to section 455B.306 is guilty of a serious misdemeanor.

92 Acts, ch 1111, § 2

455B.317 through 455B.330 Reserved.

455B.331 Definitions.

As used in this part 2 of division IV, unless the context otherwise requires:

1. "*Nuclear waste disposal site*" means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, leased, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of radioactive waste without creating a significant hazard to the public health or safety, and which are approved by the director.
2. "*Radiation*" means any ionizing radiation including, but not limited to, high-speed electrons, neutrons, protons and other nuclear particles, but not sound waves.
3. "*Radioactive material*" means any solid, liquid, or gaseous material which emits radiation spontaneously.

[C73, 75, 77, 79, 81, § 455B.85]

C83, § 455B.331

86 Acts, ch 1245, § 1899

455B.332 Policy.

The department shall be the agency of the state to establish policy for the transportation, storage, handling, and disposal of radioactive material for the purpose of protecting the public health and safety.

[C73, 75, 77, 79, 81, § 455B.86]

C83, § 455B.332

455B.333 Rules for transporting.

The commission shall provide, by rule, for the proper methods of transporting, storage, and handling of

radioactive material except that the provisions of this section shall not apply to the transportation, handling, or storage of radioactive material by licensed physicians and surgeons, licensed osteopathic physicians and surgeons, licensed podiatric physicians, licensed dentists, or licensed pharmacists within the scope of their practice or by qualified employees of licensed hospitals within the scope of their duties. In adopting such rules, the commission shall consider the methods and techniques used by the United States nuclear regulatory commission and radiation control agencies of other states for the regulation of the transporting, handling, and storage of radioactive material. The commission shall also consult with the department of public safety in the development of rules for the transporting of radioactive material on the public roads of this state.

[C73, 75, 77, 79, 81, § 455B.87]

C83, § 455B.333

96 Acts, ch 1034, § 68

455B.334 Waste disposal site.

The commission may approve or prohibit the establishment and operation of a nuclear waste disposal site in this state by a private person. In determining whether to grant or deny a permit to establish and operate a nuclear waste disposal site, the commission shall consider the need for a nuclear waste disposal site and the existing physical conditions, topography, soils and geology, climate, transportation, and land use at the proposed site. If the commission decides to issue a permit to establish and operate a nuclear waste disposal site, it shall establish, by rule, standards and procedures for the safe operation and maintenance of the proposed site. The commission shall also require the permittee to provide a sufficient surety bond or other financial commitment to insure the perpetual maintenance and monitoring of the nuclear waste disposal site.

[C73, 75, 77, 79, 81, § 455B.88]

C83, § 455B.334

83 Acts, ch 136, § 5

455B.335 Director's duties.

The director:

1. Shall enforce any rules adopted under this part 2 of division IV and furnish a copy of the rules to each applicant for a permit required under this part.
2. May issue a permit to any person transporting, handling, or storing any radioactive material under rules adopted by the commission.
3. May require the maintenance of records relating to the receipt, storage, transfer, or disposal of radioactive material.
4. May issue, modify, or revoke orders in accordance with the provisions of this part 2 of division IV or the rules adopted under said part.
5. May require the submission of plans and specifications for the design, construction, maintenance, and monitoring of nuclear waste disposal sites for review and appraisal.

[C73, 75, 77, 79, 81, § 455B.89]

C83, § 455B.335

83 Acts, ch 136, § 6; 86 Acts, ch 1245, § 1899

455B.335A Pathological waste incineration facilities radioactive materials requirements.

1. The director shall require that a person who operates or proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials conduct dispersion modeling, under the direction of the Iowa department of public health, for radiological isotopes to measure the emission levels of alpha and gamma rays. The director shall allow a three-month period during which time the operator or person proposing operation of such an incinerator shall conduct the required dispersion modeling. In order to initiate or continue such incineration, the results of the modeling shall provide that the existing incinerator meets or the proposed incinerator will meet the emission standards established by the United States environmental protection agency for a selected isotope.

2. The department shall conduct a public hearing following submission to the director of the results of the dispersion modeling conducted by an operator or person proposing operation of a waste incinerator which provides for or will provide for the incineration of pathological radioactive materials.

3. If the dispersion modeling results do not meet the standards for emission limitations prescribed under subsection 1, the director shall require the operator or the person who proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials to employ or conduct an additional dispersion modeling test employing the best available control technology. Following employment of the best available control technology or the conducting of the additional dispersion modeling, if the incinerator or proposed incinerator does not or will not meet the standards prescribed under subsection 2, the operator's permit for incineration of pathological radioactive materials shall be revoked or the permit for such proposed incineration shall be denied.

91 Acts, ch 242, §2

455B.336 Notice to violators.

If the director determines that there are reasonable grounds to believe a violation of this part 2 of division IV or of the rules issued under said part has occurred, the director shall give written notice by certified mail to the alleged violator specifying the alleged violations involved and specifying a period of time in which to eliminate the violation. If the alleged violator fails to comply within such specified time, the director shall schedule a hearing and give written notice to the alleged violator by certified mail. In connection with the hearings, the director may issue subpoenas requiring the attendance of witnesses and the production of records pertinent to such hearing. On the basis of the findings, the director shall issue a final order which shall be forwarded to the alleged violator by certified mail.

[C73, 75, 77, 79, 81, § 455B.90]

C83, § 455B.336

86 Acts, ch 1245, § 1899

455B.337 Emergency action.

Whenever the director finds that an emergency exists requiring immediate action to protect the public health and safety, the director may, without notice or hearing, issue an emergency order reciting that an emergency exists and requiring that such action be taken as the director deems necessary to meet the emergency. The order may be issued orally to the person whose operation constitutes the emergency by the director and

confirmed by a copy of such order to be sent by certified mail within twenty-four hours after the issuance of the oral order. The emergency order shall be effective immediately. Any person receiving an emergency order may request a hearing before the commission within thirty days following the receipt of the order. The commission shall schedule a hearing within fourteen days after receipt of the request for a hearing and give written notice to the alleged violator by certified mail. The commission may also schedule a hearing in the absence of a request by the alleged violator. On the basis of the findings, the commission shall issue a final order which shall be forwarded to the alleged violator by certified mail.

The director may, if an emergency exists, impound or order the impounding of any radioactive material in the possession of any person who is not equipped to observe, or fails to observe, the provisions of this part 2 of division IV or any rules adopted under said part.

[C73, 75, 77, 79, 81, § 455B.91]

C83, § 455B.337

86 Acts, ch 1245, § 1899

455B.338 Judicial review.

Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, a petition for judicial review may be filed in the district court of the county in which the alleged violation was committed or in which a final order was entered.

[C73, 75, 77, 79, 81, § 455B.92]

C83, § 455B.338

2003 Acts, ch 44, §114

455B.339 Injunction.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this part 2 of division IV or any rule or order promulgated under said part, the director may request the attorney general to make application in the name of the state to the district court of the county in which such acts or practices may be performed, for an order enjoining such acts or practices notwithstanding the existence or pursuit of any other remedy, and the attorney general shall make such application.

[C73, 75, 77, 79, 81, § 455B.93]

C83, § 455B.339

86 Acts, ch 1245, § 1899

455B.340 Penalty.

Any person who violates any provisions of this part 2 of division IV or rules adopted under said part, or any order of the department or director issued pursuant to said part, shall be guilty of a serious misdemeanor and, in addition, the person may be enjoined from continuing such violation. Each day of continued violation after notice that a violation is being committed shall constitute a separate violation.

[C73, 75, 77, 79, 81, § 455B.94]

C83, § 455B.340

86 Acts, ch 1245, § 1899, 1899B

455B.341 to 455B.360 Reserved.

455B.361 Definitions.

As used in this part 3 of division IV, unless the context otherwise requires:

1. "*Discard*" means to place, cause to be placed, throw, deposit or drop.
2. "*Litter*" means any garbage, rubbish, trash, refuse, waste materials, or debris.

[C73, 75, 77, 79, 81, § 455B.95]

C83, § 455B.361

455B.362 Director's duties.

The director, at the direction of the commission, shall establish programs to encourage the active support of business, industry and the general public for litter control.

The director, at the direction of the commission, shall co-ordinate and encourage the co-operation of state and local public agencies in the administration of this part 3 of division IV.

[C73, 75, 77, 79, 81, § 455B.96]

C83, § 455B.362

86 Acts, ch 1245, § 1899

455B.363 Litter.

No person shall discard any litter onto or in any water or land of this state, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose.

[C73, 75, 77, 79, 81, § 455B.97]

C83, § 455B.363

Footnotes

See § 321.369

455B.364 Penalty.

Any person violating the provisions of section 455B.363, upon conviction, shall be guilty of a simple misdemeanor. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering.

[C73, 75, 77, 79, 81, § 455B.98]

C83, § 455B.364

455B.365 to 455B.380 Reserved.

455B.381 Definitions.

As used in this part 4 unless the context otherwise requires:

1. "*Cleanup*" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.
2. "*Cleanup costs*" means costs incurred by the state or its political subdivisions or their agents, or by any other person participating with the approval of the director in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.
3. "*Corrosive*" means causing or producing visible destruction or irreversible alterations in human skin tissue at the site of contact, or in the case of leakage of a hazardous substance from its packaging, causing or producing a severe destruction or erosion of other materials through chemical processes.
4. "*Hazardous condition*" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. For purposes of this division, a site which is a hazardous waste or hazardous substance disposal site as defined in section 455B.411, subsection 4, is a hazardous condition.
5. "*Hazardous substance*" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "*Hazardous substance*" may include any hazardous waste identified or listed by the administrator of the United States environmental protection agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act.
6. "*Irritant*" means a substance causing or producing dangerous or intensely irritating fumes upon contact with fire or when exposed to air.
7. "*Person having control over a hazardous substance*" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

"*Person having control over a hazardous substance*" does not include a person who holds indicia of ownership in a hazardous condition site, if the person satisfies all of the following:

- a. Holds indicia of ownership primarily to protect that person's security interest in the hazardous condition site, where the indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "*primarily to protect that person's security interest*" includes, but is not limited to, ownership interests acquired as a consequence of

that person exercising rights as a security interest holder in the hazardous condition site, where the exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by the interest. The person holding indicia of ownership in a hazardous condition site and who acquires title or a right to title to the site upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold the indicia of ownership primarily to protect that person's security interest so long as the subsequent actions of the person with respect to the site are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

b. Does not exhibit managerial control of, or managerial responsibility for, the daily operation of the hazardous condition site through the actual, direct, and continual or recurrent exercise of managerial control over the hazardous condition site in which that person holds a security interest, which managerial control materially divests the borrower, debtor, or obligor of control.

c. Has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

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

a. The release is done in compliance with the conditions of a federal or state permit.

b. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.

c. In the use of pesticides, the application is done in accordance with the product label.

9. "*Toxic*" means causing or producing a dangerous physiological, anatomic, or biochemical change in a biological system.

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

[C79, 81, § 455B.110]

C83, § 455B.381

84 Acts, ch 1108, § 1; 86 Acts, ch 1025, § 1; 86 Acts, ch 1245, § 1899; 91 Acts, ch 155, §1; 93 Acts, ch 42, §2

455B.382 Administrative agency.

The department shall be the agency of the state to prevent, abate, and control the exposure of the citizens of the state to hazardous conditions as defined in this part 4 of division IV.

[C79, 81, § 455B.111]

C83, § 455B.382

455B.383 Powers and duties of department.

The department shall:

1. Establish such rules pursuant to the provisions of chapter 17A as are necessary to protect the public from unnecessary exposure to hazardous substances.
2. Develop a comprehensive plan for the prevention, abatement and control of hazardous conditions within the state.

[C79, 81, § 455B.112]

C83, § 455B.383

86 Acts, ch 1245, § 1899B

455B.384 Powers and duties of the executive director.

The director shall:

1. Provide technical advice and assistance to other state agencies, to political subdivisions of the state and to other persons upon request for the control, abatement, and prevention of hazardous conditions.
2. Collect and disseminate such information, publish such guidelines or reports, and conduct such educational programs deemed necessary to implement the provisions of this part 4 of division IV. Educational programs may be conducted in co-operation with other public or private agencies through agreements concluded pursuant to chapter 28E.
3. Exercise such other powers consistent with the Code and the provisions of this part 4 as the commission may direct.

[C79, 81, § 455B.113]

C83, § 455B.384

86 Acts, ch 1245, § 1899

455B.385 State hazardous condition contingency plan.

All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of a state hazardous condition contingency plan. The plan shall detail the manner in which public agencies shall participate in the response to a hazardous condition. The director may enter into agreements, with approval of the commission, with any state agency or unit of local government or with the federal government, as necessary to develop and implement the plan. The plan shall be coordinated with the homeland security and emergency management division of the department of public defense and any joint emergency management agencies established pursuant to chapter 29C.

[C79, 81, § 455B.114]

C83, § 455B.385

86 Acts, ch 1245, § 1899; 92 Acts, ch 1139, § 31; 2003 Acts, ch 179, §157

455B.386 Notification of spills penalty.

A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. A sheriff or police chief who has been notified of a hazardous condition shall immediately notify the department. The department, upon receiving notice of a hazardous condition, shall immediately notify the operator of any public water supply system or private water supply system which may be affected by the hazardous condition. If requested, a person shall submit within thirty days of the department's request a written report of particulars of the incident. A person violating this section is subject to a civil penalty of not more than one thousand dollars.

