CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

Referred to in §13.2, §15E.208, §306.27, §331.428, §357A.11, §357E.1, §364.22, §455A.4, §455A.6, §455E.5, §455E.6, §455E.8, §455G.5, §455H.303, §455H.507, §455I.2, §461A.62, §463B.2

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Referred to in §459.601, §459A.501

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455B.102 Repealed by 86 Acts, ch 1245, §1899O.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, **chapter 459B**, or the rules or standards adopted under **this chapter**, **chapter 459**, **chapter 459A**, or **chapter 459B**. 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; 2006 Acts, ch 1010, §170, 177; 2009 Acts, ch 155, §20, 34; 2010 Acts, ch 1069, §55

Referred to in **§455B.475**, **§459.207**, **§459.601**

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

1. If a permit is required pursuant to **this chapter** or **chapter 459**, **459A**, or **459B** 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 one newspaper with the largest circulation in the area in which the facility is located. Notice of the discontinuation of a permitted activity other than storm water and allowable nonstorm water discharges 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. *a.* Except as provided in paragraph *"b"*, 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.

b. The commission shall adopt rules for a general permit described in **section 455B.197**, including fees, only to the extent that the rules are consistent with that section.

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; 2006 Acts, ch 1178, §22; 2009 Acts, ch 155, §21, 34; 2013 Acts, ch 59, §1

Referred to in **§455B.195**, **§455B.197**

455B.104 Departmental duties.

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 5**.

2. The department shall assist persons applying for assistance to establish and operate renewable fuel production facilities pursuant to **section 15.335B**.

3. The department may periodically forward recommendations to the commission designed to encourage the reduction of statewide greenhouse gas emissions.

4. By December 31 of each year, the department shall submit a report to the governor and the general assembly regarding the greenhouse gas emissions in the state during the previous calendar year and forecasting trends in such emissions. The first submission by the

department shall be filed by December 31, 2011, for the calendar year beginning January 1, 2010.

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; 2009 Acts, ch 123, §31; 2010 Acts, ch 1031, §258; 2010 Acts, ch 1193, §54; 2011 Acts, ch 9, §2; 2011 Acts, ch 118, §86, 89; 2012 Acts, ch 1126, §25

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**, **chapter 459A**, and **chapter 459B**, 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**, **chapter 459A**, and **chapter 459B**. 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**, **chapter 459A**, and **chapter 459B** 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**, **chapter 459A**, or **chapter 459B**, 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** and **chapters 459**, **459A**, and **459B** relating to permits and general permits. The commission may also adopt, by rule, a schedule of fees for permit applications and a schedule of fees which may be periodically assessed for administration of permits. In determining the fee schedules, the commission shall consider:

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

(2) The relative benefits to the applicant and to the public of 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 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.

c. The commission shall adopt rules for applications or permits related to the national pollutant discharge elimination system (NPDES) coverage as described in **section 455B.197**, including fees, only to the extent that the rules are consistent with that section.

[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; 2006 Acts, ch 1178, §23; 2009 Acts, ch 155, §22, 23, 34; 2013 Acts, ch 30, §100; 2014 Acts, ch 1010, §1

Referred to in **§455B.183A**, **§455B.310**, **§455B.387**

Subsection 11, paragraph a amended

455B.106 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 civil penalties — 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**.

2. 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 **subsection 1**.

3. 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.

4. 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.

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

b. Civil penalties assessed and collected by or on behalf of the department and interest on the civil penalties as provided in **sections 459.602**, **459.603**, **459.604**, **459A.502**, and **459B.402** shall be deposited into the watershed improvement fund created in **section 466A.2**.

6. **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; 2008 Acts, ch 1032, §57; 2009 Acts, ch 155, §24, 34; 2011 Acts, ch 128, §34, 45

Referred to in **§455B.476**, **§455D.22**, **§459.602**, **§459.603**, **§466A.2**

455B.110 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**; **chapter 459B**; or a rule adopted pursuant to **this chapter**; **chapter 459, subchapters I, II, III, IV, and VI**; **chapter 459A**; or **chapter 459B**.

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**; **chapter 459B**; or a rule adopted pursuant to **this chapter**; **chapter 459, subchapters I, II, III, IV, and VI**; **chapter 459A**; or **chapter 459B**, 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**; **chapter 459B**; or a rule adopted pursuant to **this chapter**; **chapter 459, subchapters I, II, III, IV, and VI**; **chapter 459A**; or **chapter 459B**; or seek other relief permitted under the law.

86 Acts, ch 1245, §1888; 2005 Acts, ch 136, §26, 27; 2009 Acts, ch 155, §25, 26, 34
Referred to in **§455K.8**

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**; **chapter 459A**; or **chapter 459B**, 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**; **chapter 459A**; or **chapter 459B**, including orders or permits issued or rules adopted under this chapter; **chapter 459, subchapters I, II, III, IV, and VI**; **chapter 459A**; or **chapter 459B**.

86 Acts, ch 1245, §1889; 2005 Acts, ch 136, §28; 2009 Acts, ch 155, §27, 34
Referred to in **§455H.508**

455B.112A Environmental crimes investigation and prosecution fund.

1. An environmental crimes investigation and prosecution fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include court-ordered fines and restitution awarded to the attorney general as part of a judgment in an environmental criminal case.

2. For each fiscal year not more than twenty thousand dollars is appropriated from the fund to the department of justice to be used for the investigation and prosecution of environmental crimes, including the reimbursement of expenses incurred by county, municipal, and other local government agencies cooperating with the attorney general in the investigation and prosecution of environmental crimes.

3. Not more than twenty thousand dollars shall be credited to the fund in a fiscal year and any moneys in excess of this amount shall be credited to the general fund of the state.

4. Notwithstanding **section 8.33**, moneys credited to the fund shall not revert to any other fund. Notwithstanding **section 12C.7**, interest or earnings deposited in the fund shall be credited to the fund.

2007 Acts, ch 213, §22

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

b. 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; 2011 Acts, ch 25, §143

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

455B.116 Pollution hotline program. Repealed by 2011 Acts, ch 9, §10.

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.

DIVISION II

AIR QUALITY

Referred to in §172D.3, §455B.103A, §455B.104

PART 1

GENERAL

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.

a. 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.

b. 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. *"Greenhouse gas"* means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

8. *"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.

9. *"Person"* means an individual, partnership, 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.

10. *"Political subdivision"* means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

11. *"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.

12. *"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.

13. *"Small business stationary source"* means a stationary air contaminant source that meets all of the following requirements:

a. Employs one hundred or fewer individuals.

b. Qualifies as a small business concern by the United States department of commerce pursuant to 15 U.S.C. §632.

c. Is not a major stationary source.

d. Emits less than fifty tons per year of any federally regulated air pollutant and less than seventy-five tons per year of all federally regulated pollutants under the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7401 et seq.

[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; 2007 Acts, ch 120, §1; 2008 Acts, ch 1031, §52; 2008 Acts, ch 1032, §106; 2008 Acts, ch 1105, §1

Referred to in **§427.1(19e)**

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 Tit. 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 relating to 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 Tit. 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 Tit. 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 Tit. 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, §87 – 89; 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; 2010 Acts, ch 1061, §180; 2014 Acts, ch 1010, §2

Referred to in §455B.133B, §455B.134

Subsection 6, paragraph a amended

455B.133A Small business stationary source technical and environmental compliance assistance program.

A small business stationary source technical and environmental compliance assistance program shall be administered and enforced as required pursuant to the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7661f.

2008 Acts, ch 1105, §2

Referred to in §455B.133B, §455B.151

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.

1. Moneys received from the fees assessed pursuant to **section 455B.133, subsection 8**, shall be deposited in the fund.

2. 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, section 502, Pub. L. No. 101-549, and as provided in **section 455B.133A**.

3. 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; 2008 Acts, ch 1105, §3

Referred to in §455B.133, §455B.150

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 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 permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction permit.

c. All applications for permits 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, 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. A regulated air contaminant source for which a construction 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 Tit. 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.

e. (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:

(a) 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.

(b) 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.

f. All applications for construction permits or prevention of significant deterioration permits shall quantify the potential to emit greenhouse gases due to the proposed project.

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 cooperation 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.

14. Convene meetings not later than June 1 during the second calendar year following the adoption of new or revised federal ambient air quality standards by the United States environmental protection agency to review emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source as provided in **section 455B.133, subsection 4**. By November 1 of the same calendar year, the department shall submit a report to the governor and the general assembly regarding recommendations for law changes necessary for the attainment of the new or revised federal standards.

[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, §11 – 13; 93 Acts, ch 137, §4; 95 Acts, ch 195, §14; 2007 Acts, ch 120, §2, 3; 2010 Acts, ch 1115, §1; 2011 Acts, ch 25, §49, 50; 2014 Acts, ch 1010, §3 – 5

Referred to in **§455B.145**

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**

Subsection 3, unnumbered paragraph 1 amended

Subsection 3, paragraphs a – c amended

Subsection 3, paragraph d stricken and paragraph e amended and redesignated as d

Subsection 3, paragraphs f and g redesignated as e and f

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
Referred to in **§455B.134**, **§455B.138**

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
Referred to in **§455B.149**

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
Referred to in **§455B.142**

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
Referred to in **§331.382**

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
Referred to in **§331.382**

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
Referred to in **§29C.8A**

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

455B.147 Failure — procedure.

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.

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

C83, §455B.147

86 Acts, ch 1245, §1899, 1899B; 93 Acts, ch 137, §6; 2014 Acts, ch 1010, §6

Subsection 2 stricken and subsection 1 redesignated as an unnumbered paragraph

455B.148 Repealed by 83 Acts, ch 136, §8.

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
Section not amended; editorial change applied

455B.150 Compliance advisory panel — creation.

A compliance advisory panel is created, pursuant to Tit. V, section 507(e) of the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7661f.

1. Appointment to the compliance advisory panel shall be as follows:

a. Two persons shall be appointed by the governor.

(1) Each person shall represent the general public and have an interest in air quality issues. The person shall not be an owner or represent an owner of a small business stationary source.

(2) The person shall serve for a four-year term and may be reappointed. A term of office shall begin and end as provided in **section 69.19**.

(3) An appointment shall comply with **sections 69.16** and **69.16A**. In addition, the appointments shall be geographically balanced.

b. Four persons appointed by the leadership of the general assembly.

(1) The persons, who shall not be members of the general assembly, shall be appointed as follows:

(a) One person by the majority leader of the senate after consultation with the president of the senate, and one person by the minority leader of the senate.

(b) One person by the speaker of the house of representatives after consultation with the majority leader, and one person by the minority leader of the house of representatives.

(2) Each person shall be an owner of a small business stationary source or shall represent an owner of a small business stationary source.

(3) Each person shall serve for a term as provided in **section 69.16B** and may be reappointed.

c. The director or the director's designee who shall serve for a term of four years.

2. A vacancy shall be filled for the unexpired term by the original appointing authority in the manner of the original appointment.

3. The members are entitled to receive a per diem as specified in **section 7E.6** for each day spent in performance of duties of members, and shall be reimbursed for all actual necessary expenses incurred in the performance of duties as members. Per diem and expenses shall be paid from moneys deposited in the air contaminant source fund created pursuant to **section 455B.133B**.

4. The compliance advisory panel shall elect a chairperson and may elect a vice chairperson or other officers from among its members as provided by its rules. The panel shall meet on a regular basis, but at least once each six months, and at the call of the chairperson or upon the written request to the chairperson of three or more members.

5. The department shall staff the compliance advisory panel and provide the panel with space to conduct its meetings, clerical assistance, and necessary supplies and equipment.

93 Acts, ch 137, §7; 2008 Acts, ch 1105, §4; 2009 Acts, ch 106, §13, 14
Referred to in **§455B.151**

455B.151 Compliance advisory panel — powers and duties.

The compliance advisory panel created in **section 455B.150** shall review and report on the effectiveness of the small business stationary source technical and environmental compliance assistance program as provided in **section 455B.133A**. The compliance advisory panel shall do all of the following:

1. Render advisory opinions concerning the effectiveness of the small business stationary

source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.

2. Make periodic reports to the administrator of the federal environmental protection agency concerning the compliance of the state small business stationary source technical and environmental compliance assistance program with the requirements of the federal Paperwork Reduction Act, 44 U.S.C. §3501 et seq.; the federal Regulatory Flexibility Act, 5 U.S.C. §601 et seq.; and the federal Equal Access to Justice Act, 5 U.S.C. §504.

3. Review information for small business stationary sources to assure such information is understandable by the layperson.

4. Have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

2008 Acts, ch 1105, §5; 2009 Acts, ch 41, §131

455B.152 Greenhouse gas inventory and registry.

1. *Definitions.* For purposes of **this section**, *"greenhouse gas"* means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride.

2. *Greenhouse gas inventory.*

a. By January 1, 2008, the department shall establish a method for collecting data from producers of greenhouse gases regarding generated greenhouse gases. The data collection method shall provide for mandatory reporting to collect information from affected entities individually and shall include information regarding the amount and type of greenhouse gases generated, the type of source, and other information deemed relevant by the department in developing a baseline measure of greenhouse gases produced in the state.

b. The department may allow a series of reporting requirements to be phased in over a period of time and may provide for phasing in by producer sector, geographic area, size of producer, or other factors. The reporting requirements shall apply to the departments, agencies, boards, and commissions of the state, in addition to any other entities subject to the reporting requirements established by the department.

c. The department shall coordinate the data collection with the United States environmental protection agency upon the enactment of a federal mandatory greenhouse gas emission reporting rule.

3. *Greenhouse gas registry.*

a. The department shall establish a voluntary greenhouse gas registry for purposes of cooperating with other states in tracking, managing, and crediting entities in the state that reduce their generation of greenhouse gases or that provide increased energy efficiency.

b. The department shall develop a mechanism to coordinate the information obtained in the greenhouse gas inventory with the greenhouse gas registry.

4. *Availability.* By January 1, 2009, the greenhouse gas registry shall be made available on an internet site.

2007 Acts, ch 120, §4; 2010 Acts, ch 1034, §1; 2013 Acts, ch 90, §257

455B.153 through 455B.160 Reserved.

PART 2

ANIMAL FEEDING OPERATIONS REQUIREMENTS

455B.161 through 455B.163 Transferred to chapter 459; 2002 Acts, ch 1137, §68, 71; 2002 Acts, ch 1138, §5; 2002 Acts, 2nd Ex, ch 1003, §260, 262.

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

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

455B.166 through 455B.170 Reserved.

DIVISION III

WATER QUALITY

Referred to in **§455H.102**, **§459A.401**

PART 1

GENERAL

Referred to in **§455B.103A**

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. §1251 – 1376, as amended through December 31, 1985.

8. *"Food commodity"* means any commodity that is derived from an agricultural animal or crop, both as defined in **section 717A.1**, which is intended for human consumption in its raw or processed state.

a. A food commodity in its raw state for processing includes but is not limited to milk, eggs, vegetables, fruits, nuts, syrup, and honey.

b. A food commodity in its processed state includes but is not limited to dairy products, pastries, pies, and meat or poultry products.

9. *"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**.

10. *"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.

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

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

13. *"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.

14. *"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.

15. *"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.

16. *"On-farm processing operation"* means any place located on a farm where the form or condition of a food commodity originating from that farm or another farm is changed or packaged for human consumption, including but not limited to a dairy, creamery, winery, distillery, cannery, bakery, or meat or poultry processor.

17. *"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.

18. *a.* *"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.

b. 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**, paragraph *"b"*, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

19. *"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.

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

21. *"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.

22. *"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.

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

24. *"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.

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

26. *"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.

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

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

29. *"Semipublic 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 district, or a designated and approved management agency under §1288 of the federal Water Pollution Control Act, codified at 33 U.S.C. §1288.

30. *"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.

31. *"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.

32. *"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. ch. 1, subch. O, pt. 159, and sewage sludge products. *"Sewage sludge"* does not include grit, screenings, or ash generated during the incineration of sewage sludge.

33. *"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.

34. *"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**.

35. *"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.

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

37. *"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.

38. *"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.

39. *"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.

40. *"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.

41. *"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.

42. *"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; 2007 Acts, ch 126, §74; 2009 Acts, ch 41, §132; 2011 Acts, ch 31, §1; 2012 Acts, ch 1023, §56

Referred to in **§161A.42**, **§331.382**, **§427.1(19e)**, **§455B.172**, **§455B.176A**, **§455B.190**, **§455B.190A**, **§455B.194**, **§455B.266**, **§455E.2**, **§459.102**, **§459A.102**, **§459A.205**

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. *a.* 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**.

b. 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**.

11. *a.* If a building where a person resides, congregates, or is employed is served by a private sewage disposal system, the sewage disposal system serving the building shall be inspected prior to any transfer of ownership of the building. The requirements of **this subsection** shall be applied to all types of ownership transfer including at the time a seller-financed real estate contract is signed. The county recorder shall not record a deed or any other property transfer or conveyance document until either a certified inspector's report is provided which documents the condition of the private sewage disposal system and whether any modifications are required to conform to standards adopted by the department or, in the event that weather or other temporary physical conditions prevent the certified inspection from being conducted, the buyer has executed and submitted a binding acknowledgment with the county board of health to conduct a certified inspection of the private sewage disposal system at the earliest practicable time and to be responsible for any required modifications to the private sewage disposal system as identified by the certified inspection. Any type of on-site treatment unit or private sewage disposal system must be inspected according to rules developed by the department. For the purposes of **this subsection**, *"transfer"* means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units. However, *"transfer"* does not include any of the following:

(1) A transfer made pursuant to a court order, including but not limited to a transfer under **chapter 633** or **633A**, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to **chapter 654**, the forfeiture of a real estate contract under **chapter 656**, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.

(2) A transfer to a mortgagee by a mortgagor or successor in interest who is in default, a transfer by a mortgagee who has acquired real property as a result of a deed in lieu of foreclosure or has acquired real property under **chapter 654** or **655A**, or a transfer back to a mortgagor exercising a right of first refusal pursuant to **section 654.16A**.

(3) A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(4) A transfer between joint tenants or tenants in common.

(5) A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.

(6) A transfer between spouses resulting from a decree of dissolution of marriage, a

decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to **chapter 598**.

(7) A transfer in which the transferee intends to demolish or raze the building. The department shall adopt rules pertaining to such transfers.

(8) A transfer of property with a system that was installed not more than two years prior to the date of the transfer.

(9) A deed arising from a partition proceeding.

(10) A tax sale deed issued by the county treasurer.

(11) A transfer for which consideration is five hundred dollars or less.

(12) A deed between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in **section 428A.2, subsection 15**, and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or in the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deed is given for no actual consideration other than for shares or for debt securities of the family corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

b. At the time of inspection, any septic tank existing as part of the sewage disposal system shall be opened and have the contents pumped out and disposed of as provided for by rule. In the alternative, the owner may provide evidence of the septic tank being properly pumped out within three years prior to the inspection by a commercial septic tank cleaner licensed by the department which shall include documentation of the size and condition of the tank and its components at the time of such occurrence.

c. If a private sewage disposal system is failing to ensure effective wastewater treatment or is otherwise improperly functioning, the private sewage disposal system shall be renovated to meet current construction standards, as adopted by the department, either by the seller or, by agreement, and within a reasonable time period as determined by the county board of health or the department, by the buyer. If the private sewage disposal system is properly treating the wastewater and not creating an unsanitary condition in the environment at the time of inspection, the system is not required to meet current construction standards.

d. Inspections shall be conducted by an inspector certified by the department.

e. Pursuant to **chapter 17A**, the department shall adopt certification requirements for inspectors including training, testing, and fees, and shall establish uniform statewide inspection criteria and an inspection form. The inspector certification training shall include use of the criteria and form. The department shall maintain a list of certified inspectors.

f. County personnel are eligible to become certified inspectors. A county may set an inspection fee for inspections conducted by certified county personnel. A county shall allow any department certified inspector to provide inspection services under **this subsection** within the county's jurisdiction.

g. Following an inspection, the inspection form and any attachments shall be provided to the county board of health and the department for enforcement of any follow-up mandatory system improvement and to the department for record.

h. An inspection is valid for a period of two years for any ownership transfers during that period.

i. **This subsection** preempts any city or county ordinance related to the inspection of private sewage disposal systems in association with the transfer of ownership of a building.