[C79, 81, § 455B.115]

C83, § 455B.386

84 Acts, ch 1108, § 2; 90 Acts, ch 1032, § 1

Footnotes

See also § 321.266

455B.387 Removal of hazardous substances.

1. When any hazardous condition exists, the director may remove or provide for the removal and disposal of the hazardous substance at any time, unless the director determines such removal will be properly and promptly accomplished by the owner or operator of the vessel, vehicle, container, pipeline or other facility.
2. The director may use any resources available under the hazardous condition contingency plan to provide for the removal of hazardous substances. If the director finds that public agencies cannot provide the necessary labor or equipment or if the director determines that emergency conditions exist, the director may contract with a private person or agency for removal of the hazardous substance. In those cases where equipment or services are obtained from a public or private person or agency under emergency conditions, section 455B.105, subsection 6 does not apply.
3. An action taken by a person to abate, control, or clean up a hazardous substance involved in a hazardous condition shall not be construed as an admission of liability for a hazardous condition.

[C79, 81, § 455B.116]

C83, § 455B.387

83 Acts, ch 101, § 94; 84 Acts, ch 1108, § 3; 86 Acts, ch 1245, § 1899

455B.388 Injunctions and emergency orders.

1. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a contested case hearing before the commission or by a court.
2. The director may request that the attorney general institute legal proceedings for a temporary or permanent injunction pursuant to section 455B.391 for purposes of enforcing an emergency order.

[C79, 81, § 455B.117]

C83, § 455B.388

86 Acts, ch 1245, § 1899

455B.389 Judicial review.

Judicial review of any order or other action of the commission or of the director may be sought in accordance with the terms of chapter 17A. Notwithstanding the provisions of chapter 17A, petitions for judicial review may be filed in the district court of the county in which the alleged hazardous condition occurred.

[C79, 81, § 455B.118]

C83, § 455B.389

86 Acts, ch 1245, § 1899

455B.390 Jurisdiction limited.

Nothing contained in this part 4 of division IV shall be deemed to grant to the department any authority or jurisdiction under this part 4 with respect to the following:

1. Hazardous conditions existing solely within and which will probably continue to exist solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91.
2. Relations between employers and employees with respect to hazardous conditions except that where such hazardous conditions extend to or affect areas within the scope of the authority granted by this part 4 of division IV, the department may take any action consistent with this part 4 to abate such hazardous condition.
3. The storage, transportation, handling, or use of flammable liquids, combustibles, and explosives, control over which is exercised by the state fire marshal under chapter 100.
4. The storage, transportation, handling or use of pesticides over which control is exercised by the state secretary of agriculture under chapter 206, except when spillage of pesticides creates a hazardous condition.
5. The storage, transportation, handling or use of fertilizers over which control is exercised by the state secretary of agriculture under chapter 200, except when spillage of fertilizers creates a hazardous condition.

[C79, 81, § 455B.119]

C83, § 455B.390

92 Acts, ch 1163, § 94

455B.391 Duties of attorney general.

1. The attorney general shall, at the request of the department, institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to obtain compliance with the provisions of this part 4 of division IV. In any legal proceedings any previous findings of fact of the director or the department after due notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

2. The attorney general shall, at the request of the director, take appropriate action against the person having control over a hazardous substance to recover for the liabilities resulting under section 455B.392.

[C79, 81, § 455B.120]

C83, § 455B.391

86 Acts, ch 1158, § 1; 86 Acts, ch 1245, § 1899, 1899B

455B.392 Liability for cleanup costs.

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

a. The reasonable cleanup costs incurred by the state or its political subdivisions, by governmental subdivisions, or by any other persons participating in the prevention or mitigation of damages with the approval of the director, as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

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

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

d. The excessive and extraordinary cost, excluding salaries, incurred by the department in responding at and to the scene of a hazardous condition caused by that person.

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

Claims by the state under this subsection may be appealed to the commission by the person filing a written notice of appeal within thirty days after receipt of the bill.

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

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

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

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

a. An act of God.

b. An act of war.

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

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

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

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

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

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

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

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

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423. Moneys shall be used to reimburse governmental subdivisions requested to assist in the cleanup for which the moneys were collected. The remainder of the moneys shall be used in the manner permitted for the fund.

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

7. a. There is no liability under this section for a person who has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, regardless of when that person acquired title or right to title to the hazardous condition site, except that a person otherwise exempt from liability under this subsection shall be liable to the state for the lesser of:

(1) The total reasonable cleanup costs incurred by the state to clean up a hazardous substance at the hazardous condition site; or

(2) The amount representing the postcleanup fair market value of the property comprising the hazardous condition site.

b. Liability under this subsection shall only be imposed when the person holds title to the hazardous condition site at the time the state incurs reasonable cleanup costs.

c. For purposes of this subsection, "*postcleanup fair market value*" means the actual amount of consideration received by such person upon sale or transfer of the hazardous condition site which has been cleaned up by the state to a bona fide purchaser for value.

d. Cleanup expenses incurred by the state shall be a lien upon the real estate constituting the hazardous condition site, recordable and collectable in the same manner as provided for in section 424.11, subject to the terms of this subsection. The lien shall attach at the time the state incurs expenses to clean up the hazardous condition site. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only when a notice of the lien is filed with the recorder of the county in which the property is located. Upon payment by the person to the state, of the amount specified in this

subsection, the state shall release the lien. If no lien has been recorded at the time the person sells or transfers the property, then the person shall not be liable for any cleanup costs incurred by the state.

84 Acts, ch 1108, § 4; 86 Acts, ch 1158, § 2, 3; 86 Acts, ch 1245, § 1899; 93 Acts, ch 42, §3; 94 Acts, ch 1157, §1, 2

455B.393 Liability of state employees or persons providing assistance.

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

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

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

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

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

84 Acts, ch 1108, § 5

455B.394 Right of entry.

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

84 Acts, ch 1108, § 6

455B.395 Public information.

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

84 Acts, ch 1108, § 7

455B.396 Claim of state.

Liability to the state under this part or part 5 of this division is a debt to the state. The debt, together with interest on the debt at the maximum lawful rate of interest permitted pursuant to section 535.2, subsection 3, paragraph "a" from the date costs and expenses are incurred by the department is a lien on real property,

except single and multi-family residential property, on which the department incurs costs and expenses creating a liability and owned by the persons liable under this part or part 5. To perfect the lien a statement of claim describing the property subject to the lien, signed by the director and approved by the commission must be filed within one hundred twenty days after the incurrence of costs and expenses by the department. The statement shall be filed with, accepted by, and recorded by the county recorder in the county in which the property subject to the lien is located. The statement of claim may be amended to include subsequent liabilities. To be effective the statement of claim shall be amended and filed within one hundred twenty days after the occurrence of the event resulting in the amendment.

The lien may be dissolved by filing with the appropriate recording officials a certificate, signed by the director, that the debt for which the lien is attached, together with interest and costs on the debt, has been paid or legally abated.

86 Acts, ch 1115, §1

455B.397 Financial disclosure.

Immediately upon the incurrence of any liability to the state under this part, the debtor shall submit to the director a report consisting of documentation of the debtor's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the life of the debt. These reports shall be kept confidential and shall not be available to the public.

86 Acts, ch 1115, §2; 90 Acts, ch 1205, § 12

455B.398 Reserved.

455B.399 Cleanup assistance liability.

1. A person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous condition or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of a hazardous condition is not liable for damages resulting from the assistance or advice.
2. Subsection 1 does not apply to a person who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering the assistance or advice.
3. This section does not limit the liability of a person for damages resulting from the person's gross negligence or reckless, wanton or intentional misconduct.

84 Acts, ch 1059, § 1

455B.400 to 455B.410 Reserved.

455B.411 Definitions.

As used in this part 5, unless the context otherwise requires:

1. "*Disposal*" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste or hazardous substance into or on land or water so that the hazardous waste or hazardous substance or a constituent of the hazardous waste or hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
2. "*Hazardous substance*" means a hazardous substance as defined in 42 U.S.C. § 9601 of the federal

Comprehensive Environmental Response, Compensation, and Liability Act and any element, compound, mixture, solution, or substance designated pursuant to 40 C.F.R. § 302.4.

3. *a. "Hazardous waste"* means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:

(1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. *"Hazardous waste"* may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

b. "Hazardous waste" does not include:

(1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(2) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

4. *"Hazardous waste or hazardous substance disposal site"* means real property which has been used for the disposal of hazardous waste or hazardous substances either illegally or prior to regulation as a hazardous waste or a hazardous substance under this part and any adjoining real property and groundwater affected by the disposal activities.

5. *"Lubricating oil"* means the fraction of crude oil or re-refined oil which is sold for purposes of reducing friction in an industrial or mechanical device.

6. *"Manifest"* means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

7. *"Recycled oil"* means used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Recycled oil includes oil which is refined, reclaimed, burned, or reprocessed.

8. *"Re-refined oil"* means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

9. *"Storage"* means the containment of a hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

10. *"Treatment"* means a method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous waste so as to neutralize the waste or to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or to reduce the waste in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render the waste nonhazardous.

11. *"Used oil"* means oil which has been refined from crude oil, has then been used, and as a result of the use, is contaminated by physical or chemical impurities.

[C81, § 455B.130; 81 Acts, ch 151, § 1]

C83, § 455B.411

84 Acts, ch 1108, § 8; 84 Acts, ch 1157, § 1; 84 Acts, ch 1158, § 2; 86 Acts, ch 1025, § 2, 3; 91 Acts, ch 155, § 2

Footnotes

Partial suspension and applicability of subsections 6, 9, and 10; 2000 Acts, ch 1073, § 1

455B.412 Duties of the department.

The department shall:

1. Develop comprehensive plans and programs for the state for the management of hazardous waste. In the development of plans and programs, the department shall recognize the need for assuring that suitable facilities and sites for treatment and disposal are available for hazardous wastes generated in Iowa. As part of the hazardous waste management plan, the department shall conduct a study of hazardous waste management in Iowa and shall report its findings to the general assembly not later than eighteen months after July 1, 1979. The study shall include the following:

a. A description of current sources of hazardous waste within the state, including the types and quantities of hazardous wastes.

b. A description of current hazardous waste transportation, storage, treatment and disposal practices and costs within the state.

c. A description of practices and methods that would reduce at the source the amount of hazardous waste generated and an estimate of the cost of these practices.

d. Identification and evaluation of alternatives to land disposal of hazardous wastes.

e. Identification of the general geologic and other criteria for a site for land disposal of hazardous wastes and the areas in Iowa that might meet the general criteria if alternatives to land disposal are not feasible.

f. The proper role and activities of the state in addition to those established in sections 455B.411 to 455B.421 and the federal Solid Waste Disposal Act in facilitating safe and efficient disposal of hazardous waste, including but not limited to a determination of the most appropriate procedures for receiving public comments and approving permits for siting hazardous waste disposal facilities.

g. The estimated private and public capital and annual operating costs of implementing the hazardous waste management plan recommended by the department.

2. Adopt rules establishing criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes that are subject to this part. The department shall consider toxicity, persistence and degradability in nature, potential for accumulation in tissue, and related factors including flammability, corrosiveness, and other hazardous characteristics.

3. Adopt rules, applicable to generators or transporters of or owners or operators of facilities for the treatment, storage, or disposal of hazardous waste listed or identified by the department under subsection 2 of this section, as necessary to protect human health and the environment. The rules shall include establishment

of a manifest system.

4. Adopt rules establishing standards and procedures for the certification of supervisory personnel and operators at hazardous waste treatment, storage or disposal facilities required to have a permit under section 455B.415.

[C81, § 455B.131]

C83, § 455B.412

84 Acts, ch 1157, § 2; 84 Acts, ch 1158, § 3; 85 Acts, ch 42, §1; 86 Acts, ch 1025, § 4; 86 Acts, ch 1245, § 1899B; 2004 Acts, ch 1078, §2

Footnotes

Partial suspension and applicability of subsections 24; 2000 Acts, ch 1073, § 1

455B.413 Director's duties.

The director shall:

1. Issue, revoke, suspend, modify or deny permits for persons owning or operating a facility for the treatment, storage or disposal of a hazardous waste identified by the commission under section 455B.412, subsection 2. Permits shall be issued for a period as the commission may by rule prescribe.
2. Administer examinations to determine the competence of operators and supervisory personnel at facilities for the treatment, storage or disposal of hazardous waste that are required to have a permit under section 455B.415. The director shall issue, revoke, suspend, or deny certificates of competency for persons as supervisory or operating personnel at facilities for the treatment, storage or disposal of hazardous waste.
3. Inspect and investigate hazardous waste generators and transporters and treatment, storage and disposal facilities as may be necessary to determine compliance with sections 455B.411 to 455B.421 and rules adopted and permits and orders issued pursuant to sections 455B.411 to 455B.421. The director shall periodically survey or inspect the construction, operation and monitoring, reporting and record-keeping systems of hazardous waste generators and transporters and treatment, storage and disposal facilities.

[C81, § 455B.132]

C83, § 455B.413

84 Acts, ch 1158, § 4; 86 Acts, ch 1245, § 1899

Footnotes

Partial suspension; applicability; 2000 Acts, ch 1073, § 1

455B.414 Hazardous waste notification.

1. A person who on the effective date of a rule adopted under section 455B.412, subsection 2 identifying a hazardous waste as subject to sections 455B.411 to 455B.421 is generating or transporting the identified hazardous waste or owns or is operating a treatment, storage or disposal facility handling the identified

hazardous waste shall file with the director a notification stating the waste handled by the person and the location and a general description of the activity involving the waste. The notice shall be given within ninety days after the effective date of the rule identifying the waste.