[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; 2006 Acts, ch 1010, §172, 177; 2008 Acts, ch 1033, §1, 2; 2009 Acts, ch 175, §22, 25; 2010 Acts, ch 1061, §85; 2010 Acts, ch 1120, §1 – 5; 2011 Acts, ch 25, §51

Referred to in **§358.16**, **§358.22**, **§384.38**, **§455B.172A**, **§455B.188**, **§558.69**

2010 amendment striking a requirement relating to documentation on title abstracts for property containing private sewage systems, applies retroactively to July 1, 2009; 2013 Acts, ch 25, §1

2013 amendment to 2010 Acts, ch 1120, takes effect April 5, 2013, and applies retroactively to July 1, 2010; 2013 Acts, ch 25, §2, 3

455B.172A On-farm processing operations.

1. The department shall adopt by rule standards for the disposal of wastewater from an on-farm processing operation. These standards shall provide for but are not limited to disposal by all of the following:

a. By land application if all of the following apply:

(1) The volume of wastewater produced by the on-farm processing operation is less than one thousand five hundred gallons per day.

(2) The application rate does not exceed thirty thousand gallons per acre per year.

(3) The application rate does not exceed one thousand five hundred gallons per acre per day.

(4) The standards for land application are consistent with the rules for land application of septage that implement **section 455B.172**.

b. At a publicly owned treatment works or other wastewater treatment system with the permission of the owner of the treatment works.

c. Through a subsurface absorption system in conformance with applicable regulations of the United States environmental protection agency.

d. Through a disposal system that meets all of the following:

(1) The disposal system is located on the same site as the on-farm processing operation.

(2) The disposal system is constructed in conformance with a permit issued by the department.

(3) For a disposal system that discharges wastewater to a water of the United States, the system must be operated in conformance with a national pollutant discharge elimination system permit issued by the department under **section 455B.197**.

2. The department shall adopt by rule standards for the disposal of septage from an on-farm processing operation. The rules shall provide that the septage may be discharged to a permitted septage lagoon or septage drying bed with the permission of the owner of the septage system.

2011 Acts, ch 31, §2; 2012 Acts, ch 1042, §1, 2

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 in accordance with the provisions of **this chapter**.

a. The effluent standards may provide for maintaining the existing quality of the water of the state that is a navigable water of the United States under the federal Water Pollution Control Act where the quality thereof exceeds the requirements of the water quality standards.

b. 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 or 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.

a. 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.

b. 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 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; 2006 Acts, ch 1014, §2; 2006 Acts, ch 1145, §1; 2011 Acts, ch 25, §102; 2014 Acts, ch 1010, §7

Referred to in **§331.382**, **§455B.174**, **§455B.176A**, **§455B.183**, **§455B.188**, **§455B.474**

Subsection 3, paragraph a stricken and former paragraphs b and c redesignated as a and b

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**, **chapter 459, subchapter III**, **chapter 459A**, **chapter 459B**, 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**, **chapter 459, subchapter III**, **chapter 459A**, or **chapter 459B**.

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.* (1) 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:

(a) 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.

(b) 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.

(c) 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.

(2) 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. A person who is an applicant or permittee may contest the denial of a permit or any condition of a permit issued by the director if the person notifies the director within thirty days of the director's notice of denial or issuance of the permit. Notwithstanding **section 17A.11, subsection 1**, if the applicant or permittee timely contests the director's action, the presiding officer in the resulting contested case proceeding shall be an administrative law judge assigned by the division of administrative hearings pursuant to **sections 10A.801** and **17A.11**.

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. 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.

e. The department may enter into an agreement with a county to delegate to the county the duties of the department under **this subsection** as they relate to the construction of semipublic sewage disposal systems.

5. *a.* 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**.

b. 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.9 – 455B.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; 2009 Acts, ch 155, §28, 34; 2010 Acts, ch 1029, §1; 2011 Acts, ch 97, §2; 2014 Acts, ch 1010, §8

Referred to in **§331.382**, **§357A.2**, **§455B.172**, **§455B.173**, **§455B.175**, **§455B.183A**

Subsection 4, paragraph d stricken and former paragraphs e and f redesignated as d and e

455B.175 Violations.

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

a. 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

b. 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

c. 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**.

2. Notwithstanding the limitations on civil and criminal penalty amounts in **sections 331.302** and **331.307**, a county that has entered into an agreement with the department pursuant to **sections 455B.174** and **455B.183** regarding the construction of semipublic sewage disposal systems may assess civil penalties in amounts consistent with and not exceeding the amounts established for such penalties under **this division**.

[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; 2007 Acts, ch 82, §1; 2009 Acts, ch 155, §29, 34; 2011 Acts, ch 97, §3

Referred to in **§459.601**, **§459A.501**

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

2009 Acts, ch 41, §133

455B.176A Water quality standards.

1. For purposes of **this section**, unless the context otherwise requires:

a. *"Base flow conditions"* means the flow of a stream segment, as measured during the time period between July 1 and September 30, that occurs during a period of time when the watershed in which the stream segment is located receives no twenty-four-hour rainfall in excess of one-quarter inch total rainfall and not more than one-half inch total rainfall for the watershed in the preceding two weeks.

b. *"Credible data"* means the same as defined in **section 455B.171** and is subject to the same requirements as provided in **section 455B.193** and may include, but not rely solely on, data that is older than five years and that is obtained pursuant to the best professional judgment of a professional designee or a state or federal agency.

c. *"Ephemeral stream"* means a stream that flows only in response to precipitation and whose channel is primarily above the water table.

d. *"Professional designee"* means the same as defined in **section 455B.193**.

e. *"Use attainability analysis"* means a structured scientific assessment that includes physical, chemical, biological, and economic factors.

2. A water of the state shall be a designated stream segment when any one of the following is met:

a. The most recent ten-year median flow is equal to or in excess of one cubic foot per second based on data collected and evaluated by the United States geological survey between July 1 and September 30 of each year or in the absence of stream segment flow data calculations of flow conducted by extrapolation methods provided by the United States geological survey or based upon a calculation method adopted by rule.

b. The water is a critical habitat of a threatened or endangered aquatic specie as determined by the department or the United States fish and wildlife service.

c. Credible data developed in accordance with **section 455B.193** shows that water flows that are less than set out in paragraph *"a"* provide a refuge for aquatic life that permits biological recolonization of intermittently flowing segments.

3. All waters of the state not designated as a stream segment shall be identified as a general stream segment and shall be subject to narrative water quality standards.

4. *a.* The commission shall adopt rules to define designated uses of stream segments in accordance with the following categories:

(1) Agricultural water supply use.

(2) Aquatic life support.

(3) Domestic water supply.

(4) Food procurement use.

(5) Industrial water supply use.

(6) Recreational use, including primary, secondary, and children's recreational use.

(7) Seasonal use. The department may allow for a seasonal use designation for streams that would otherwise be categorized under an aquatic or recreational designation if a varying degree of protection would be sufficient to protect the stream during a seasonal time period.

b. The commission shall include subcategories of designated uses of the categories listed in paragraph *"a"*, as deemed appropriate by the commission.

c. When reviewing whether a designated use is attainable, the department shall consider at a minimum the following:

(1) Whether the natural, ephemeral, intermittent, or low flow conditions or water levels could inhibit recreational activities.

(2) If opposite sides of a stream segment would have different designated recreational uses due to differences in public access, the designated use of the entire stream segment may be the higher attainable use.

(3) The time period for determining primary contact recreation shall be March 15 through November 15.

(4) The degree to which the public has access to the stream segment.

(5) The minimum depth of the deepest pool.

(6) Stream segments shall be protected for all existing uses as defined by the federal Water Pollution Control Act.

5. The commission shall adopt rules designating water quality standards which shall be specific to each designated use adopted pursuant to **subsection 4**. The standards shall take into account the different characteristics of each designated use and shall provide for only the appropriate level of protection based upon that particular use. The standards shall not be identical for each designated use unless required for the appropriate level of protection. The appropriate level of protection and standards shall be determined on a scientific basis. In the development process for the water quality standards, input shall be received from a water quality standards advisory committee convened by the department. The water quality standards advisory committee shall be comprised of experts in the scientific fields relating to water quality, such as environmental engineering, aquatic toxicology, fisheries biology, and other life sciences and experts in the development of the appropriate levels of aquatic life protection and standards. The water quality standards shall be reviewed and revised by the department as new scientific data becomes available to support revision.

6. Prior to any changes in a national pollutant discharge elimination system permit effluent limitation based upon a new use designation, the department or a designee of the department shall conduct a use attainability analysis. The commission shall adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. The rules shall, at a minimum, provide all of the following:

a. A designated use, which is not an existing use as defined by the federal Water Pollution Control Act, may be removed due to any of the following:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use.

(2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met.

(3) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(4) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

(6) Controls more stringent than those required by sections 1311(b) and 1316 of the federal Water Pollution Control Act would result in substantial and widespread economic and social impact.

b. A designated use shall not be removed if any of the following occur:

(1) The designated use is an existing use, as defined by the federal Water Pollution Control Act, unless a use requiring more stringent criteria is added.

(2) Such uses will be attained by implementing effluent limits required under sections 1311(b) and 1316 of the federal Water Pollution Control Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

c. Where existing water quality standards specify designated uses less than those which are presently being attained, the commission shall revise its standards to reflect the uses actually being attained.

7. *a.* The commission shall adopt rules pursuant to **chapter 17A** to administer **this section**. All new or revised stream segment use designations shall be adopted by rule. Any rule that establishes, modifies, or repeals existing water quality standards in this state shall be adopted in conformance with **this section**.

b. (1) By December 31, 2006, the department shall publish a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has not been completed and a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has been completed and whether a recreational or aquatic use has been determined to be or not to be attainable. By December 31, 2007, a use attainability analysis shall be completed for all newly designated stream segments that receive a permitted discharge.

(2) A use attainability analysis for a designated stream segment receiving a permitted discharge shall be conducted by either the department or a professional designee.

(3) The department shall make public a written determination of whether a new or revised use designation is appropriate for the designated stream segment prior to adoption by rule of the proposed changes.

c. The department shall complete, upon request, a use attainability analysis for recreational and aquatic uses on any designated stream segment not receiving a permitted discharge or on any previously designated stream segment in accordance with the following provisions:

(1) The department shall make public a written determination of whether a new or revised designated use is appropriate for the designated stream segment within ninety days of completion of the use attainability analysis prior to adoption by rule of the proposed changes.

(2) The department shall accept a use attainability analysis submitted by someone other than a professional designee.

(a) Within thirty days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete.

(b) Within ninety days after receipt of submission of a completed use attainability analysis, the department shall review and make available to the public a written determination of whether a new or revised use designation is appropriate for the designated stream segment.

d. Any regulated entity or property owner adjacent to the accessed stream segment aggrieved by such a determination may make a written request, within thirty days from the date the written determination of the appropriate use designation is made available to the public, for a meeting with the director or the director's designee. A regulated entity or property owner adjacent to the accessed stream segment shall be allowed to provide evidence that the designation is not appropriate under the criteria as established in **this subsection**.

8. An operation permit issued pursuant to **section 455B.173** that expires before a use attainability analysis is performed shall remain in effect and the department shall not renew the permit until a use attainability analysis is completed. If a use attainability analysis demonstrates that a change in the use designation is warranted, the permit shall remain in effect and the department shall not renew the permit until the stream use designation is changed. In order for an expired permit to remain in effect, the permit holder must meet the requirements for a permit renewal. **This subsection** does not apply if the permit applicant and the department agree that the performance of a use attainability analysis presents no reasonable likelihood of resulting in a change to the existing stream use designations.

2006 Acts, ch 1145, §3; 2009 Acts, ch 72, §12

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 7**, 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; 2009 Acts, ch 133, §247; 2010 Acts, ch 1061, §88, 181

Referred to in **§455B.191**

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**; **chapter 459A**; **chapter 459B**; 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; 2009 Acts, ch 155, §30, 34
Referred to in **§455B.191**

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, licensed 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, licensed 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 licensed 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 licensed 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.

8. The department may enter into an agreement with a county to delegate to the county the duties of the department under **this section** as they relate to the construction of semipublic sewage disposal systems.

[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; 2007 Acts, ch 126, §75 – 77; 2011 Acts, ch 97, §4

Referred to in **§331.382**, **§455B.172**, **§455B.174**, **§455B.175**, **§455B.183A**, **§455B.191**, **§459.320**

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

Referred to in **§455B.183B**, **§455B.183C**, **§455B.187**, **§455B.190A**

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

Referred to in **§455B.183A**

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**; **chapter 459A**; or **chapter 459B**. 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; 2009 Acts, ch 155, §31, 34

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 in accordance with rules adopted by the commission. A pollutant whether treated or untreated shall not be discharged into any state-owned natural or artificial lake except as authorized in **subsection 2**.

2. **Subsection 1** shall not be construed to prohibit the use or application of a pesticide in accordance with the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. However, an aquatic pesticide shall not be applied to any water of the United States except as authorized in accordance with rules adopted by the commission.

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

C83, §455B.186

86 Acts, ch 1245, §1899; 90 Acts, ch 1167, §1; 2013 Acts, ch 59, §2

Referred to in **§455B.191**

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

Referred to in **§455B.172**, **§455B.183A**, **§455B.188**

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

Referred to in **§455B.183A**

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

Referred to in **§455B.183A**, **§558.69**

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, §1 – 5; 2003 Acts, ch 30, §3
Referred to in **§105.11**, **§455B.172**, **§455B.183A**

455B.191 Penalties — burden of proof.

1. As used in **this section**, *"hazardous substance"* means hazardous substance as defined in **section 455B.381** or **section 455B.411**.

2. 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.

3. *a.* Any person who negligently or knowingly does any of the following shall, upon conviction, be punished as provided in paragraph *"b"* or *"c"*:

(1) Violates **section 455B.183** or **section 455B.186** or any condition or limitation included in any permit issued under **section 455B.183**.

(2) 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.

(3) 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**, unless the person is in compliance with all applicable federal and state requirements or permits.

b. (1) A person who commits a negligent violation under **this subsection** is guilty of a serious misdemeanor 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.

(2) 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.

c. (1) A person who commits a knowing violation under **this subsection** is guilty of an aggravated misdemeanor 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.

(2) 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.

4. 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.

5. 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.

6. 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**.

7. 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**.

8. Any civil penalty collected by the state or a county relating to the construction of semipublic sewage disposal systems shall be deposited in the unsewered community revolving loan fund created pursuant to **section 16.141**.

[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; 2009 Acts, ch 133, §154; 2010 Acts, ch 1069, §56; 2011 Acts, ch 97, §5

Referred to in **§29C.8A**, **§455B.175**, **§455B.178**, **§459.603**, **§459A.502**

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.

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

a. 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 paragraph, *"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.

b. 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.

c. 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.

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

2. 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; 2011 Acts, ch 25, §143

Referred to in **§455B.176A**

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

Referred to in **§455B.171**, **§455B.195**

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 storm water 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 National pollutant discharge elimination system permit fund.

1. A national pollutant discharge elimination system permit fund is created as a separate fund in the state treasury under the control of the department. The fund is composed of moneys appropriated to the department for deposit into the fund and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund. The fund shall include moneys deposited into the fund from fees charged for the processing of applications for the issuance of permits related to the national pollutant discharge elimination system as provided in **section 455B.197**.

2. Moneys in the national pollutant discharge elimination system permit fund are appropriated to the department each fiscal year for purposes of administering **section 455B.197** and expediting the department's processing of national pollutant discharge elimination system applications and the issuance of permits, including for salaries, support, maintenance, and other costs of administering **section 455B.197**.

3. **Section 8.33** shall not apply to moneys credited to the national pollutant discharge elimination system permit fund. Notwithstanding **section 12C.7**, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in **this section**.

2006 Acts, ch 1178, §24; 2009 Acts, ch 175, §20

Referred to in **§455B.197**

455B.197 National pollutant discharge elimination system permits.

The department may issue a permit related to the administration of the national pollutant discharge elimination system (NPDES) permit program pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 124 including but not limited to storm water discharge permits issued pursuant to **section 455B.103A**. The department may provide for the receipt of applications and the issuance of permits as provided by rules adopted by the department which are consistent with **this section**. The department shall assess and collect fees for the processing of applications and the issuance of permits as provided in **this section**. The department shall deposit the fees into the national pollutant discharge elimination system permit fund created in **section 455B.196**. The fees shall be established as follows:

1. For a permit for the discharge from mining and processing facilities, NPDES general permit no. 5, the following fee schedule shall apply:

a. An annual permit, one hundred twenty-five dollars each year.

b. For a multiyear permit, all of the following shall apply:

(1) A three-year permit, three hundred dollars.

(2) A four-year permit, four hundred dollars.

(3) A five-year permit, five hundred dollars.

2. For coverage under NPDES individual permits for storm water, for a construction permit, an application fee of one hundred dollars.

3. For coverage under NPDES individual permits for non-storm water, the following annual fees apply:

a. For a major municipal facility, one thousand two hundred seventy-five dollars.

b. For a minor municipal facility, two hundred ten dollars. For a city with a population of two hundred fifty or less, the maximum fee shall be two hundred ten dollars regardless of how many NPDES individual permits for non-storm water the city holds.

c. For a semipublic facility, three hundred forty dollars.

d. For a facility that holds an operation permit, with no wastewater discharge into surface waters, one hundred seventy dollars.

e. For a municipal water treatment facility, a fee shall not be charged.

f. For a major industrial facility, three thousand four hundred dollars.

g. For a minor industrial facility, three hundred dollars.

h. For an open feedlot operation as provided in **chapter 459A**, an annual fee of three hundred forty dollars.

i. For a new facility that has not been issued a current non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.

j. For a facility covered under an existing non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.

k. For a non-storm water permit as provided in **this subsection**, a single application fee of eighty-five dollars.

4. A single family home shall not be charged a fee under **this section**.

5. The owner of an on-farm processing operation that produces less than one thousand five hundred gallons per day of wastewater shall not be assessed a fee by the department under **this section**.

2006 Acts, ch 1178, §25; 2007 Acts, ch 22, §79; 2007 Acts, ch 53, §1, 2; 2011 Acts, ch 31, §3

Referred to in **§455B.103A**, **§455B.105**, **§455B.172A**, **§455B.196**

455B.198 Wastewater discharge from well drilling sites — rules.

1. The commission shall adopt rules to regulate the discharge of wastewater from water well drilling sites. The rules shall incorporate the following considerations:

a. The size of the well as measured by the flow of water in gallons per minute.

b. The best management practices to address wastewater discharge.

c. Requirements for notification to the department prior to the commencement of drilling operations.

d. Requirements for retention of records for a well.

e. Reasonable and appropriate limitations on wastewater discharge that take into consideration the need for the well.

f. Reasonable and appropriate limitations on wastewater discharge that take into consideration the need to conserve soil and protect water quality.

2. The commission shall have the authority in the rules to provide for the issuance of a general permit and to establish a fee sufficient to recover the costs of issuing a general permit, which shall not exceed fifty dollars. The fees shall be remitted to the department and shall be used by the department to administer the permitting requirements of **this section**.

3. The commission shall convene an advisory committee that includes representatives of the Iowa water well association to assist in the development of the rules.

4. The rules shall be adopted no later than July 31, 2009.

2008 Acts, ch 1165, §1

455B.199 Water resource restoration sponsor program.

1. The department shall establish and administer a water resource restoration sponsor program to assist in enhancing water quality in the state through the provision of financial assistance to communities for a variety of impairment-based, locally directed watershed projects.

2. For purposes of **this section**, unless the context otherwise requires:

a. *"Qualified entity"* means the same as defined in **section 384.84**.

b. *"Sponsor project"* means a water resource restoration project as defined in **section 384.80**.

3. Moneys in the water pollution control works revolving loan fund created in **section 455B.295**, and the drinking water facilities revolving loan fund created in **section 455B.295**, shall be used for the water resource restoration sponsor program. The department shall establish on an annual basis the percentage of moneys available for the sponsor program from the funds.