2. Except as provided in subsection 1, a person shall not commence to transport or generate a hazardous waste identified by rule under section 455B.412, subsection 2 without first notifying the director of the proposed activity. The notice shall state the waste to be handled, and the location and a general description of the activity involving the identified waste.

3. When the commission amends a rule adopted under section 455B.412, subsection 2, identifying additional characteristics of hazardous waste or identifying an additional substance as hazardous waste, the commission may require a person to file the notification required by subsection 1 or 2.

[C81, § 455B.133; 81 Acts, ch 151, § 2]

C83, § 455B.414

84 Acts, ch 1158, § 5; 86 Acts, ch 1245, § 1899

Footnotes

Partial suspension; applicability; 2000 Acts, ch 1073, § 1

455B.415 Permit required.

1. Except as provided in subsections 2 and 4, a person shall not construct or operate a facility for the treatment, storage or disposal of a hazardous waste identified under section 455B.412, subsection 2 unless the owner or operator has obtained a permit for the facility from the director.

2. The owner or operator of a facility for the treatment, storage or disposal of a hazardous waste identified under section 455B.412, subsection 2 existing on the effective date of the rule listing the waste shall obtain a permit for the facility within six months of the effective date of the rule. A person owning or operating a facility for the treatment, storage or disposal of a hazardous waste that existed on the effective date of the rule identifying the waste and that is required to have a permit under sections 455B.411 to 455B.421 is considered to have a permit until a final administrative determination is made if the person meets the following conditions:

a. The person has given notice as required by section 455B.414.

b. The person has applied for a permit.

c. The director has determined that the failure to issue the permit is not the result of the failure of the applicant to furnish information reasonably required or requested to process the application.

3. The commission may by rule specify the information required to be submitted with the application for a permit and the conditions under which the director shall issue, deny, revoke, suspend or modify permits. However, a permit shall not be issued for a treatment, storage or disposal facility unless the applicant presents evidence of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of the hazardous waste as determined by the commission.

4. A permit is not required for the storage of a hazardous waste identified under section 455B.412, subsection

2 when the only purpose of the storage is to accumulate for a period of up to ninety days sufficient quantities of the waste for transportation, treatment or disposal unless a permit for the storage is required under federal law.

5. A permit issued pursuant to this section shall be in addition to other licenses, permits or variances authorized or required by law, including, but not limited to, the requirements of chapter 335.

6. If the director denies a permit, the director shall inform the applicant in writing of the reasons for the denial. The applicant may appeal to the commission from the denial of a permit or from a condition of a permit if the applicant files a notice of appeal with the director within thirty days of receipt of the denial or issuance of the permit.

[C81, § 455B.134]

C83, § 455B.415

83 Acts, ch 136, § 7; 84 Acts, ch 1158, § 6; 86 Acts, ch 1245, § 1899

Footnotes

Partial suspension; applicability; 2000 Acts, ch 1073, § 1

455B.416 Inspections.

1. For purposes of developing a rule, conducting a study of hazardous waste management, compiling a site inventory, or enforcing sections 455B.411 to 455B.421, a person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous waste shall, upon request of the director, furnish information relating to the hazardous waste and permit the director at reasonable times to have access to and copy records relating to the waste. For the purpose of developing a rule or enforcing sections 455B.411 to 455B.421, the director may:

a. Enter at reasonable times an establishment or other place where hazardous waste is or has been generated, stored, treated or disposed of, or a vehicle transporting hazardous waste.

b. Inspect and obtain samples from a person of a hazardous waste and of containers or labeling associated with the waste.

c. Install, service and take samples from monitoring equipment on the property.

The inspection shall be completed within a reasonable period of time.

2. If the director obtains a sample, prior to leaving the premises, the director shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

3. Documents or information obtained from a person under this section shall be available to the public except as provided in this subsection. Upon a showing satisfactory to the director by a person that documents or information, or a particular part of the documents or information to which the director has access under this section if made public would divulge commercial or financial information obtained from a person and privileged or confidential or a trade secret, the director shall consider the documents or information or the particular portion of the documents or information confidential. However the document or information may

be disclosed to officers, employees or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part 5.

4. *a.* If upon receipt of any information, the director determines that the presence of a hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of the waste from the facility or site may present a substantial hazard to human health or the environment, the director may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the facility or site to determine the nature and extent of the hazard.

b. In the case of a facility or site not in operation at the time a determination is made regarding the facility or site under this subsection, if the director finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the director may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have actual knowledge to carry out the actions referred to in this subsection.

c. An order under this subsection shall require the person to whom the order is issued to submit to the director within thirty days from the issuance of the order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The director may, after providing the person with an opportunity to confer with the director on the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, which may be modified as the director deems reasonable to determine the nature and extent of the hazard or to remove the hazard.

d. If the director determines that no owner or operator referred to in this subsection is able to conduct monitoring, testing, analysis, or reporting satisfactory to the director, if the director deems any action carried out by an owner or operator to be unsatisfactory, or if the director cannot initially determine that there is an owner or operator referred to in this subsection who is able to conduct monitoring, testing, analysis, or reporting, the director may conduct reasonable monitoring, testing, or analysis to determine the nature and extent of the hazard associated with the site. The director may require the owner or operator referred to in this subsection to reimburse the director or other authority or person for the costs of the monitoring, testing, analysis, or reporting. The director shall not order a person to pay the costs of monitoring, testing, analysis, or reporting carried out by the director which confirms the results of monitoring, testing, or analysis done pursuant to an earlier order of the director.

e. For purposes of carrying out this subsection, the director may exercise the powers set forth in subsection 1.

[C81, § 455B.135; 81 Acts, ch 151, § 3, 4]

C83, § 455B.416

86 Acts, ch 1245, § 1899

Footnotes

Partial suspension; applicability; 2000 Acts, ch 1073, § 1

455B.417 Prohibited acts penalties.

1. A person shall not knowingly do any of the following acts:

- a. Transport a hazardous waste identified under the commission's rules to a hazardous waste storage, treatment or disposal facility that is located in Iowa and that does not have a permit under section 455B.415, subsection 1.
- b. Treat, store, or dispose of a hazardous waste identified under sections 455B.411 to 455B.421 either without having obtained a permit for the treatment, storage, or disposal under section 455B.415, subsection 1, or in violation of a material condition or requirement of a permit.
- c. Make a false material statement or representation in an application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the provisions of sections 455B.411 to 455B.421.
- d. Destroy, alter or conceal after July 1, 1981, any record required to be kept under rules adopted by the commission under this part. This paragraph applies to all persons who generated, stored, treated, transported, disposed of, or otherwise handled hazardous waste after November 19, 1980.

2. A person who violates subsection 1 is subject upon conviction to a fine of not more than twenty-five thousand dollars or to imprisonment for not to exceed one year, or both for each day of violation. If the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than fifty thousand dollars or by imprisonment for not more than two years, or both for each day of violation.

3. A person who violates a provision of this part or a rule, permit, or order adopted or issued under this part is subject to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation constitutes a separate violation.

[C81, § 455B.136; 81 Acts, ch 151, § 58]

C83, § 455B.417

84 Acts, ch 1158, § 7, 8

Footnotes

Partial suspension; applicability; 2000
Acts, ch 1073, § 1

455B.418 Enforcement.

1. If the director has substantial evidence that a person has violated or is violating a provision of sections 455B.411 to 455B.421, or of a rule or standard established or permit issued pursuant to sections 455B.411 to 455B.421:

a. The director may issue an order directing the person to desist in the practice that constitutes the violation or to take corrective action as necessary to ensure that the violation will cease. The person to whom the order is issued may commence a contested case within the meaning of chapter 17A by filing with the director within thirty days of receipt of the order a notice of appeal to the commission. On appeal, the commission may affirm, modify or vacate the order of the director.

b. If it is determined by the director that an emergency exists, the director may issue without notice or hearing an order necessary to terminate the emergency. The order shall be binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a court. "Emergency" as used in this subsection means a situation where the handling, storage, treatment, transportation or disposal of a hazardous waste is presenting an imminent and substantial threat to human health or the environment.

c. When the director determines that a disposal site contains hazardous waste in an amount and under conditions that cause an imminent threat to human health and that the person responsible for the site will not properly and promptly remove the waste or eliminate the threat, the director may take action as necessary to remove the waste or permanently alleviate or eliminate the threat to human health. The costs of removing the waste or alleviating or eliminating the threat shall be recovered from the person responsible for the disposal site.

d. The director with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to subsection 2 of this section.

2. The attorney general shall, at the request of the director pursuant to paragraph "d" of subsection 1 of this section, institute legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of sections 455B.411 to 455B.421 or to obtain compliance with said sections or a rule promulgated or a condition of a permit or order issued under said sections.

3. In a case arising from the violation of an order issued under subsection 1, paragraph "a" of this section, the burden of proof shall be on the state to show that the time specified in the order within which the individual must take corrective action is reasonable.

4. For the purpose of determining violations under this section and section 455B.417, the term "*person*" does not include a person who holds indicia of ownership in the hazardous waste or hazardous substance disposal site which contains a hazardous waste or hazardous substance, or where hazardous substances or wastes are treated, stored, or disposed of, if such person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the disposal site, whether or not the director has determined that such disposal site constitutes a hazardous condition site.

[C81, § 455B.137; 81 Acts, ch 151, § 911]

C83, § 455B.418

86 Acts, ch 1245, § 1899; 93 Acts, ch 42, §4

Footnotes

Partial suspension; applicability; 2000 Acts, ch 1073, § 1

455B.419 Agricultural chemicals.

1. A farmer using or disposing of federally approved agricultural chemicals or the empty containers of agricultural chemicals is not in violation of sections 455B.411 to 455B.421 by reason of the use or disposal if the farmer does both of the following:

a. Applies or disposes of the chemicals in accordance with the manufacturer's instructions.

b. Triple rinses each chemical container after it has been emptied and uses the rinsing as makeup water in a tankmix and applies the mix to the farmer's cropland at an application rate that does not exceed the manufacturer's instructions.

2. As used in this section, farmer means an owner or tenant of a farm unit, a member of the family of the owner or tenant, or an employee of the owner or tenant. Farmer does not include a commercial applicator of agricultural chemicals.

[C73, 75, 77, § 455B.102(2); C79, § 455B.132(2); C81, § 455B.138]

C83, § 455B.419

84 Acts, ch 1158, § 9

Footnotes

Partial suspension; applicability; 2000
Acts, ch 1073, § 1

455B.420 Rules.

Except as provided in chapter 89B, rules adopted by the commission under sections 455B.411 to 455B.421 shall be consistent with and shall not exceed the requirements of 42 U.S.C. secs. 6921-6934 as amended to January 1, 1981, and rules and regulations adopted pursuant to those sections.

[C81, § 455B.139; 81 Acts, ch 151, § 12]

C83, § 455B.420

84 Acts, ch 1085, § 21

Footnotes

Partial suspension; applicability; 2000
Acts, ch 1073, § 1

455B.421 Judicial review.

Judicial review of actions of the commission or the director may be sought in accordance with the provisions of chapter 17A. Notwithstanding the provisions of chapter 17A, petitions for judicial review may be filed in the district court of the county where the acts in issue occurred. In addition to other rights of judicial review authorized by this section, a person who has complied with an order issued by the director or commission may within six months of compliance with the order seek relief in the district court on the grounds that the requirements imposed by the order are excessive, that the benefits to society are not commensurate with the costs of complying with the order and that society can be protected in a less costly manner. Upon a finding that the requirements imposed by the order are excessive, the court may modify or vacate the order.

[C81, § 455B.140]

C83, § 455B.421

86 Acts, ch 1245, § 1899

Footnotes

Partial suspension; applicability; 2000
Acts, ch 1073, § 1

455B.422 Acquisition and lease of sites. Repealed by 87 Acts, ch 180, §12. See § 455B.486, 455B.487.

455B.423 Hazardous substance remedial fund.

1. A hazardous substance remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the remedial fund at the end of each fiscal year shall be retained in the fund.
 2. The director may use the fund for any of the following purposes:
 - a. Administrative services for the identification, assessment and cleanup of hazardous waste or hazardous substance disposal sites.
 - b. Payments to other state agencies for services consistent with the management of hazardous waste or hazardous substance disposal sites.
 - c. Emergency response activities as provided in part 4 of this division.
 - d. Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.
 - e. Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of hazardous waste or hazardous substance disposal sites that do not qualify for federal cost-sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.
 - f. Through agreements or contracts with other state agencies, work with private industry to develop alternatives to land disposal of hazardous waste or hazardous substances including, but not limited to, resource recovery, recycling, neutralization, and reduction.
 - g. For the administration of the waste tire collection or processing site permit program.
- However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraphs "d" and "e".
3. Neither the state nor its officers, employees, or agents are liable for an injury caused by a dangerous condition at a hazardous waste or hazardous substance disposal site unless the condition is the result of gross negligence on the part of the state, its officers, employees, or agents.
 4. The director may contract with any person to perform the acts authorized in this section.
 5. Moneys shall not be used from the fund for hazardous waste or hazardous substance disposal site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of hazardous waste or hazardous substance disposal sites or other responsible persons.
 6. The director shall make all reasonable efforts to recover the full amount of moneys expended from the fund through litigation or cooperative agreements with responsible persons. Moneys recovered pursuant to this subsection shall be deposited with the treasurer of state and credited to the remedial fund.