4. The interest rate on the loan under the program for communities participating in a sponsor project shall be set at a level that requires the community to pay not more than the amount the community would have paid if they did not participate in a sponsor project.

5. Not more than ninety percent of the projected interest payments on bonds issued under **section 384.84** or the total cost of the sponsor project shall be advanced to the community, whichever is lower.

6. A proposed sponsor project must be compatible with the goals of the water resource restoration sponsor program, shall include the application of best management practices for the primary purpose of water quality protection and improvement, and may include but not be limited to any of the following:

a. Riparian buffer acquisition, enhancement, expansion, or restoration.

b. Conservation easements.

c. Riparian zone or wetland buffer extension or restoration.

d. Wetland restoration in conjunction with an adjoining high-quality water resource.

e. Stream bank stabilization and natural channel design techniques.

f. In-stream habitat enhancements and dam removals.

g. Practices related to water quality or water quality protection that are included in a field office technical guide published by the natural resources conservation service of the United States department of agriculture or are included in the Iowa stormwater management manual published by the department of natural resources.

7. A proposed sponsor project shall not include any of the following:

a. Passive recreation activities and trails including bike trails, playgrounds, soccer fields, picnic tables, and picnic grounds.

b. Parking lots, unless a parking lot is constructed in a manner to improve water quality and construction is consistent with a field office technical guide published by the natural resources conservation service of the United States department of agriculture or the Iowa stormwater management manual published by the department of natural resources.

c. Diverse habitat creation contrary to the botanical history of the area.

d. Planting of nonnative plant species.

e. Dredging.

f. Supplemental environmental projects required as a part of a consent decree.

8. A sponsor project must be approved by the department prior to participating in the water resource restoration sponsor program.

9. A resolution by the city council must be approved and included as part of an application for the water resource restoration sponsor program. After approval of the project, the city council shall enter into an agreement pursuant to **chapter 28E** with the qualified entity who shall implement the project.

10. A water resource restoration project shall not include the acquisition of property, an interest in property, or improvements to property through condemnation.

11. The commission shall adopt rules pursuant to **chapter 17A** necessary for the administration of **this section**.

2009 Acts, ch 72, §7; 2013 Acts, ch 53, §1, 2

Referred to in **§455B.295**, **§461.34**

455B.199A Prioritization of municipal water quality improvement projects.

1. The department may allow schedules of compliance to be included in permits whenever authorized by federal law or regulations. Such schedules shall be established to maximize benefits and minimize local financial impact while improving water quality, where such opportunities arise. If information is provided showing that the anticipated costs of compliance with a schedule have no reasonable relationship to environmental or public health needs or benefits, or may result in other detrimental environmental impacts, such as significant greenhouse gas emissions, the projects may be deferred, in whole or in part as determined appropriate by the department, and a variance granted, as consistent with applicable federal law or regulations.

2. Unless otherwise restricted by federal law or regulations, the department may allow compliance schedules of up to thirty years in national pollutant discharge elimination system permits, particularly where the costs of compliance with federal program mandates will adversely impact the construction of other necessary local capital improvement projects. If the department determines an existing condition constitutes a significant public health or environmental threat, the schedule of compliance shall be based on the shortest practicable time frame for remedying the condition.

2009 Acts, ch 72, §9

455B.199B Disadvantaged communities variance.

1. The department may provide for a variance of regulations pursuant to this part when it determines that regulations adopted pursuant to this part affect a disadvantaged community. Such a variance shall be consistent with federal rules and regulations. In considering an application for a variance, the department shall consider the substantial and widespread economic and social impact to the ratepayers and the affected community that may occur as a result of compliance with a federal regulation, a rule adopted by the department, or an order of the department pursuant to this part. In considering an application for a variance, the department shall take into account the rules adopted pursuant to this part with which a regulated entity and the commensurate affected community are required to comply.

2. The department shall find that a regulated entity and the affected community are a disadvantaged community by evaluating all of the following:

a. The ability of the regulated entity and the affected community to pay for a project based on the ratio of the total annual project costs per household to median household income.

b. Median household income in the community and the unemployment rate of the county in which the community is located.

c. The outstanding debt of the system and the bond rating of the community.

3. The department shall find that an unsewered community is a disadvantaged community by evaluating all of the following:

a. The ability of the community to pay for a project based on the ratio of the total annual project costs per household to median household income.

b. The unemployment rate in the county where the community is located.

c. The median household income of the community.

4. The department shall not consider a regulated entity, affected community, or unsewered community a disadvantaged community if the ratio of compliance costs to median household income is below one percent.

5. The department may grant a regulated entity a variance from complying with a rule adopted pursuant to this part or as otherwise allowed by federal law or regulations, if the department determines that the regulated entity or the affected community will suffer substantial and widespread economic and social impact. The department shall ensure the conditions of any variance improve water quality and represent reasonable progress toward complying with rules adopted pursuant to this part, but do not result in substantial and widespread economic and social impact.

6. The department shall not require installation of a wastewater treatment system by an unsewered community if the department determines that such installation would create substantial and widespread economic and social impact.

7. The Iowa finance authority, in cooperation with the department, shall utilize the disadvantaged community criteria in **this section** to determine the appropriate interest rates for loans awarded from the revolving loan funds created in **sections 455B.291 through 455B.299**, as allowed by federal law or regulations.

8. The economic development authority shall utilize the disadvantaged community criteria in **this section** to determine eligibility for water or sewer community development block grants as provided in **section 15.108, subsection 1**, paragraph "*a*".

2009 Acts, ch 72, §10; 2011 Acts, ch 97, §6, 7; 2011 Acts, ch 118, §85, 89

455B.199C Alternative wastewater treatment technologies — legislative intent and purpose.

1. The intent of the general assembly is to address the rising costs of water and wastewater treatment compliance for regulated entities and affected communities by authorizing the use of alternative treatment technologies. The purpose of **this section** is to eliminate regulatory barriers that limit or prevent the use of new or innovative technologies.

2. The department shall produce and publish design guidance documents for alternative wastewater treatment technologies. The guidance documents shall be intended to encourage regulated entities to use such technologies and to assist design engineers with the submission of projects employing alternative wastewater treatment technologies that can be readily approved by the department.

3. In writing design guidance documents for alternative wastewater treatment technologies the department shall review all of the following:

a. The on-site sewage design and reference manual published by the department of natural resources.

b. The guidance manual for the management of on-site and decentralized wastewater systems published by the United States environmental protection agency.

c. Other credible sources of information on the design, operation, and performance of alternative wastewater treatment technologies.

2009 Acts, ch 72, §11

Referred to in **§16.134**

455B.200 through 455B.206 Transferred to chapter 459; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262.

455B.207 through 455B.210 Reserved.

PART 2

WATER TREATMENT

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. *"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.

4. *"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.

5. *"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.

6. *"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.

[C66, 71, §136A.1; C73, 75, 77, 79, 81, §455B.50]
C83, §455B.211
86 Acts, ch 1245, §1890
Referred to in §272C.1

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
86 Acts, ch 1245, §1891, 1899
Referred to in §272C.1

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.*

a. 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.

b. 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; 2011 Acts, ch 25, §103

Referred to in **§272C.1**

455B.214 and 455B.215 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

Referred to in **§272C.1**

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

Referred to in **§272C.1**

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
Referred to in §272C.1

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
Referred to in §272C.1, §272C.3, §272C.4

455B.220 Certificate without examination. Repealed by 2006 Acts, ch 1014, §10.

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
Referred to in §272C.1, §455B.218

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
Referred to in §272C.1

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

Referred to in §272C.1

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

Referred to in §272C.1, §331.756(67)

455B.225 through 455B.240 Reserved.

PART 3

SEWAGE WORKS CONSTRUCTION

455B.241 through 455B.246 Repealed by 2011 Acts, ch 9, §10.

455B.247 through 455B.260 Reserved.

PART 4

WATER ALLOCATION AND USE; FLOODPLAIN CONTROL

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.

a. The "average minimum flow" for a given watercourse shall be determined by the following factors:

(1) 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.

(2) 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.

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

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

8. *"Floodplains"* 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 floodplains 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 floodplain 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 floodplain 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; 2012 Acts, ch 1023, §57

Referred to in **§455B.265A**

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 database 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 floodplain 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 floodplain and floodway boundaries. The plan of floodplain mapping shall be for the period from June 30, 1986, to December 31, 2004. After the department adopts a plan of floodplain mapping, the department shall submit a progress report and proposed implementation schedule to the general assembly biennially. The department may modify the floodplain 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

83 Acts, ch 137, §9; 85 Acts, ch 7, §2; 85 Acts, ch 91, §1; 86 Acts, ch 1245, §1899B

Referred to in **§455B.265A**

455B.262A National flood insurance program — participation required.

1. All counties and cities in this state that have an effective flood insurance rate map or flood hazard boundary map published by the federal emergency management agency that identifies a special flood hazard area within the political boundaries of the county or city shall meet the requirements for participation in the national flood insurance program administered by the federal emergency management agency on or before June 30, 2011.

2. If a county or city does not currently have an effective flood insurance rate map or flood hazard boundary map published by the federal emergency management agency that identifies a special flood hazard area within the political boundaries of the county or city, the county or city shall have twenty-four months from the effective date of any future flood insurance rate map or flood hazard boundary map published by the federal emergency management agency to meet the requirements for participation in the national flood insurance program.

3. State participation in funding financial assistance for a flood-related disaster under **section 29C.6, subsection 17**, paragraph *"a"*, is contingent upon the county or city participating in the national flood insurance program pursuant to the terms, conditions, and deadlines set forth in **this section**.

2009 Acts, ch 147, §1

Referred to in **§455B.265A**

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. *a.* 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:

(1) To protect the health, safety, and general welfare of the people of the state.

(2) To achieve the purposes of **this chapter**.

(3) To provide that the state is not responsible to any person if the waters involved are insufficient for performance.

b. 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; 2011 Acts, ch 25, §143

Referred to in **§455B.264**, **§455B.265A**, **§455B.266**

455B.264 Jurisdiction — water and floodplains.

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 floodplains 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]

C83, §455B.264

83 Acts, ch 137, §11; 85 Acts, ch 7, §4; 86 Acts, ch 1245, §1899A, 1899B

Referred to in **§455B.265A**

455B.265 Permits for diversion, storage, and withdrawal — fees authorized.

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 complete application. A renewal permit shall be approved or denied by the department within thirty days from the date that the department receives a complete application for renewal. If the applicant requests an extension of the time allotted, the department may approve the request to allow the applicant more time to submit additional information to resolve a contested or complex application. Regardless of the request in the application, and subject to appeal, the director or the department 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.

6. The department may charge a fee to a person who has been granted a permit pursuant to **this section** or is required to have a permit pursuant to **section 455B.268**. The commission shall adopt by rule the fee amounts.

a. The amount of a fee shall be based on the department's reasonable cost of reviewing applications, issuing permits, ensuring compliance with the terms of the permits, and resolving water interference complaints. The commission shall calculate the fees to produce total revenues of not more than five hundred thousand dollars for each fiscal year, commencing with the fiscal year beginning July 1, 2009, and ending June 30, 2010.

b. Fees collected pursuant to **this subsection** shall be credited to the water use permit fund created in **section 455B.265A**.

c. The commission shall annually review the amount of moneys generated by the fees, the balance in the water use permit fund, and the anticipated expenses for the succeeding fiscal year.

d. Fees paid pursuant to **this section** shall not be subject to sales or services taxes.

e. The department shall not require an applicant to pay both an annual fee and an application fee when submitting an application for a water use permit.

[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; 2008 Acts, ch 1163, §2; 2013 Acts, ch 59, §3

Referred to in §423.3, §455B.265A, §455B.271, §455B.281

455B.265A Water use permit fund — appropriation.

1. A water use permit fund is created in the state treasury. The fund shall be separate from the general fund of the state and shall be under the control of the department.

2. Moneys credited to the fund from the fees assessed pursuant to **section 455B.265, subsection 6**, are appropriated to the department and shall be used for all of the following purposes:

a. Reviewing applications for permits under **section 455B.265**, issuing permits, and providing technical assistance to permit applicants.

b. Ensuring compliance with the terms of the permits.

c. Implementing and enforcing the provisions of **sections 455B.261 through 455B.281** pertaining to water allocation, use, diversion, storage, and withdrawal, and completing investigations needed to issue new or modified permits or to resolve water interference complaints.

3. Notwithstanding **section 8.33**, any unexpended balance in the fund at the end of a fiscal year shall be retained in the fund.

4. Notwithstanding **section 12C.7, subsection 2**, interest, earnings on investments, or time deposits of the moneys in the fund shall be retained in the fund.

2008 Acts, ch 1163, §3

Referred to in §455B.265

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 department of homeland security and emergency management 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; 2013 Acts, ch 29, §56

Referred to in **§455B.265A**, **§455B.271**

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.22 – 455A.24; 82 Acts, ch 1199, §21, 96]

C83, §455B.267

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

Referred to in **§455B.265A**, **§460.302**

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

Referred to in **§455B.172**, **§455B.265**, **§455B.265A**

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
Referred to in §455B.265A

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
Referred to in §455B.265A

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
Referred to in §455B.265, §455B.265A, §455B.266, §455B.281

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
Referred to in **§455B.265A**, **§455B.271**

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
86 Acts, ch 1245, §1899
Referred to in **§455B.265A**

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
Referred to in **§455B.265A**

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

(1) Erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on any floodway or floodplains.

(2) Erect, construct, maintain, or operate a dam on a navigable or meandered stream.

(3) Erect, construct, maintain, or operate a dam on a stream for manufacturing or industrial purposes.

b. 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. Notwithstanding design criteria and guidelines for Iowa dams adopted by the department, all of the following standards shall apply to a person reconstructing a dam that was damaged due to a natural disaster who files an application under **subsection 3**:

a. The person reconstructing the dam is only required to possess the flooding easements or ownership which was held prior to the reconstruction as long as the former normal pool elevation is not exceeded and the spillway capacity is increased by at least fifty percent.

b. Flooding easements or ownership is only required to the top of the reconstructed spillway elevation.

5. 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 floodplain in an agricultural area established under **chapter 352** is not exempt from the sections of this part which relate to regulation of floodplains 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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; 2011 Acts, ch 25, §143; 2013 Acts, ch 69, §1; 2013 Acts, ch 140, §70

Referred to in §455B.265A, §469A.8

Nuisances in general, chapter 657

In addition to prospective application, 1988 amendments amending subsection 5 and enacting subsection 10 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

Validity of permits or licenses issued before July 1, 1990, under chapter 469, Code 1989; rights and obligations governed by §455B.275; 90 Acts, ch 1108, §6

455B.276 Floodplains — encroachment limits.

The commission may establish and enforce rules for the orderly development and wise use of the floodplains 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 floodplains. The order shall fix the length of floodplains 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, floodplain regulations, and zoning ordinances relating to floodplain areas within their jurisdiction. Encroachment limits, floodplain regulations, or floodplain 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 floodplain 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 floodplains constructed in conformity with encroachment limits, floodplain 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

Referred to in §455B.265A

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
Referred to in **§455B.265A**, **§455B.276**

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
Referred to in **§455B.265A**, **§455B.266**

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
Referred to in **§455B.265A**

455B.280 Repealed by 86 Acts, ch 1245, §668.

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

Referred to in **§455B.265A**

455B.282 County and city control of junkyards.

Nothing in this part shall be construed as limiting the authority of a city or county to adopt an ordinance regulating a junkyard located within a five hundred year floodplain.

2009 Acts, ch 146, §4

455B.283 through 455B.290 Reserved.

PART 5

WATER POLLUTION CONTROL WORKS AND DRINKING WATER FACILITIES FINANCING PROGRAM

See also **§16.131 – 16.135**

455B.291 Definitions.

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

1. *"Administration funds"* means funds established pursuant to this part for the costs and expenses associated with administering the program under this part and **section 16.133A**.

2. *"Authority"* means the Iowa finance authority created in **section 16.1A**.

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. §1251 – 1376, as amended.

4. *"Cost"* means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the department as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

5. *"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 any of the revolving loan funds.

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

7. *"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.

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

9. *"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.

10. *"Revolving loan funds"* means the funds of the program established under **sections 16.133A** and **455B.295**.

11. *"Safe Drinking Water Act"* means Tit. 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, as amended.

12. *"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; 2009 Acts, ch 30, §11; 2013 Acts, ch 100, §25, 27; 2014 Acts, ch 1080, §89, 98

Referred to in **§16.131**, **§418.4**, **§455B.199B**, **§456A.17**

2014 amendment to subsection 8 takes effect January 1, 2015; 2014 Acts, ch 1080, §98

Subsection 8 amended

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

Referred to in **§16.131**, **§455B.199B**, **§456A.17**

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
Referred to in **§16.131**, **§455B.199B**, **§456A.17**

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

The 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; 2014 Acts, ch 1080, §90, 98
Referred to in **§16.131**, **§16.131A**, **§455B.199B**, **§455B.291**, **§456A.17**
2014 amendment takes effect January 1, 2015; 2014 Acts, ch 1080, §98
Section amended

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, including sponsor projects under the water resource restoration sponsor program established in **section 455B.199**. 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 may establish and maintain 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 to the extent permitted by the Clean Water Act, the Safe Drinking Water Act, and other applicable federal law. Moneys appropriated to the department and the authority for purposes of paying the costs and expenses associated with the administration of the program shall be administered as determined by the department and the authority.

5. The funds or accounts held by the department, or a trustee acting on behalf of the department pursuant to a trust agreement related to the program, shall not be 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 funds and accounts maintained by the department or trustee pursuant to a trust agreement. Funds and accounts held by the department, or a trustee acting on behalf of the department pursuant to a trust agreement related to the program, are separate dedicated funds and accounts under the administration and control of the department.

88 Acts, ch 1217, §14; 97 Acts, ch 4, §11; 2002 Acts, ch 1019, §5; 2009 Acts, ch 30, §12 – 14; 2009 Acts, ch 72, §8

Referred to in §16.131, §16.131A, §455B.199, §455B.199B, §455B.291, §456A.17

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 received for deposit in and disbursements made from the revolving loan funds and the administration funds 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 another 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; 2009 Acts, ch 30, §15

Referred to in §16.131, §455B.199B, §455B.295, §455B.297, §456A.17

455B.297 Loans to eligible entities.

1. Moneys deposited in the revolving loan funds shall be used for the primary purpose of making loans to eligible entities to finance the eligible costs of projects in accordance with the intended use plans developed by the department under **section 455B.296**. The loan recipients and the purpose and amount 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.

2. Notwithstanding any provision of **this chapter** to the contrary, moneys received under the federal American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and

deposited in the revolving loan funds may be used in any manner permitted or required by applicable federal law.

88 Acts, ch 1217, §16; 97 Acts, ch 4, §13; 2002 Acts, ch 1019, §7; 2009 Acts, ch 30, §16; 2009 Acts, ch 100, §19, 21

Referred to in §16.131, §455B.199B, §456A.17

455B.298 Powers and duties of the director.

The director shall:

1. Process, review, and approve or deny intended use plan applications to determine if an application meets the eligibility requirements set by the rules of the department.

2. Process and review all documents relating to the planning, design, construction, and operation of water pollution control works and drinking water facilities pursuant to this part.

3. Prepare and process, in coordination with the authority, documents relating to the administration of the program.

4. 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.

5. Receive fees pursuant to the program as determined in conjunction with the authority.

6. Perform other acts and assume other duties and responsibilities necessary for the operation of the program and for the carrying out of the Clean Water Act and the Safe Drinking Water Act.

88 Acts, ch 1217, §17; 97 Acts, ch 4, §14; 2002 Acts, ch 1019, §8; 2009 Acts, ch 30, §17

Referred to in §16.131, §455B.199B, §456A.17

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

Referred to in §16.131, §455B.199B, §456A.17

455B.300 Reserved.

DIVISION IV

SOLID WASTE DISPOSAL

PART 1

SOLID WASTE

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. *"Beneficial use"* means a specific utilization of a solid by-product as a resource that constitutes reuse rather than disposal, does not adversely affect human health or the environment, and is approved by the department.