84 Acts, ch 1108, § 9; 86 Acts, ch 1025, § 5; 86 Acts, ch 1245, § 1899; 91 Acts, ch 155, § 35; 92 Acts, ch 1218, § 2; 2004 Acts, ch 1101, §63

455B.424 Hazardous waste fees.

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

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

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

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

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

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

a. Hazardous waste that is reclaimed or reused for energy or materials.

b. Hazardous waste that is transformed into new products which are not wastes.

c. Hazardous wastes created or retrieved as a result of remedial actions at a hazardous waste or hazardous substance disposal site.

d. Influent waste water to a treatment facility which is subject to regulation under either 33 U.S.C. § 1317(b) or 33 U.S.C. § 1342.

e. A hazardous waste which due to its intrinsic physical, chemical or biological composition degrades, decomposes or changes physical characteristics so as to be rendered or considered nonhazardous without any form of external mechanical, physical or chemical treatment being introduced. However, such change to a nonhazardous nature must occur within twenty-four hours of the generation of the hazardous waste before the exemption granted in this paragraph is applicable.

5. In addition to other fees imposed by this section, a person that is required to obtain a United States environmental protection agency identification number shall pay the following fees:

a. If the person generates more than one thousand kilograms of hazardous waste per month, a fee of two hundred fifty dollars.

b. If the person generates hazardous waste but does not generate more than one thousand kilograms of hazardous waste per month, a fee of twenty-five dollars.

c. If the person is a transporter of hazardous waste, a fee of twenty-five dollars.

d. If the person operates a hazardous waste treatment, storage, or disposal facility, a fee of twenty-five dollars.

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

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

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

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

84 Acts, ch 1108, § 10; 88 Acts, ch 1115, § 1; 91 Acts, ch 155, §6; 98 Acts, ch 1178, §11, 12

455B.425 Annual report on hazardous substance remedial fund.

The director shall annually on January 1 give a full accounting of moneys received, moneys expended, sources and recipients, and purposes of the expenditures for the preceding fiscal year in the hazardous substance remedial fund to the general assembly and the governor.

84 Acts, ch 1108, § 11; 86 Acts, ch 1025, § 6; 86 Acts, ch 1245, § 1899

455B.426 Registry of hazardous waste or hazardous substance disposal sites.

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

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

84 Acts, ch 1108, § 12; 86 Acts, ch 1025, § 7; 86 Acts, ch 1245, § 1899; 91 Acts, ch 155, §7

455B.427 Annual report on hazardous waste or hazardous substance disposal sites.

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

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

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

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

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

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

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

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

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

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

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

b. Significant threat to the environment action required.

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

d. Site properly closed requires continued management.

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

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

5. The director shall work with the Iowa department of public health when assessing the effects of a hazardous waste or hazardous substance disposal site on human health.

84 Acts, ch 1108, § 13; 86 Acts, ch 1025, § 8; 86 Acts, ch 1245, § 1899; 91 Acts, ch 155, § 8

455B.428 Investigation of sites.

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

2. The director shall identify each hazardous waste or hazardous substance disposal site by providing all of the following:

a. The address and site boundaries.

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

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

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

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

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

following:

- a. The depth of the water table at the site.
 - b. The nature of soils at the site.
 - c. The location, nature, and size of aquifers at the site.
 - d. The direction of present and historic groundwater flows at the site.
 - e. The location and nature of surface waters at and near the site.
 - f. The levels of contaminants in groundwater, surface water, air, and soils at and near the site resulting from hazardous wastes or hazardous substances disposed of at the site.
 - g. The current quality of all drinking water drawn from or distributed through the area in which the site is located, if the director determines that water quality may have been affected by the site.
4. The director shall maintain a site assessment file for each site listed in the registry. The file shall contain all information obtained pursuant to this section and shall be open to the public. Information in the file may be reproduced by any person at a charge not to exceed the actual cost of reproduction for copies of file information.

84 Acts, ch 1108, § 14; 86 Acts, ch 1025, § 9; 86 Acts, ch 1245, § 1899; 91 Acts, ch 155, §9

455B.429 Notification to owners appeals.

1. Within sixty days after July 1, 1984, the director shall notify the owner of any part of a site to be included in the registry required by section 455B.426. The notice shall be sent by certified mail to the owner's last known address. Thirty days before a site is added to the registry, the director shall notify the owner of any part of the site by certified mail of the proposed addition to the registry. The notice shall be sent by certified mail to the owner's last known address.
2. An owner or operator of a site proposed for listing in the registry or listed in the registry pursuant to section 455B.426, may petition the director for deletion of the site, modification of the site classification, or modification of any information regarding the site. A site shall not be listed on the registry until a final determination has been made on any appeal initiated under this section. An appeal is a contested case for the purposes of chapter 17A.
3. Within ninety days after the submission of an appeal, the department shall conduct a hearing to review the determination. At least thirty days prior to the hearing the department shall publish a notice of hearing in a newspaper of general circulation in the county in which the site is located. The department shall also notify in writing the owner or operator of the site at least thirty days prior to the hearing.
4. At least thirty days following the hearing, the department shall provide the owner or operator with a written determination accompanied by reasons for the determination on the appeal.
5. Within ten days of a determination, the director shall notify the local governments with jurisdiction over the site whenever a change is made in the registry pursuant to this section.

84 Acts, ch 1108, § 15; 86 Acts, ch 1245, § 1899

455B.430 Use and transfer of sites penalty financial disclosure.

1. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry pursuant to section 455B.426 is used without the written approval of the director.
2. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal site which is on the registry pursuant to section 455B.426 without the written approval of the director. The director shall respond to a request for a change of ownership within thirty days of its receipt.
3. Decisions of the director concerning the use or transfer of a hazardous waste or hazardous substance disposal site may be appealed in the manner provided in section 455B.429.
4. If the director has reason to believe this section has been violated, or is in imminent danger of being violated, the director may institute a civil action in district court for injunctive relief to prevent the violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation. Moneys collected under this subsection shall be deposited in the remedial fund.
5. Immediately upon the listing of real property in the registry of hazardous waste or hazardous substance disposal sites, a person liable for cleanup costs shall submit to the director a report consisting of documentation of the responsible person's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the period the site remains on the registry.

84 Acts, ch 1108, § 16; 86 Acts, ch 1025, § 10; 86 Acts, ch 1245, § 1899; 86 Acts, ch 1115, § 3; 90 Acts, ch 1205, § 13; 91 Acts, ch 155, §10

455B.431 Recording of site designation.

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

84 Acts, ch 1108, § 17; 86 Acts, ch 1025, § 11; 86 Acts, ch 1245, § 1899

455B.432 Liability.

Acts or omissions of the director or the department in carrying out the duties imposed by sections 455B.423 through 455B.431 shall not be cause for a claim against the state within the meaning of chapter 669.

84 Acts, ch 1108, § 18; 86 Acts, ch 1245, § 1899

455B.433 Physical infrastructure assistance funding liability.

1. The department of natural resources shall work in conjunction with the Iowa department of economic development to identify environmentally contaminated sites which qualify for the physical infrastructure assistance program under section 15E.175. The department shall provide an assessment of the site and shall provide any emergency response activities which the department deems necessary. The department may take any further action, including remediation of the site, that the department deems to be appropriate and which promotes the purposes of the physical infrastructure assistance program.
2. The department shall be reimbursed from the physical infrastructure assistance fund under section 15E.175

for any costs incurred pursuant to this section.

3. A person shall not have standing pursuant to section 455B.111 to commence a citizen suit which is based upon property that is part of the physical infrastructure assistance program pursuant to section 15E.175.

96 Acts, ch 1218, §53

455B.434 through 455B.440 Reserved.

455B.441 Purpose and guidelines.

The purpose of this part is to protect the public health and the environment by providing a procedure for establishing appropriate sites and properly designed facilities for the treatment, storage and disposal of hazardous waste. It is the intent of the general assembly that in the implementation of this part the department of natural resources shall emphasize alternatives to land burial of hazardous waste whenever possible with emphasis on the following management methods in the following order: Source reduction, reuse, resource recovery, incineration, and detoxification.

[81 Acts, ch 152, § 1]

83 Acts, ch 101, § 95; 83 Acts, ch 137, § 23

455B.442 Definitions.

As used in this part 6 of division IV unless the context otherwise requires:

1. *"Construct"* means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility. *"Construct"* includes alteration to existing structures or a land disposal facility to initially accommodate hazardous waste but does not include any alteration to increase the capacity or change the ability to accommodate hazardous waste. However, any alteration to increase or change the ability to accommodate hazardous waste is subject to section 455B.413.

2. *a. "Facility"* means land and structures, other appurtenances, and improvements on the land used for the treatment, storage, or disposal of a hazardous waste required to have a permit under section 455B.415.

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

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

3. *"Hazardous waste"* means a hazardous waste as defined in section 455B.411, subsection 3 and listed under section 455B.412, subsection 2.

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

[81 Acts, ch 152, § 2]

83 Acts, ch 101, § 96, 97; 83 Acts, ch 137, § 24, 25

455B.443 License required.

1. A person shall not construct a facility until the person obtains a site license issued under this part 6 of division IV by the commission. A person planning to construct a facility shall give notice of the intent to construct the facility as provided in this section. The notice shall be served on the director and on the city council and board of supervisors of each city and county in which the facility is located and shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks. The notice shall contain the following:

- a.* A description of the proposed location of the facility.
- b.* A description of the treatment, storage, or disposal method to be used and the types of wastes to be handled, including estimated volumes.
- c.* The names and addresses of the owners and the operators of the facility.

2. Within fifteen days of the date the notice is last published, the owners and operators of the facility shall submit an application to the director requesting that a site license be issued under this part 6 of division IV. The application for a site license shall contain the name and residence of the applicant, and the following additional information:

- a.* The location of the proposed facility and a plat of the proposed location.
- b.* A description of the design and capacity of the proposed facility.
- c.* The expected sources of hazardous wastes for the facility, the proposed methods and routes of transporting the wastes to and from the facility.
- d.* The qualifications of the operator.
- e.* Other relevant information as the commission requires by rule.

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

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

4. This part 6 of division IV does not apply to a facility that is subject to section 455B.415, subsection 2, and that has obtained applicable local zoning permits and for which contracts have been signed prior to January 1, 1982.

[81 Acts, ch 152, § 3]

86 Acts, ch 1245, § 1899

455B.444 Temporary members appointed.

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

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

Temporary members who may be appointed under this section shall serve on the commission only during discussion and proceedings relating to the application for a site license which the temporary members were appointed to consider and shall vote only on questions relating to the issuance of that site license. Temporary members shall serve on the commission until final action is taken on the application for the site license which the temporary members were appointed to consider. Temporary members who are not public employees shall receive a per diem as specified in section 7E.6 and actual and necessary expenses incurred in performance of their official duties. Temporary employees who are public employees shall receive reimbursement for expenses only. Per diem and expenses under this section shall be paid by the state.

[81 Acts, ch 152, § 4]

86 Acts, ch 1245, § 1899; 90 Acts, ch 1256, § 48

455B.445 Notification requirements.

Upon acceptance of a site license application under section 455B.443 the director shall mail copies of the application to regulatory agencies. A regulatory agency receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and for compliance with the regulatory agency's permit or licensing requirements.

[81 Acts, ch 152, § 5]

86 Acts, ch 1245, § 1899

455B.446 Proceeding.

1. Within thirty days after the acceptance of the application for a site license, the commission shall establish a timetable for consideration of the application. The timetable for final action by the commission shall not exceed one hundred eighty days after the date the application is accepted.
2. The proceeding for the issuance of a site license is a contested case under chapter 17A.
3. The commission shall establish a date for the hearing on the application and shall serve notice of the hearing on interested agencies, as determined by the commission, and regulatory agencies.

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

4. Notice of the hearing in the form provided in section 17A.12, subsection 2, shall be published in a

newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing.

[81 Acts, ch 152, § 6]

455B.447 Proceeding role of regulatory agencies.

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

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

[81 Acts, ch 152, § 7]

455B.448 Decision by commission.

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

a. The need for the services to be offered by the facility.

b. The impact of the proposed facility on the area in which it is to be located.

c. The zoning classification of the proposed site and the extent to which a proposed site is by present or projected use dedicated to industrial development.

d. The land uses and the density of population in areas near the facility.

e. The density of population in areas adjacent to probable transportation routes to the facility.

f. The risk and effect of accidents during the transportation of hazardous wastes to the site.

g. The geology of the site, where relevant, with reference to factors which include, but are not limited to, the presence of fault zones and the risk of contamination of ground and surface waters by leaching and runoff from the facility.

h. The risk and effect of fires or explosions from improper storage and disposal methods.

i. The impact of the facility on the operations and responsibilities of the city and county in which the facility is proposed to be located and on cities and counties near the proposed site.

j. Local ordinances, permits, or other requirements and their relationship to the proposed facility.

k. The availability of alternative sites and methods of treatment, disposal, or storage, including cost comparisons. The cost comparisons shall cover short and long-term costs including, but not limited to, liability insurance, postclosure maintenance, monitoring of ground and surface waters, monitoring of air before and after closure, and the potential loss of land or water resources due to contamination.

l. To the maximum extent feasible a site should be located away from all of the following areas:

(1) Areas subject to natural hazards including, but not limited to, flooding, earthquakes, or subsidence.