3. *"Beverage"* means wine as defined in **section 123.3, subsection 47**, 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.

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

5. *"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.

6. *"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.

7. *"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.

8. *"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.

9. *"Financial assurance instrument"* means an instrument submitted by an applicant to ensure the operator's financial capability to provide reasonable and necessary remedial responses.

a. The instrument shall be sufficient to ensure adequate response pursuant to **section 455B.304, subsection 6**.

b. The instrument shall be sufficient to ensure the proper closure and postclosure care of the project, and corrective action, if necessary, in the event the operator fails to correctly perform those requirements.

c. The instrument may provide for one or more of the following:

(1) The establishment of a secured trust fund.

(2) The use of a cash or surety bond.

(3) The obtaining of insurance.

(4) The satisfaction of a corporate financial test.

(5) The satisfaction of a local government financial test.

(6) The obtaining of a corporate guarantee.

(7) The obtaining of a local government guarantee.

(8) The use of a local government dedicated fund.

(9) The obtaining of an irrevocable letter of credit.

10. *"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.

11. *"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.

12. *"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.

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

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

15. *"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.

16. *"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.

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

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

19. *"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.

20. *"Rubble"* means dirt, stone, brick, or similar inorganic materials used for beneficial fill, landscaping, excavation, or grading at places other than a sanitary disposal project. *"Rubble"* includes asphalt waste only as long as it is not used in contact with water or in a floodplain. For purposes of **this chapter**, *"rubble"* does not mean gypsum or gypsum wallboard, coal combustion residue, foundry sand, or other industrial process wastes unless those wastes are approved by the department.

21. *"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.

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

23. *"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**. This definition does not prohibit the use of rubble at places other than a sanitary disposal project. *"Solid waste"* does not include any of the following:

a. Hazardous waste regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. §6921-6934.

b. Hazardous waste as defined in **section 455B.411**, except to the extent that rules allowing for the disposal of specific wastes have been adopted by the commission.

c. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

d. Petroleum contaminated soil that has been remediated to acceptable state or federal standards.

e. Steel slag which is a product resulting from the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material.

[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; 2008 Acts, ch 1118, §1; 2013 Acts, ch 90, §109; 2014 Acts, ch 1039, §1

Referred to in **§331.441**, **§331.461**, **§455B.306**, **§455B.482**, **§455D.3**, **§455E.11**, **§558.69**

Subsection 23, NEW paragraph e

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. Combustion with energy recovery.

d. Other approved techniques of solid waste management including but not limited to 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; 2006 Acts, ch 1063, §1
Referred to in §455B.302, §455B.304, §455B.311, §455D.3, §455D.5

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 cooperative 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
Referred to in §331.381, §331.427, §455B.304, §455B.306

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 cooperate 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**.

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. A sanitary landfill disposal project operating with a permit shall have a trained, tested, and certified operator. The department shall adopt by rule a certification program.

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 floodplains.

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. §6921 – 6934, nor does it include hazardous waste as defined in **section 455B.411**, except to the extent that the commission has adopted rules allowing the disposal of certain wastes.

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.

19. The commission shall adopt rules for determining when the utilization of a solid by-product, including energy recovery, constitutes beneficial use rather than the disposal of solid waste. Materials approved for beneficial use at a sanitary landfill shall be exempt from the tonnage fee imposed by **section 455B.310** to the extent authorized by rule or 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, §1 – 3; 87 Acts, ch 225, §406 – 408; 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; 2006 Acts, ch 1014, §3; 2008 Acts, ch 1118, §2, 3
Referred to in §455B.172, §455B.301

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. 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. 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**.

b. Each sanitary disposal project shall be inspected periodically by the department or a local board of health.

c. A permit may be suspended or revoked by the director if a sanitary disposal project is found not to meet the requirements of **this part 1** or the rules adopted pursuant to **this part 1**. The suspension or revocation of a permit may be appealed to the department.

2. The director shall not issue or renew a permit for a municipal solid waste landfill unless the permit applicant, in conjunction with all local governments using the landfill, has documented its implementation of solid waste disposal methods other than final disposal in a sanitary landfill.

3. The director shall not issue or renew a permit for a sanitary landfill unless the landfill is equipped with a leachate control system.

4. 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**, unless the applicant, in conjunction with all local governments using the transfer station, has documented its implementation of solid waste disposal methods other than final disposal in a sanitary landfill.

[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; 2008 Acts, ch 1118, §4; 2011 Acts, ch 25, §52
Referred to in §331.381, §455B.304, §455B.306

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

1. *a.* 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.

b. 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. *a.* 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.

b. 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. *a.* 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.

b. 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. *a.* 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.

b. 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; 2011 Acts, ch 25, §143

455B.305B Repealed by 90 Acts, ch 1191, §8.

455B.306 Plans filed.

1. A city, county, or private agency operating, or planning to operate, a municipal solid waste 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 or state.

a. 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.

b. 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. Filing of a comprehensive plan constitutes full compliance by the public agency's members with the filing requirements of **this section**.

c. 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 a city's or county's comprehensive plan is not compatible with the comprehensive plan of a public agency, as defined in **chapter 28E**, the director shall require the city or county to provide justification for the approval of the comprehensive plan based upon the following factors: the innovative nature of the comprehensive plan, the urgency of the

plan's implementation, any unique features of the city's or county's comprehensive plan, and whether the plan otherwise complies with the provisions of **this chapter**.

d. **This subsection** does not prevent the director from approving pilot projects which otherwise comply with the provisions of **this chapter**.

e. 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 cities, counties, and private agencies the forms appropriate for the submission of comprehensive plans, and the director may hold hearings for the purpose of implementing this part.

f. The director, and any 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.

g. A comprehensive plan filed by a private agency operating, or planning to operate, a sanitary disposal project required by **section 455B.302** shall be developed in cooperation and consultation with the city or county responsible for establishing and operating a sanitary disposal project.

h. The director shall review a completed plan for the control and treatment of leachate, to meet the requirements of **subsection 7**, paragraph *"b"*, and shall reject the plan, suggest modifications, or approve it within six months of the time the plan was submitted. If the director has not acted on the plan within those six months, the plan shall be considered approved. However, the director, upon a request to renew or reissue a previously issued permit may require that the plan be updated.

2. A planning area that closes all of the municipal solid waste sanitary landfills located in the planning area and chooses instead to use a municipal solid waste sanitary landfill in another planning area may choose to retain its autonomy as long as the sanitary landfill in the other planning area complies with all the requirements of **this chapter**, and all solid waste generated within the planning area closing its landfills is consolidated at, and transported from, a permitted transfer station. For purposes of **this subsection**, a planning area closing its own landfills that chooses to retain its autonomy shall not be required to join the planning area that contains the landfill it is using for final disposal of its solid waste.

a. If a planning area chooses to retain autonomy pursuant to **this subsection**, the planning area receiving solid waste from the planning area sending it shall not be required to include the sending planning area in its comprehensive plan provided that no services other than the acceptance of solid waste for disposal are shared between the two planning areas. A planning area receiving solid waste shall only be responsible for the permitting, planning, and waste reduction and diversion programs within that planning area.

b. 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. A planning area sending solid waste for disposal in another planning area may retain autonomy under **this subsection** only if both comprehensive planning areas enter into an agreement pursuant to **chapter 28E** that includes all of the following:

(1) A detailed methodology of the manner in which solid waste will be tracked and reported between the two planning areas.

(2) 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 3**.

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 the 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 of a sanitary landfill 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 any of the instruments described in **section 455B.301, subsection 9**.

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.

12. **This section** shall not apply to a sanitary landfill project owned by an electric generating facility and used exclusively for the disposal of coal combustion residue. A utility under **this subsection** may demonstrate financial assurance by any of the instruments described in **section 455B.301, subsection 9**, or by an alternative method acceptable to the department. The financial assurance instrument submitted must ensure the facility's financial capability to provide reasonable and necessary response during the lifetime of the project and for a specified period of time following closure as required by rules adopted by the commission.

[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, §411 – 414; 89 Acts, ch 272, §31, 32; 90 Acts, ch 1255, §24; 92 Acts, ch 1213, §1; 92 Acts, ch 1215, §7 – 9; 2004 Acts, ch 1078, §1; 2005 Acts, ch 31, §2 – 4; 2006 Acts, ch 1030, §42; 2007 Acts, ch 215, §115; 2008 Acts, ch 1118, §5 – 7

Referred to in **§28G.1**, **§28G.2**, **§331.381**, **§455B.305**, **§455B.310**, **§455F.8A**

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

Referred to in **§455B.304**

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 one thousand dollars for each violation. The revenue from the penalty provided in **this subsection** shall be remitted to the treasurer of state for deposit in the general fund of the state. Fifty percent of such moneys are appropriated to the state department of transportation for purposes of the cleanup of litter and illegally discarded solid waste. The remaining fifty percent of such moneys shall be deposited in the general fund of the county in which the violation occurred to be used exclusively for the cleanup and prevention of illegal dumping.

92 Acts, ch 1215, §10; 2006 Acts, ch 1087, §1

Referred to in **§455B.307B**

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 Repealed by 87 Acts, ch 225, §116.

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, except as provided in **section 455J.5, subsection 1**, paragraph *"b"*.

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, §416 – 418; 88 Acts, ch 1169, §6 – 8; 90 Acts, ch 1070, §1; 91 Acts, ch 257, §2 – 5; 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; 2008 Acts, ch 1109, §1

Referred to in **§455B.304**, **§455B.306**, **§455D.3**, **§455E.11**, **§455J.5**

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. Repealed by 2011 Acts, ch 9, §10.

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. Repealed by 2011 Acts, ch 9, §10.

455B.317 through 455B.330 Reserved.

PART 2

RADIOACTIVE WASTE

Referred to in **§455B.104**

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. Repealed by 2006 Acts, ch 1014, §10.

455B.333 Rules for transporting. Repealed by 2006 Acts, ch 1014, §10.

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 require the maintenance of records relating to the receipt, storage, transfer, or disposal of radioactive material.
3. 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.
4. 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; 2006 Acts, ch 1014, §4

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 through 455B.360 Reserved.