- (2) Sources of drinking water supply including, but not limited to, reservoirs, lakes and rivers and their watersheds, and aquifers and their recharge areas.
- (3) Fragile land areas including, but not limited to, wetlands and the shorelines of rivers, lakes, and streams.
- (4) Areas with rare or valuable ecosystems or geologic formations or significant wildlife habitat.
- (5) Unique scenic or historic areas.
- (6) Residential areas, parks, or schools.
- (7) Prime farmland as defined by the United States department of agriculture in 7 C.F.R. § 657.5(a).

m. Other criteria adopted by rule which the commission finds relevant to the siting of a facility which are consistent with this part 6 of division IV.

2. The commission shall grant the license if it finds that the facility will meet the requirements imposed by rules adopted by the commission under section 455B.412, subsection 3, and the permit requirement of section 455B.415, that operation of the facility at the proposed location will be in the public interest and that the public health and welfare and the environment will be adequately protected. The failure of the proposed facility to meet zoning requirements established under chapters 329, 335, and 414, and the licensing requirements of regulatory agencies except the requirements imposed by sections 455B.412, subsection 3 and 455B.415 shall not preclude the commission from issuing the license and to that extent this subsection supersedes the licensing requirements of regulatory agencies and the requirements of chapters 329, 335 and 414.

3. A municipality as defined in section 670.1, subsection 2, is not liable in an action for damages arising out of the construction, operation, or maintenance of a hazardous waste facility which is licensed by the commission under this part 6 of division IV unless the municipality is responsible for or in control of the facility. However, a municipality may be subject to liability for damages caused by hazardous waste in connection with an act or omission which would otherwise subject the municipality to liability. A municipality shall not be required to pay any portion of the costs associated with the response to a release or threatened release of a hazardous waste from a facility into the land, air, or water that threatens or may threaten human health or the environment unless the municipality is responsible for or in control of the facility or unless the municipality is otherwise subject to liability under this subsection.

[81 Acts, ch 152, § 8]

86 Acts, ch 1149, § 2

455B.449 Issuance of license effect.

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

[81 Acts, ch 152, § 9]

455B.450 Cost of proceedings.

The cost of the proceeding for the issuance of a license shall be paid by the applicant for the license until the cost exceeds nine thousand dollars. The director shall notify the applicant upon the issuance or denial of the

license or upon termination of the proceeding at any point during the process of the cost of the proceeding to the applicant. These costs include the costs of providing notices, holding the hearing and the per diem of the commissioners in the proceeding for the license. Moneys collected shall be deposited in the general fund of the state.

[81 Acts, ch 152, § 10]

86 Acts, ch 1245, § 1899

455B.451 Further approvals prohibited exception.

Upon the issuance of a license under this part 6 of division IV, notwithstanding any provision of law or ordinance except statutory requirements relating to the protection of employees engaged in the construction of the facility, no further approval, permit, or license for the construction, operation, or maintenance of the facility as stated in the license shall be required. The commission may incorporate in the license the licensing requirements of a regulatory agency to the extent that those requirements are consistent with the construction and operation of the facility according to the requirements of the commission. However, this section does not limit the authority of the director under sections 455B.413 and 455B.415. A local unit of government shall not unduly restrict the transportation of hazardous waste to a facility for which a license has been issued under this part 6 of division IV.

[81 Acts, ch 152, § 11]

86 Acts, ch 1245, § 1899

455B.452 Single hearing judicial review.

Notwithstanding chapter 17A:

1. Any proceeding or oral presentation held before the commission on an application for a license shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance, or operation of a facility.
2. The issuance or denial of the license is a final agency action, and the date for determining whether any person is aggrieved or adversely affected by the action is the date of the issuance or denial of the license.

[81 Acts, ch 152, § 12]

455B.453 Rules.

The commission shall adopt rules under chapter 17A necessary to implement this part 6 of division IV including but not limited to the form for an application for a license and the description of information to be furnished by the applicant.

[81 Acts, ch 152, § 13]

455B.454 Penalties.

A person required to obtain a site license under this part 6 of division IV who constructs a facility without having first obtained the license is subject to a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

[81 Acts, ch 152, § 14]

455B.455 Surcharge imposed.

A land burial surcharge tax of two percent is imposed on the fee for land burial of a hazardous waste. The owner of the land burial facility shall remit the tax collected to the director of revenue after consultation with the director according to rules that the director shall adopt. The director shall forward a copy of the site license to the director of revenue which shall be the appropriate license for the collection of the land burial surcharge tax and shall be subject to suspension or revocation if the site license holder fails to collect or remit the tax collected under this section. The provisions of section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70 to 422.75, section 423.14, subsection 1, and sections 423.23, 423.24, 423.25, 423.31, 423.33, 423.35, 423.37 to 423.42, and 423.47, consistent with the provisions of this part 6 of division IV, shall apply with respect to the taxes authorized under this part, in the same manner and with the same effect as if the land burial surcharge tax were sales taxes within the meaning of those statutes. Notwithstanding the provisions of this section, the director shall provide for only quarterly filing of returns as prescribed in section 423.31. Taxes collected by the director of revenue under this section shall be deposited in the general fund of the state.

[81 Acts, ch 152, § 15]

86 Acts, ch 1245, § 1899; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §197, 205

455B.456 to 455B.460 Reserved.

455B.461 Definitions.

As used in this part 7 of division IV, unless the context otherwise requires:

1. *"Facility"* means facility as defined in section 455B.442, subsection 2.
2. *"Hazardous waste"* means hazardous waste as defined in section 455B.411, subsection 3, and section 455B.464.
3. *"Land disposal"* means either of the following:
 - a. Disposal of hazardous wastes on or into the land, including, but not limited to, landfill, surface impoundment, waste piles, land spreading, and coburial with municipal garbage.
 - b. Treatment of hazardous wastes on or in the land, such as neutralization and evaporation ponds and land farming, where the treatment residues are hazardous wastes and are not removed for subsequent processing or disposal within one year.

"Land disposal" does not include long-term storage as defined in subsection 4.
4. *"Long-term storage"* means the above-ground containment of stabilized or solidified hazardous waste on a temporary basis or for a period of years in a manner that does not constitute disposal of hazardous waste.
5. *"Restricted waste"* means a hazardous waste or any other waste which is determined by rule of the commission to be a significant environmental burden if disposed of at a land disposal facility.
6. *"Storage"* means the containment of a hazardous waste for a period less than one year in a manner consistent with the requirements of 42 U.S.C. §6921-6934 as amended to January 1, 1981 and the regulations adopted pursuant to those sections.

85 Acts, ch 202, §2

455B.462 Limitations on land disposal of hazardous waste.

1. A generator, recycler, transporter or other handler of hazardous waste shall not dispose of the wastes by land disposal or store wastes at an above-ground storage facility, unless all of the following conditions exist:

- a. The commission determines that the best available technology is being used at the land disposal facility.
- b. The handler proves to the satisfaction of the commission that there is no available alternative including above ground storage for the disposal of hazardous waste.
- c. The handler utilizes methods of source reduction, recycling and destruction of hazardous waste to the extent feasible, as determined by rule.
- d. The handler pretreats the hazardous waste as determined by rule.

2. The commission shall adopt rules including, but not limited to, the following:

- a. To determine the criteria that industry must satisfy to show that alternatives to land disposal of hazardous wastes are not technically or economically feasible.
- b. To require that all industrial and commercial owners or users of land disposal and storage sites report to the department annually the amount and content of current hazardous waste production, treatment methods used and technological advances made or pursued to implement alternatives to land disposal and source reduction.

85 Acts, ch 202, §3

455B.463 Dilution of hazardous waste.

Any hazardous waste shall be considered a restricted waste for the purposes of this part even though it is diluted to a concentration less than the listed concentration threshold by the addition of other hazardous waste or any other material during waste handling treatment or storage. Dilution which occurs as a normal part of the manufacturing process shall not be considered dilution for purposes of this section.

85 Acts, ch 202, §4

455B.464 Additional hazardous or restricted waste listed.

Notwithstanding the restriction in section 455B.420, the director shall compile, annually, a list of additional hazardous wastes for adoption by the commission pursuant to the rulemaking procedures of chapter 17A. The list shall include wastes which may be a significant environmental burden if disposed of at a land disposal facility.

85 Acts, ch 202, §5; 86 Acts, ch 1245, § 1899A

455B.465 Well injection prohibited.

It is unlawful for a person to inject hazardous or restricted wastes into a well.

85 Acts, ch 202, §6

455B.466 Civil penalties.

A person who violates a provision of this part is subject to a civil penalty of not more than ten thousand dollars for each violation and for each day of continuing violation. Civil penalties collected pursuant to this section shall be forwarded by the clerk of the district court to the treasurer of state for deposit in the general fund of the state.

85 Acts, ch 202, §7

455B.467 Emergency variance.

The department may grant a variance to the restrictions or prohibition of land disposal of a hazardous waste in either of the following situations:

1. When the materials sought to be disposed of resulted from the cleanup of a hazardous condition involving a hazardous waste.
2. When the materials sought to be disposed of resulted from remediation or cleanup of hazardous waste or hazardous substance disposal sites.

85 Acts, ch 202, §8; 91 Acts, ch 155, §11

455B.468 Coordination with existing reporting and permitting requirements.

This part does not require the department to establish a reporting or permitting system if such a system is already established under the federal Resource Conservation and Recovery Act 42 U.S.C. § 6901 et seq. and administered and enforced through the federal environmental protection agency that achieves the objectives set out in this part. Consistent with this part, the department may establish requirements in addition to those established under the Resource Conservation Recovery Act for reporting, permitting, and enforcement. However, in such actions, the department shall avoid any redundancy in reporting, compliance, and enforcement with that provided under the Resource Conservation and Recovery Act.

Notwithstanding section 455B.420, the rules and requirements imposed under this part may be more restrictive than required by federal law or regulation.

85 Acts, ch 202, §9

455B.469 and 455B.470 Reserved.

455B.471 Definitions.

As used in this part unless the context otherwise requires:

1. "*Board*" means the Iowa comprehensive petroleum underground storage tank fund board.
2. "*Corrective action*" means an action taken to reduce, minimize, eliminate, clean up, control, or monitor a release to protect the public health and safety or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for purposes of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, and site management practices. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

3. "*Fund*" means the Iowa comprehensive petroleum underground storage tank fund.

4. "*Nonoperational storage tank*" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

5. "*Operator*" means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

6. a. "*Owner*" means:

(1) In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

(2) In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

b. To the extent consistent with the federal Resource Conservation and Recovery Act, as amended to January 1, 1994, 42 U.S.C. § 6901 et seq., "*owner*" does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "*primarily to protect that person's security interest*" includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold such indicia of ownership primarily to protect that person's security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

7. "*Petroleum*" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

8. "*Regulated substance*" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes substances designated in 40 C.F.R., Parts 61 and 116, and 40 C.F.R. § 401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch

absolute). However, regulated substance does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to section 455B.474.

9. *"Release"* means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

10. *"Tank site"* means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

11. *"Underground storage tank"* means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. § 1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. § 2001 et seq.), or an intrastate pipeline facility regulated under chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i".

85 Acts, ch 162, § 1; 89 Acts, ch 131, § 3335; 93 Acts, ch 42, §5; 94 Acts, ch 1067, §1; 95 Acts, ch 215, §4

455B.472 Declaration of policy.

The general assembly finds that the release of regulated substances from underground storage tanks constitutes a threat to the public health and safety and to the natural resources of the state, and that existing regulatory programs of the department and other agencies do not adequately or appropriately address this substantial public concern.

85 Acts, ch 162, §2

455B.473 Report of existing and new tanks fee.

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.
 2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.
 3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.
 4. An owner or operator of a storage tank described in section 455B.471, subsection 11, paragraph "a", which brings the tank into use after July 1, 1987, shall notify the department of the existence of the tank within thirty days. The registration of the tank shall be accompanied by a fee of ten dollars to be deposited in the storage tank management account. A tank which is existing before July 1, 1987, shall be reported to the department by July 1, 1989. Tanks under this section installed on or following July 1, 1987, shall comply with underground storage tank regulations adopted by rule by the department.
 5. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11. All moneys collected pursuant to this section prior to July 1, 1987, which have not been expended, shall be deposited in the storage tank management account.
 6. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.
 7. A person who sells, installs, modifies, or repairs a tank used or intended to be used as an underground storage tank shall notify the purchaser and the owner or operator of the tank in writing of the owner's notification requirements pursuant to this section including the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A person who installs an underground storage tank and the owner or operator of the underground storage tank shall, prior to installing an underground storage tank, notify the department in writing regarding the intent to install a tank.
 8. It shall be unlawful to deposit or accept a regulated substance in an underground storage tank which has not been registered and issued permanent and annual tank management fee renewal tags pursuant to subsections 1 through 6. A person shall not deposit a regulated substance in an underground storage tank after receiving notice from the department that the underground storage tank is not covered by an approved form of financial responsibility in accordance with section 455B.474, subsection 2.
- The department shall furnish the owner or operator of an underground storage tank with a registration tag for each underground storage tank registered with the department. The owner or operator shall affix the tag to the fill pipe of each registered underground storage tank. If an owner or operator fails to register or obtain annual renewal tags for the underground storage tank, the owner or operator shall pay an additional fee of two hundred fifty dollars upon registration of the tank. A fee imposed pursuant to this subsection shall not preclude the department from assessing an administrative penalty pursuant to section 455B.476.
9. The department may deny issuance of a registration or annual tank management fee renewal tag for failure

of the owner or operator to provide proof the underground storage tank is covered by an approved form of financial responsibility as provided in section 455B.474, subsection 2.

85 Acts, ch 162, § 3; 87 Acts, ch 225, § 604, 605; 2001 Acts, ch 51, § 1, 2; 2002 Acts, ch 1119, §60

455B.473A Petroleum underground storage tank registration amnesty program.

A petroleum underground storage tank required to be registered under section 455B.473, which has not been registered prior to July 1, 1988, may be registered under the following conditions:

1. The tank registration fee under section 455B.473, subsection 5, shall accompany the registration.
2. The storage tank management fee of fifteen dollars per tank under section 455B.479 shall be paid for past years in which the tank should have been registered.

If a tank is registered under this section on or prior to October 1, 1989, penalties under section 455B.477 shall be waived.

88 Acts, ch 1244, §3

455B.474 Duties of commission rules.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:
 - a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
 - b. Maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.
 - c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.
 - d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of

the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk when it is determined that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of ASTM (American society for testing and materials) international's emergency standard, ES38-94, or other look-up table as determined by the department by rule.

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. However, if the report is found to be inaccurate or incomplete, and if based upon information in the report the risk classification of the site cannot be reasonably determined by the

department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately classify the site. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "d".

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:

(a) The extent of remediation required to reclassify the site as a low risk site.

(b) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.

(c) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

(d) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(e) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with ASTM (American society for testing and materials) international's emergency standard, ES38-94.

(f) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls, including an environmental covenant as established by chapter 455I.

(g) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(5) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if the corrective action design report is found to be inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately determine the corrective action response requirements. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under section 455G.18.

(6) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate.

(7) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this paragraph "f" shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9.

(8) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, "*bioremediation*" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(9) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(10) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(11) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

g. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state

standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

h. Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(1) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site.

(2) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(3) A certificate may be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this paragraph "*h*" or a subsequent purchaser of the site shall not be required to perform further corrective action solely because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or

operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term "*guarantor*" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with ASTM (American society for testing and materials) international's standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes

of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 8. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. §1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. §1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. §7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. §2606.

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph "f" and subsection 3, paragraph "d". It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph "f" and subsection 3, paragraph "d" be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

85 Acts, ch 162, § 4; 86 Acts, ch 1245, § 1899A; 87 Acts, ch 225, § 606; 88 Acts, ch 1244, § 47, 9; 89 Acts, ch 131, § 36, 37; 91 Acts, ch 252, § 5, 6; 92 Acts, ch 1163, § 95; 95 Acts, ch 215, §510; 2000 Acts, ch 1058, §44, 45; 2004 Acts, ch 1086, §106; 2005 Acts, ch 102, §2

455B.475 Duties and powers of the director.

The director shall:

1. Inspect and investigate the facilities and records of owners and operators of underground storage tanks as may be necessary to determine compliance with this part and the rules adopted pursuant to this part. An inspection or investigation shall be concluded subject to section 455B.103, subsection 4. For purposes of developing a rule, maintaining an accurate inventory or enforcing this part, the department may:

a. Enter at reasonable times any establishment or other place where an underground storage tank is located.

b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the director obtains a sample, prior to leaving the premises, the director shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the director by a person that public

disclosure of documents or information, or a particular part of the documents or information to which the director has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the director shall consider the documents or information or the particular portion of the documents or information confidential. However, the document or information may be disclosed to officers, employees or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part.

2. Maintain an accurate inventory of underground storage tanks.

3. Take any action allowed by law which, in the director's judgment, is necessary to enforce or secure compliance with this part or any rule adopted under this part.

85 Acts, ch 162, §5; 86 Acts, ch 1245, § 1899A

455B.476 Violations orders.

1. If there is substantial evidence that a person has violated or is violating a provision of this part or a rule adopted under this part the director may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 455B.109. The person to whom the order is issued may appeal the order to the commission as provided in chapter 17A. On appeal, the commission may affirm, modify or vacate the order of the director.

2. However, if it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a district court.

3. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.477.

85 Acts, ch 162, §6; 86 Acts, ch 1245, § 1899A

455B.477 Penalties burden of proof.

1. A person who violates a provision of this part or a rule or order issued under this part is subject to a civil penalty not to exceed five thousand dollars for each day during which the violation continues. The civil penalty is an alternative to a criminal penalty provided under this part.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, plan or other document filed or required to be maintained under this part or who falsifies, tampers with or knowingly renders inaccurate a monitoring device or method required to be maintained under this part or by a rule or order issued under this part, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the director with approval of the commission, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this part or to obtain compliance with the provisions of this part or rules adopted or order issued under this part. In any action, previous findings of fact of the director or the commission after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of a provision of this part or a rule adopted or order

issued by the commission, the burden of proof is upon the commission or the department.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.478 shall be raised in the legal proceedings instituted in accordance with this section.

6. The penalty for intentional failure of an owner or operator to register a petroleum underground storage tank under section 455B.473 shall be a minimum of seven thousand five hundred dollars up to a maximum of ten thousand dollars after October 1, 1989.

7. The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part of this division or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after May 5, 1989, or received generally for underground storage tank programs on or after May 5, 1989, shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.

85 Acts, ch 162, § 7; 86 Acts, ch 1245, § 1899A; 88 Acts, ch 1244, § 10; 89 Acts, ch 131, § 39

455B.478 Judicial review.

Except as provided in section 455B.477, subsection 5, judicial review of an order or other action of the commission or the director may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

85 Acts, ch 162, §8; 86 Acts, ch 1245, § 1899A

455B.479 Storage tank management fee.

An owner or operator of an underground storage tank shall pay an annual storage tank management fee of sixty- five dollars per tank of over one thousand one hundred gallons capacity. Twenty-three percent of the fees collected shall be deposited in the storage tank management account of the groundwater protection fund. Seventy-seven percent of the fees collected shall be deposited in the Iowa comprehensive petroleum underground storage tank fund created in chapter 455G.

87 Acts, ch 225, § 607; 89 Acts, ch 131, § 38

455B.480 Short title.

This part may be cited as the "*Waste Management Assistance Act*".

87 Acts, ch 180, § 1; 92 Acts, ch 1239, § 21; 2001 Acts, ch 7, §4; 2002 Acts, ch 1162, §46

455B.481 Waste management policy.

1. The purpose of this part is to promote the proper and safe storage, treatment, and disposal of solid, hazardous, and low-level radioactive wastes in Iowa. The management of these wastes generated within Iowa is the responsibility of Iowans. It is the intent of the general assembly that Iowans assume this responsibility

to the extent consistent with the protection of public health, safety, and the environment, and that Iowans insure that waste management practices, as alternatives to land disposal, including source reduction, recycling, compaction, incineration, and other forms of waste reduction, are employed.

2. It is also the intent of the general assembly that a comprehensive waste management plan be established by the department which includes: the determination of need and adequate regulatory controls prior to the initiation of site selection; the process for selecting a superior site determined to be necessary; the establishment of a process for a site community to submit or present data, views, or arguments regarding the selection of the operator and the technology that best ensures proper facility operation; the prohibition of shallow land burial of hazardous and low-level radioactive wastes; the establishment of a regulatory framework for a facility; and the establishment of provisions for the safe and orderly development, operation, closure, postclosure, and long-term monitoring and maintenance of the facility.

3. In order to meet capacity assurance requirements of section 104k of the federal Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, and further the objectives of waste minimization, the department, in cooperation with the small business assistance center at the university of northern Iowa, shall work with generators of hazardous wastes in the state to develop and implement aggressive waste minimization programs. The goal of these programs is to reduce the volume of hazardous waste generated in the state as a whole by twenty-five percent of the amount generated as of January 1, 1987, as reported in the biennial reports collected by the United States environmental protection agency. The twenty-five percent reduction goal shall be reached as expeditiously as possible and no later than July 1, 1994. In meeting the reduction goal, elements "a" through "d" of the hazardous waste management hierarchy shall be utilized. The department, in cooperation with the small business assistance center, shall reassess the twenty-five percent reduction goal in 1994. The department shall promote research and development, provide and promote educational and informational programs, promote and encourage voluntary technical assistance to hazardous waste generators, promote assistance by the small business assistance center, and promote other activities by the public and private sectors that support this goal. In the promotion of the goal, the following hazardous waste management hierarchy, in descending order of preference, is established by the department:

a. Source reduction for waste elimination.

b. On-site recycling.

c. Off-site recycling.

d. Waste treatment.

e. Incineration.

f. Land disposal.

4. Additionally, the department shall establish and distribute to generators a listing of hazardous waste materials which are currently being recycled. The department shall require that each hazardous waste generator in the state submit, with the biennial report submitted to the United States environmental protection agency, a report of hazardous waste materials currently designated as recyclable by the department which are not being recycled by the generator. The report shall include the reason why the generator is not recycling such products. A small generator which does not submit a biennial report to the United States environmental protection agency, shall provide the information required to be submitted under this paragraph on a form provided by the department, with the submittal of the small generator's hazardous waste permit fee.

5. The department shall consult with representatives of industries which generate hazardous waste and shall make recommendations to the general assembly by January 1, 1991, concerning the possible application of a front-end fee for substances which will result in the generation of hazardous waste, the role of state

government in assisting the private sector in establishing permanent, on-site, internal audit functions, and other measures which state government may initiate to encourage and assist generators of hazardous waste in reducing the hazardous waste generated.

87 Acts, ch 180, § 3; 89 Acts, ch 242, § 2; 92 Acts, ch 1239, § 21; 2001 Acts, ch 7, §5; 2002 Acts, ch 1162, §47

455B.482 Definitions.

As used in this part unless the context otherwise requires:

1. "*Disposal*" means the isolation of waste from the biosphere in a permanent facility designed for that purpose.
2. "*Facilities*" means land and improvements on land, buildings and other structures, and other appurtenances used for the management of solid, toxic, hazardous, or low-level radioactive wastes, including but not limited to waste collection sites, waste transfer stations, waste reclamation and recycling centers, waste processing centers, waste treatment centers, waste storage sites, waste reduction and compaction centers, waste incineration centers, waste detoxification centers, and waste disposal sites.
3. "*Hazardous waste*" means hazardous waste as defined in section 455B.411, subsection 3, and under section 455B.464.
4. "*Long-term monitoring and maintenance*" means the continued observation and care of a facility after closure in order to ensure that the site poses no threat to the public health, the groundwater, and the environment. In the case of a low-level radioactive waste facility, the time period constituting "*long-term*" is the number of years of monitoring and maintenance based upon the half-life properties of the wastes, and in the case of a hazardous waste facility is the number of years based upon the projected active toxicity of the waste.
5. "*Low-level radioactive waste*" means low-level radioactive waste as defined in section 457B.1, article II, section "m", and as defined in the federal Low-Level Radioactive Waste Policy Amendments Act, 42 U.S.C. § 2021.
6. "*Management of waste*" means the storage, transportation, treatment, or disposal of waste.
7. "*Person*" means person as defined in section 4.1.
8. "*Regulatory agency*" means a federal, state, or local agency that issues a license or permit required for the siting, construction, operation, or maintenance of a facility pursuant to federal or state statute or rule, or local ordinance or resolution.
9. "*Site*" means the geographic location of a facility.
10. "*Solid waste*" means solid waste as defined in section 455B.301, subsection 20.
11. "*State*" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.
12. "*Storage*" means the temporary holding of waste for treatment or disposal.
13. "*Treatment*" means any method, technique, or process designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render the waste safer for transport or

management, amenable to recovery, convertible to another usable material, or reduced in volume.

14. "Waste" means solid waste, hazardous waste, and low-level radioactive waste as defined in this section.

87 Acts, ch 180, § 4; 92 Acts, ch 1239, § 21; 2001 Acts, ch 7, §6; 2002 Acts, ch 1162, §48

455B.483 Waste management assistance.

The director of the department of natural resources shall provide for administration of the provisions of this part.

87 Acts, ch 180, § 5; 92 Acts, ch 1239, § 21; 2001 Acts, ch 7, §7; 2002 Acts, ch 1162, §49

455B.484 Duties of the department.

The department shall:

1. Recommend to the commission the adoption of rules necessary to implement this part.
2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit into the waste management assistance trust fund to be used for programs relating to the duties of the department under this part.
3. Administer and coordinate the waste management assistance trust fund created under this part.
4. Enter into contracts and agreements, with the approval of the commission for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out its duties under this part.
5. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts or public-private compacts relating to the ownership, operation, management, or funding of a facility. Any agreement is subject to the approval of the commission.
6. Review, propose, and recommend legislation relating to the proper and safe management of waste.
7. Establish a central repository and information clearinghouse within the state for the collection and dissemination of data and information pertaining to the proper and safe management of waste.
8. Develop, sponsor, and assist in the implementation of public education and information programs on proper and safe management of waste in cooperation with other public and private agencies as deemed appropriate.
9. Include in the annual report to the governor and the general assembly required by section 455A.4, subsection 1, paragraph "d", information outlining the activities of the department in carrying out programs and responsibilities under this part, and identifying trends and developments in the management of waste. The report shall also include specific recommendations for attaining the goals for waste minimization and capacity assurance requirements.
10. Solicit proposals from public and private agencies to conduct hazardous waste research, and to develop and implement storage, treatment, and other hazardous waste management practices including but not limited

to source reduction, recycling, compaction, incineration, fuel recovery, and other alternatives to land disposal of hazardous waste. In the acceptance of a proposal, preference shall be given to Iowa agencies pursuant to chapter 73.

11. Develop and implement programs, in cooperation with the small business assistance center at the university of northern Iowa, which result in widespread adoption of waste minimization programs by hazardous waste generators. The department shall conduct educational and informational programs. The small business assistance center shall provide direct waste minimization technical assistance to small quantity hazardous waste generators. These programs may include, but are not limited to, source reduction, recycling, fuel recovery, incineration, compaction, and other alternatives to land disposal. The preference for program development and implementation shall be for programs which result in the generation of less waste, followed by a preference for programs which reuse the waste generated in a beneficial manner.

87 Acts, ch 180, § 6; 88 Acts, ch 1134, § 87; 89 Acts, ch 242, § 3, 4; 92 Acts, ch 1239, § 21; 2001 Acts, ch 7, §8, 9; 2002 Acts, ch 1050, §41; 2002 Acts, ch 1119, §61; 2002 Acts, ch 1162, §5052; 2003 Acts, ch 108, §75

Footnotes

Iowa waste reduction center; see also § 268.4

455B.484A Confidentiality for assistance programs.

1. As used in this section:

a. "Applicant" means a person, acting in good faith, who seeks the services of an assistance program.

b. "Assistance information" means all information voluntarily supplied to or obtained by an assistance program for the sole purpose of providing assistance to an applicant and which constitutes information not otherwise available to an assistance program.

c. "Assistance program" means the waste reduction assistance program of the department or of the Iowa waste reduction center for safe and economic management of solid waste and hazardous substances conducted pursuant to section 268.4.

2. Assistance information in the possession of an assistance program or an employee or agent of an assistance program is privileged and confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and is not admissible evidence in an administrative or judicial proceeding. However, assistance information discoverable from sources other than an assistance program or prohibited from being made confidential pursuant to federal or state law does not become privileged or confidential merely because it has been made available to or is in the custody of an assistance program or an employee or agent of an assistance program.

3. Assistance information shall not be used by an employee or agent of the state in determining whether to initiate an enforcement action or investigation by the state.

92 Acts, ch 1214, § 1

455B.485 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of this part.

2. Adopt, modify, or repeal rules necessary to implement this part pursuant to chapter 17A.
3. Approve the budget request for administration of this part prior to submission to the department of management. The commission may increase, decrease, or strike any proposed expenditure within the budget request before granting approval.
4. Recommend legislative action which may be required for the safe and proper management of waste, for the acquisition or operation of a facility, for the funding of a facility, to enter into interstate agreements for the management of a facility, and to improve the operation of the department relating to waste management assistance.
5. Approve all contracts and agreements, in excess of twenty-five thousand dollars, under this part between the department and other public or private persons or agencies.

87 Acts, ch 180, § 7; 92 Acts, ch 1239, § 21; 2001 Acts, ch 7, §10; 2002 Acts, ch 1162, §53

455B.486 Facility siting.

1. The department shall identify and recommend to the commission suitable sites for locating facilities for the treatment, storage, or disposal of hazardous waste within this state. The department shall use site selection criteria adopted by the environmental protection commission pursuant to section 455B.487 in identifying these sites. The commission shall accept or reject the recommendation of the department. If the commission rejects the recommendation of the department, the commission shall state its reasons for rejecting the recommendation.
2. The commission shall adopt rules establishing criteria for the identification of sites which are suitable for the operation of low-level radioactive waste disposal facilities. The department shall apply these criteria, once adopted, to identify and recommend to the commission sites suitable for locating facilities for the disposal of low-level radioactive waste. The commission shall accept or reject the recommendation of the department. If the commission rejects the recommendation of the department, the commission shall state its reasons for rejecting the recommendation.

87 Acts, ch 180, § 8; 92 Acts, ch 1239, § 21; 2002 Acts, ch 1162, §54

455B.487 Facility acquisition and operation.

The commission shall adopt rules establishing criteria for the identification of land areas or sites which are suitable for the operation of facilities for the management of hazardous and low-level radioactive wastes. Upon request, the department shall assist in locating suitable sites for the location of a facility. The commission may purchase or condemn land to be leased or used for the operation of a facility subject to chapter 6A. Consideration for a contract for purchase of land shall not be in excess of funds appropriated by the general assembly for that purpose. The commission may lease land purchased under this section to any person including the state or a state agency. This section authorizes the state to own or operate hazardous waste facilities and low-level radioactive waste facilities, subject to the approval of the general assembly.

The terms of the lease or contract shall establish responsibility for long-term monitoring and maintenance of the site. The commission shall require that the lessee or operator post bond or provide proof of sufficient insurance coverage, as determined by the commission to be reasonably necessary to protect the state against liabilities arising from the storage of wastes, abandonment of the facility, facility accidents, failure of the facility, or other liabilities which may arise.

The terms of the lease or contract shall also require that the lessee or operator of the facility pay an annual fee to the state, as established by the commission, to cover facility monitoring costs, and shall require that the

lessee or operator establish a long-term monitoring and maintenance fund in which the lessee or operator shall deposit annually an amount specified by the commission. The fund shall be used to pay closure, long-term monitoring and maintenance, and contingency costs.

The lease agreement or contract shall provide for a local review and monitoring committee established by the county or municipal entity governing the jurisdiction in which the facility is located. Prior to the approval of a lease agreement or contract the local committee shall review the application of the prospective lessee or operator and shall determine the suitability of the proposed site for the facility. The local committee may inspect the facility during operation and may make recommendations regarding the operation and closure of the facility. The commission shall establish a surtax paid by the lessee or operator of a facility to the local governmental entity, and retained by the local governmental entity in which the facility is located. The lessee or operator of the facility shall provide funding for the implementation of the duties of the local committee.

The lessee or operator is subject to all applicable permit and licensing requirements. The leasehold interest, including improvements made to the property, shall be listed, assessed, and valued as any other real property as provided by law.

Facilities acquired or operated pursuant to this section shall comply with applicable federal and state statutes, local ordinances, and regulations adopted by regulatory agencies to the extent required by law.

The purchase, condemnation, use, or lease of land for the management of wastes, shall be approved by the general assembly prior to the purchase, condemnation, use, or lease of the land.

Facilities acquired or operated pursuant to this section may be used for regional, statewide or multistate management of wastes.

Facilities acquired or operated pursuant to this section shall not be used for the purpose of shallow land burial of wastes as a means of disposal.

An operator of a facility acquired or operated pursuant to this section shall require that a person, prior to the use of the facility, submit proof that reasonable and good faith measures have been taken to reduce the generation of waste.

A hazardous waste facility acquired or operated pursuant to this section shall be operated in accordance with the following schedule:

1. The initial fee paid by a person depositing hazardous waste at the facility shall be increased by ten percent per ton upon receipt of twenty-five percent of the waste capacity of the facility.
2. The initial fee paid by a person depositing hazardous waste at the facility shall be increased by twenty-five percent per ton upon receipt of fifty percent of the waste capacity of the facility.
3. Upon receipt of fifty percent of the waste capacity of the facility, the receipt of waste shall be limited to hazardous waste generated within the state of Iowa. If an agreement has been established between the owner or operator of the hazardous waste facility and an out-of-state generator of hazardous waste, this limitation is null and void.

87 Acts, ch 180, § 9

455B.488 Household hazardous waste collection and disposition.

The department shall develop, sponsor, and assist in conducting local, regional, or statewide programs for the receipt or collection and proper management of hazardous wastes from households and farms. In conducting

such events the department may establish limits on the types and amounts of wastes that will be collected, and may establish a fee system for acceptance of wastes in quantities exceeding the limits established pursuant to this section.

87 Acts, ch 180, § 10; 92 Acts, ch 1239, § 21; 2003 Acts, ch 108, §76

455B.489 Waste management authority fund. Repealed by 89 Acts, ch 272, § 41. See § 455D.15.

455B.490 Used storage tank disposal. Repealed by 92 Acts, ch 1018, § 3.

455B.491 Restrictions on use of agricultural chemicals.

1. If the commission determines that an agricultural chemical causes an unreasonable, adverse effect on humans or the environment, the commission shall submit to the secretary of agriculture its findings and recommended actions. The secretary of agriculture shall propose rules implementing the recommended actions and shall hold a public hearing to determine the effects of the proposed rules as provided in chapter 206 after review and consideration of the findings as provided in subsection 2 of this section. A rule of the secretary shall be adopted pursuant to chapter 17A.

2. The commission shall submit to the secretary of agriculture its findings on the unreasonable, adverse effect that the agricultural chemical causes to humans or the environment. The department of agriculture and land stewardship shall prepare an estimate of the economic impact of restricting the use of the agricultural chemical. The economic impact statement, the commission's findings and the report of the advisory committee created under section 206.23 shall be available at the time of publication of the intended rule action by the secretary. The secretary of agriculture and the advisory committee shall review the commission's findings and collect, analyze and interpret any other scientific data relating to the agricultural chemical. The secretary and the committee shall consider any official reports, academic studies, expert opinions or testimony, or other matters deemed to have probative value and shall consider the toxicity, hazard, effectiveness, public need for the agricultural chemical or other means of control other than the chemical in question, and the economic impact on the members of the public and agencies affected by it.

3. As used in this section, "*agricultural chemical*" means a pesticide as defined in section 206.2 and also means any feed or soil additive, other than a pesticide, which is designed for and used to promote the growth of plants or animals.

[C71, § 206A.2; C73, 75, 77, § 455B.100; C79, § 455B.130, 455B.131; C81, § 455B.150]

C83, § 455B.471

CS85, § 455B.491

455B.492 through 455B.499 Reserved.

455B.500 Waste management research by persons in conjunction with institutions of higher education.

A person acting in conjunction with a private college, community college, or state board of regents' institution, to conduct research relating to waste management, on private property, or on property in which a city or county holds an interest, shall notify the department in writing. The person is not required to obtain authorization, including but not limited to a permit, by the department for one hundred twenty days after submitting the notice. After the end of the one- hundred-twenty-day period the department shall conduct an evaluation of the permit status of the research and may determine whether a permit ought to be issued or modified before the research continues.

455B.501 Regulation of infectious waste.

1. As used in this section, unless the context otherwise requires:

a. "Contaminated animal carcasses" means waste including carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

b. "Contaminated sharps" means all discarded sharp items derived from patient care in medical, research, or industrial facilities including glass vials containing materials defined as infectious, hypodermic needles, scalpel blades, and pasteur pipettes.

c. "Cultures and stocks of infectious agents" means specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biological agents, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, or mix cultures.

d. "Human blood and blood products" means human serum, plasma, other blood components, bulk blood, or containerized blood in quantities greater than twenty milliliters.

e. "Infectious" means containing pathogens with sufficient virulence and quantity so that exposure to an infectious agent by a susceptible host could result in an infectious disease when the infectious agent is improperly treated, stored, transplanted, or disposed.

f. "Infectious waste" means waste, which is infectious, including but not limited to contaminated sharps, cultures, and stocks of infectious agents, blood and blood products, pathological waste, and contaminated animal carcasses from hospitals or research laboratories.

g. "Pathological waste" means human tissues and body parts that are removed during surgery or autopsy.

2. The department shall recommend, for adoption by the commission, standards for on-site and off-site treatment of infectious waste. In developing standards, the department shall consider factors affecting the feasibility of alternative methods of treatment and disposal, including but not limited to the volume of infectious waste generated, the availability of treatment facilities within geographic areas, and the costs of transporting infectious wastes to treatment facilities. The standards shall include monitoring requirements for treatment facilities and training requirements for operators of facilities. The standards may include requirements for management plans dealing with the plans for management of infectious wastes in compliance with adopted standards. In cases in which an individual generator of infectious waste is served by a person treating or disposing of the infectious waste, the person treating or disposing of the waste may prepare the plan for all generators served.

89 Acts, ch 245, § 1; 99 Acts, ch 46, §1

Footnotes

Local approval of infectious waste incinerator projects; § 455B.305A

455B.502 Infectious medical waste incinerators regents universities requirements. Repealed by 99 Acts, ch 46, § 3.

455B.503 Infectious waste treatment and disposal facilities permits required rules.

The commission shall adopt rules which require a person who owns or operates an infectious waste treatment or disposal facility to obtain an operating permit before initial operation of the facility. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be issued, suspended, modified, revoked, or renewed. The rules shall address but are not limited to the areas of operator safety, recordkeeping and tracking procedures, best available appropriate technologies, emergency response and remedial action procedures, waste minimization procedures, and long-term liability. The department shall not grant permits for the construction or operation of a commercial infectious waste treatment or disposal facility until the commission has adopted the required rules.

91 Acts, ch 242, § 4; 92 Acts, ch 1182, § 4; 93 Acts, ch 103, §1; 99 Acts, ch 46, §2

455B.504 Collection and transportation of infectious medical waste permits required rules.

The commission shall adopt rules which require a person who owns or operates an infectious medical waste collection or transportation operation to obtain an operating permit prior to initial operation. The rules shall address but are not limited to the areas of operator safety, recordkeeping and tracking procedures, best available appropriate technologies, emergency response and remedial action procedures, waste minimization procedures, and long-term liability.

91 Acts, ch 242, §5

455B.505 Infectious waste treatment and disposal facilities national register of historic places.

The department of natural resources shall not grant a permit for the construction or operation of a commercial infectious waste treatment or disposal facility within one mile of a site or building which has been placed on the national register of historic places. This section does not apply to hospitals, health care facilities licensed pursuant to chapter 135C, physicians' offices or clinics, and other health service-related entities.

91 Acts, ch 242, §6

455B.506 through 455B.515 Reserved.

455B.516 Definitions.

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

1. "*Commission*" means the environmental protection commission established pursuant to section 455A.6.
2. "*Department*" means the department of natural resources created pursuant to section 455A.2.
3. "*Emergency Planning and Community Right-to-know Act*" or "*EPCRA*" means the federal Emergency Planning and Community Right-to-know Act as defined in section 30.1.
4. "*Environmental waste*" means a pollutant, waste, or release regardless of the type or existence of regulation and regardless of the media affected by the pollutant, waste, or release.
5. "*Existing toxics user*" means a toxics user installation or source constructed prior to July 1, 1991.
6. "*Multimedia*" means any combination of air, water, land, or workplace environments into which toxic substances or wastes are released.
7. "*Release*" means emission, discharge, or disposal into any environmental media including air, water, or land.

8. *"Toxics"* means toxic substances.

9. *"Toxics pollution prevention"* means employment of a practice which reduces the industrial use of toxic substances or reduces the environmental and health hazards associated with an environmental waste without diluting or concentrating the waste before the release, handling, storage, transport, treatment, or disposal of the waste. The term includes toxics pollution prevention techniques but does not include a practice which is applied to an environmental waste after the waste is generated or comes into existence on or after the waste exits a production or commercial operation.

"Toxics pollution prevention" does not include, promote, or require any of the following:

- a. Waste burning in industrial furnaces, boilers, smelters, or cement kilns for the purpose of energy recovery.
- b. The transfer of an environmental waste from one environmental medium to another environmental medium, the workplace environment, or a product.
- c. Off-site waste recycling.
- d. Any other method of end-of-pipe management of environmental wastes including waste exchange and the incorporation or embedding of regulated environmental wastes into products or by-products.

10. *"Toxics pollution prevention techniques"* means any of the following practices by a toxics user:

- a. Input substitution, which refers to replacing a toxic substance or raw material used in a production process with a nontoxic or less toxic substance.
- b. Product reformulation, which refers to substituting for an existing end product an end product which is nontoxic or less toxic upon use or release.
- c. Production process redesign or modification, which refers to developing and using production processes of a different design other than those currently in use.
- d. Production process modernization, which refers to upgrading or replacing existing production process equipment or methods with other equipment or methods based on the same production process.
- e. Improved operation and maintenance of existing production process equipment and methods, which refers to modifying or adding to existing equipment or methods, including but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, and production process control equipment or methods.
- f. Recycling, reuse, or extended use of toxic substances by using equipment or methods which become an integral part of the production process.

11. *"Toxic substance"* means any chemical substance in a gaseous, liquid, or solid state which is identified as a reportable substance under the federal Resource Conservation and Recovery Act, EPCRA, or defined as a hazardous air pollutant under the Clean Air Act of 1990. However, *"toxic substance"* does not include a chemical substance present in the article; used as a structural component of a facility; present in a product used for routine janitorial or facility grounds maintenance; present in foods, drugs, cosmetics, or other personal items used by employees or other persons at a toxics user facility; present in process water or noncontact cooling water as drawn from the environment or from municipal sources; present in air used either as compressed air or as part of combustion; present in a pesticide or herbicide when used in agricultural applications; or present in crude, fuel, or lube oils for direct wholesale or retail sale.

12. "*Toxics user*" means a large quantity generator as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or a person required to report pursuant to Title III of the federal Superfund Amendments and Reauthorization Act of 1986.

13. "*Waste exchange*" means a method of end-of-pipe management of environmental wastes that involves the transfer of environmental wastes between businesses or facilities owned or operated by the same business for recovery or to serve a productive purpose.

91 Acts, ch 255, § 3; 92 Acts, ch 1239, § 21; 2001 Acts, ch 7, §11; 2002 Acts, ch 1162, §55

455B.517 Duties of department.

The department shall do all of the following:

1. Establish the criteria for the development of the toxics pollution prevention program.
2. Develop and implement a toxics pollution prevention program.
3. Assist toxics users in the completion of toxics pollution prevention plans and inventories, and provide technical assistance as requested by the toxics user.
4. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for the uses designated pursuant to section 455B.133B. The department shall also coordinate existing resources and oversee the disbursement of federal grant moneys to provide consistency in achieving the toxics pollution prevention goal of the state.
5. Develop and implement guidelines regarding assistance to toxics users to ensure that the plans are multimedia in approach and are not duplicated by the department or other agencies of the state.
6. Identify obstacles to the promotion, within the toxics user community, of toxics pollution prevention techniques and practices.
7. Compile an assessment inventory, through solicitation of recommendations of toxics users and owners and operators of air contaminant sources, of the informational and technical assistance needs of toxics users and air contaminant sources.
8. Function as a repository of research, data, and information regarding toxics pollution prevention activities throughout the state.
9. Provide a forum for public discussion and deliberation regarding toxic substances and toxics pollution prevention.
10. Promote increased coordination between the department, the Iowa waste reduction center at the university of northern Iowa, and other departments, agencies, and institutions with responsibilities relating to toxic substances.
11. Coordinate state and federal efforts of clearinghouses established to provide access to toxics reduction and management data for the use of toxics users.
12. Make recommendations to the general assembly by January 1, 1992, regarding a funding structure for the long- term implementation and continuation of a toxics pollution prevention program.
13. Work with the Iowa waste reduction center at the university of northern Iowa to assist small business

toxics users with plan preparation and technical assistance.

91 Acts, ch 255, § 4; 92 Acts, ch 1239, § 21; 95 Acts, ch 26, §3; 2001 Acts, ch 7, §12; 2002 Acts, ch 1162, §56, 57

455B.518 Toxics pollution prevention plans.

1. A toxics user required to report under section 313 of EPCRA, 42 U.S.C. § 11023, or a large quantity generator, as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., shall be encouraged to develop a facility-wide multimedia toxics pollution prevention plan, as described pursuant to this section.

2. The department shall adopt criteria for the information required in a multimedia toxics pollution prevention plan. To the extent possible, the plans shall coordinate reporting requirements in order to minimize unnecessary duplication. The plans shall include, but are not limited to, all of the following:

a. A policy statement which articulates upper management and corporate support for the toxics pollution prevention plan and its implementation.

b. The identification and quantities of toxic substances used and released by groups of related production processes or by processes used in producing an identifiable product.

c. An assessment of the applicability of the approaches designated as toxics pollution prevention techniques including the following: input substitution; production reformulation; production process redesign or modification; production process modernization; improved operation and maintenance of existing production process equipment and methods; and recycling, reuse, or extended use of toxic substances, to the toxics users' production processes as identified in paragraph "b".

d. A description of current and previous techniques used to reduce or eliminate toxics used or released.

e. An economic analysis of the proposed toxics pollution prevention plan. The economic analysis shall also include an evaluation of the impact upon the toxics user's existing labor force by division or department, and the projected impact upon future expansion of the toxics user's labor force.

f. A clear statement listing specific reduction objectives.

g. A method for employees of a toxics user to provide input and to be involved in the development of the plans. If the employees are represented by a labor union, organization, or association, a representative of the union, organization, or association shall be included in the development of the plans.

3. The plans developed under this section shall not promote the use of pollution control or waste management approaches that address waste or pollution after the creation of the waste or pollution.

4. A toxics pollution prevention plan developed under this section shall be reviewed by the department for completeness, adequacy, and accuracy.

5. A toxics user shall maintain a copy of the plan on the premises, and shall submit a summary of the plan to the department.

91 Acts, ch 255, § 5; 92 Acts, ch 1239, § 21; 2002 Acts, ch 1162, §58; 2003 Acts, ch 108, §77

455B.519 through 455B.600 Reserved.

455B.601 Pesticide and fertilizer contaminated sites prioritization of cleanup.

1. The commission shall adopt rules to establish criteria for the classification and prioritization of sites upon which contamination has been discovered.

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

(1) A site shall be considered high priority under any of the following conditions:

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

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

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

(2) 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.

(3) A site shall be considered low priority under any of the following conditions:

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

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

(4) 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 established under this paragraph.

b. An initial site plan shall be developed by the responsible person and approved by the department for each site upon which contamination has been discovered. The site 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) A recommendation as to whether the site should be classified as a high, medium, or low priority site.

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

c. 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 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 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 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 on a low priority site is undertaken, no further action shall be required on the site.

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

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

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

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

3. Application of contaminated groundwaters and soils on land upon which the contaminants have been applied in accordance with department rules shall not exceed a level which would preclude the resumption of normal farming practices within a two-year period.

4. This section 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.

92 Acts, ch 1239, § 48; 2000 Acts, ch 1184, §1113; 2002 Acts, ch 1119, §175

Footnotes

Classification and prioritization of sites by department of agriculture and land stewardship; §161.6

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.

2000 Acts, ch 1184, §14

455B.603 through 455B.700 Reserved.

455B.701 Oil spill immunity.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. *"Damages"* means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or relating to the discharge or threatened discharge of oil.

b. *"Discharge"* means any emission, other than natural seepage, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

c. *"Federal on-scene coordinator"* means the federal official designated by the federal agency in charge of the removal efforts or by the United States environmental protection agency or the United States coast guard to coordinate and direct responses under the national contingency plan.

d. *"National contingency plan"* means the national contingency plan prepared and published under 33 U.S.C.

§ 1321(d).

e. "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

f. "Remove" or "removal" means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

g. "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

h. "Responsible party" means a responsible party as defined under 33 U.S.C. § 2701.

2. Exemption from liability.

a. Notwithstanding any other provisions of law, a person is not liable for removal costs or damages which result from acts or omissions taken or made in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on- scene coordinator or by the state official with responsibility for oil spill response.

b. Paragraph "*a*" does not apply to the following:

(1) A responsible party.

(2) When the damage involves personal injury or wrongful death.

(3) If the person is grossly negligent or engages in willful misconduct.

c. A responsible party is liable for any removal costs and damages that another person is relieved of under paragraph "*a*".

d. This section does not affect the liability of a responsible party for oil spill response under state law.

95 Acts, ch 15, §1

455B.702 through 455B.750 Reserved.

455B.751 Definitions.

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

1. "*Acquired*" means purchased, leased, obtained by inheritance or descent and distribution, or obtained by foreclosure sale under chapter 654, nonjudicial voluntary foreclosure under section 654.18, deed in lieu of foreclosure under section 654.19, foreclosure without redemption under section 654.20, or nonjudicial foreclosure of nonagriculture mortgages under chapter 655A.

2. "*Hazardous substance*" means the same as defined in section 455B.381 or 455B.411.

3. "*Hazardous waste*" means the same as defined in section 455B.411.

4. "*Potentially responsible party*" means a person whose acts or omissions were a proximate cause of the contamination of the acquired property, or a person whose negligent acts or omissions are a proximate cause of injury or damages resulting from exposure to such contamination. Injury or damages to persons or property arising by reason of contamination that migrates from the acquired property shall not be deemed to be caused by an act or omission of the person that acquired the property, except to the extent that the act or omission of such person exacerbated the release of such contamination.

5. "*Regulated substance*" means the same as defined in section 455B.471.

6. "*Response action*" means any action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release of hazardous substances, hazardous waste, or regulated substances to protect the public health, safety, or the environment.

7. "*Third party*" means any person other than a person that holds indicia of title to property or that has acquired property as identified in section 455B.752.

8. "*Third-party liability*" means any liability or obligation, other than contractual obligations that specifically waive all or part of the immunity provided by section 455B.752, arising out of or resulting from contamination of property by a hazardous substance, hazardous waste, or a regulated substance, including without limitation, claims for illness, personal injury, death, consequential damages, exemplary damages, lost profits, trespass, loss of use of property, loss of rental value, reduction in property value, property damages, or statutory or common law nuisance.

2004 Acts, ch 1141, §75, 79; 2005 Acts, ch 19, §58

455B.752 Immunity from third-party liability.

A person that holds indicia of ownership of property contaminated by a hazardous substance, hazardous waste, or regulated substance, and that satisfies all of the conditions provided in section 455B.381, subsection 7, paragraphs "a", "b", and "c", or section 455B.471, subsection 6, paragraph "b", subparagraphs (1), (2), and (3), or a person that has acquired property contaminated by a hazardous substance, hazardous waste, or regulated substance, shall not be liable to any third party for any third-party liability arising from such contamination provided that all of the following apply:

1. The person does not knowingly cause or permit a new or additional hazardous substance, hazardous waste, or regulated substance to arise on or from the acquired property that injures a third party or contaminates property owned or leased by a third party.

2. The person is not a potentially responsible party or affiliated with any potentially responsible party by reason of any of the following:

a. Any direct or indirect familial relationship.

b. Any contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the property is conveyed or financed or by a contract for the sale of goods or services.

c. A reorganization of a business entity that is or was a potentially responsible party.

2004 Acts, ch 1141, §76, 79

455B.753 Access to property.

A person that holds indicia of title to property or a person that has acquired property as identified in section 455B.752 shall provide reasonable access to the acquired property to any potentially responsible party or to any authorized regulatory authority for the purpose of investigating or evaluating any contamination, planning, or preparing a remedial plan for any abatement of the contamination, and for any required remediation.

2004 Acts, ch 1141, §77, 79

455B.754 Legal responsibility.

This division shall not be interpreted to affect the legal responsibility to the state to conduct response actions under any applicable state law. This division shall not be interpreted to affect or provide immunity from any criminal liability.

2004 Acts, ch 1141, §78, 79