PART 3

DEBRIS

Referred to in §455B.104

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 coordinate and encourage the cooperation 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
Referred to in §455B.307B, §455B.364
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 through 455B.380 Reserved.

PART 4

HAZARDOUS CONDITIONS

Referred to in §101.10, §455B.104, §455B.423, §455H.102

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 the agents of the state or a political subdivision 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. *a.* *"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.

b. *"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:

(1) 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.

(2) 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.

(3) Has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

8. *"Political subdivision"* means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof, including but not limited to any emergency services and emergency management agency established pursuant to **chapter 28E** or **29C**, and any municipal fire departments and ambulance services and agents thereof.

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

a. The release is done in compliance with the conditions of a federal or state permit.

b. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.

c. In the use of pesticides, the application is done in accordance with the product label.

10. *"Toxic"* means causing or producing a dangerous physiological, anatomic, or biochemical change in a biological system.

11. *"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; 2009 Acts, ch 16, §1, 2

Referred to in **§124C.1**, **§455B.171**, **§455B.191**, **§455B.392**, **§455B.751**, **§455B.752**, **§455H.103**, **§455H.301**, **§459.506**

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

Referred to in **§459.506**

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

Referred to in **§459.506**

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 cooperation 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
Referred to in §459.506

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 department of homeland security and emergency management 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; 2013 Acts, ch 29, §57
Referred to in §459.506

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
Referred to in §29C.8A, §321.266, §331.653, §455G.31, §459.506

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
Referred to in §459.506

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
Referred to in **§459.506**

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
Referred to in **§459.506**

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
Referred to in **§101.10**, **§459.506**

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

Referred to in **§455B.388**, **§459.506**

455B.392 Liability for cleanup costs.

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

(1) The reasonable cleanup costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

(2) The reasonable costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision to evacuate people from the area threatened by a hazardous condition caused by the person.

(3) 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.

(4) The excessive and extraordinary cost incurred by the state or its political subdivisions or the agents of the state or a political subdivision in responding at and to the scene of a hazardous condition caused by that person.

b. If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision. Prompt and good faith notification to the state or a political subdivision 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.

c. Claims under **this subsection** shall be made by the state agency or the political subdivision that incurred costs or damages under **this subsection**, and such costs or damages will be subject to administrative and judicial review, including the terms of **chapter 17A** when appropriate. If administrative or judicial review is sought, a political subdivision making a claim shall submit an advisory request to the department to determine whether the cleanup actions serving as the basis for the cleanup costs were consistent with **this chapter**. The department shall respond in writing to a request within thirty days of receiving the request.

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

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

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

(2) 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 by the department pursuant to **this section** shall be deposited in the hazardous waste remedial fund created in **section 455B.423**. Moneys shall be used in the manner permitted for the fund. Moneys collected by a state agency other than the department of natural resources pursuant to **this section** are appropriated to that agency for purposes of reimbursing costs of the agency for emergency response activities described in **subsection 1**. Moneys collected by a political subdivision pursuant to **this section** shall be retained by the political subdivision and shall be used for purposes of reimbursing costs of the political subdivision for emergency response activities described in **subsection 1**.

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 or a political subdivision 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**, paragraph "*b*", 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 or a political subdivision 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 or a political subdivision 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 or a political subdivision to a bona fide purchaser for value.

d. Cleanup expenses incurred by the state or a political subdivision 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 or a political subdivision 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 or a political subdivision, of the amount specified in **this subsection**, the state or a political subdivision 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 or a political subdivision.

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; 2009 Acts, ch 16, §3

Referred to in **§455B.391**, **§459.506**, **§481A.151**

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
Referred to in §459.506

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
Referred to in §459.506

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
Referred to in §459.506

455B.396 Claim of state.

1. Liability to the state under this part or **part 5 of this division** is a debt to the state. Liability to a political subdivision under this part of **this division** is a debt to the political subdivision. 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 state or a political subdivision is a lien on real property, except single and multifamily 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 must be filed within one hundred twenty days after the incurrence of costs and expenses by the state or a political subdivision. 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.

2. The lien may be dissolved by filing with the appropriate recording officials a certificate 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; 2009 Acts, ch 16, §4
Referred to in §459.506

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
Referred to in §459.506

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
Referred to in §459.506

455B.400 through 455B.410 Reserved.

PART 5

HAZARDOUS WASTE AND SUBSTANCE MANAGEMENT

Referred to in §455B.104, §455B.396, §455H.102

"Toxic Cleanup Days"; see §455E.11(2c) and 455F.8

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 groundwaters.

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.

[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; 2011 Acts, ch 9, §3

Referred to in §124C.1, §455B.191, §455B.301, §455B.304, §455B.381, §455B.482, §455B.751, §455F.1, §558.69, §716B.1

455B.412 through 455B.421 Repealed by 2011 Acts, ch 9, §10.

455B.422 Repealed by 87 Acts, ch 180, §12.

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. *a.* The director may use the fund for any of the following purposes:

(1) Administrative services for the identification, assessment and cleanup of hazardous waste or hazardous substance disposal sites.

(2) Payments to other state agencies for services consistent with the management of hazardous waste or hazardous substance disposal sites.

(3) Emergency response activities as provided in **part 4 of this division**.

(4) 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.

(5) 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.

(6) Through agreements or contracts with other state agencies, to 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.

(7) For the administration of the waste tire collection or processing site permit program.

b. However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraph "*a*", subparagraphs (4) and (5).

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, §3 – 5; 92 Acts, ch 1218, §2; 2004 Acts, ch 1101, §63; 2011 Acts, ch 25, §105; 2012 Acts, ch 1023, §58

Referred to in §455B.392, §455B.432, §455D.11B

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

Referred to in **§455B.432**

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

Referred to in **§455B.432**

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.

3. Beginning July 1, 2011, a new site shall not be placed on the registry of confirmed hazardous waste or hazardous substance disposal sites.

4. A site placed on the registry of confirmed hazardous waste or hazardous substance disposal sites prior to July 1, 2011, shall be removed upon the execution of a uniform environmental covenant pursuant to the provisions of **chapter 455I** relating to the contaminated portions of the property listed on the registry. A site may also be removed from the registry pursuant to **section 455B.427, subsection 4**.

5. If no sites remain listed on the registry of confirmed hazardous waste or hazardous substance disposal sites, the department shall recommend to the general assembly the repeal of **this section** and **sections 455B.427 through 455B.432**.

84 Acts, ch 1108, §12; 86 Acts, ch 1025, §7; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §7; 2011 Acts, ch 9, §4, 5

Referred to in **§455B.429**, **§455B.430**, **§455B.431**, **§455B.432**, **§455H.509**

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
Referred to in **§455B.426**, **§455B.431**, **§455B.432**

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
Referred to in **§455B.426**, **§455B.432**

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

Referred to in **§455B.426**, **§455B.430**, **§455B.432**

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

Referred to in **§455B.426**, **§455B.432**

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

Referred to in **§455B.426**, **§455B.432**

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

Referred to in **§455B.426**

455B.433 Physical infrastructure assistance — funding — liability. Repealed by 2012 Acts, ch 1126, §26.

455B.434 through 455B.440 Reserved.

PART 6

HAZARDOUS WASTE SITES AND FACILITIES

455B.441 through 455B.455 Repealed by 2011 Acts, ch 9, §10.

455B.456 through 455B.460 Reserved.

PART 7

DISPOSAL OF HAZARDOUS WASTE ON LAND

455B.461 through 455B.463 Repealed by 2011 Acts, ch 9, §10.

455B.464 Additional hazardous or restricted waste listed. Repealed by 2006 Acts, ch 1014, §10.

455B.465 through 455B.468 Repealed by 2011 Acts, ch 9, §10.

455B.469 and 455B.470 Reserved.

PART 8

UNDERGROUND STORAGE TANKS

Referred to in **§455E.11**, **§455H.102**, **§455H.107**, **§455H.204**

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 (60 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., pts. 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 (60 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. *a.* *"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.

b. (1) *"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, codified at 49 U.S.C. §1671 et seq., the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985, codified at 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.

(2) *"Underground storage tank"* does not include pipes connected to a tank described in paragraph *"b"*, subparagraph (1).

85 Acts, ch 162, §1; 89 Acts, ch 131, §33 – 35; 93 Acts, ch 42, §5; 94 Acts, ch 1067, §1; 95 Acts, ch 215, §4; 2011 Acts, ch 25, §106; 2012 Acts, ch 1023, §59; 2014 Acts, ch 1026, §99

Referred to in **§101.1**, **§101.21**, **§455B.473**, **§455B.474**, **§455B.751**, **§455B.752**, **§455G.13**, **§558.69**

Subsections 7 and 8 amended

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 *"b"*, subparagraph (1), subparagraph division (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. *a.* 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**.

b. 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; 2011 Acts, ch 25, §136, 143; 2012 Acts, ch 1023, §150

Referred to in **§455B.474**, **§455B.477**, **§455E.11**

455B.473A Petroleum underground storage tank registration amnesty program. Repealed by 2011 Acts, ch 34, §164.

455B.474 Duties of commission — rules.

The commission shall adopt rules pursuant to **chapter 17A** relating to:

1. *a.* 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:

(1) 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.

(2) Maintaining records of any monitoring or leak detection system, inventory control system, tank testing or comparable system, and periodic underground storage tank facility compliance inspections conducted by inspectors certified by the department.

(3) Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

(4) Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(a) 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(b) A site shall be classified as either high risk, low risk, or no action required, as determined by a certified groundwater professional.

(i) A site shall be considered high risk when a certified groundwater professional determines that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(A) 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.

(B) 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.

(C) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(ii) A site shall be considered low risk when a certified groundwater professional determines that low risk conditions exist as follows:

(A) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(B) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(iii) A site shall be considered no action required and a no further action certificate shall be issued by the department when a certified groundwater professional determines that contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(iv) 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.

(v) 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 and the site shall be classified as indicated by the groundwater professional unless, within ninety days of receipt by the department, the department identifies material information in the report that is inaccurate or incomplete, and based upon inaccurate or incomplete information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within ninety days of receipt of the report and shall work with the groundwater professional to obtain correct information or additional information necessary to appropriately classify the site. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete. 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 **this section**.

(5) 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.

(6) 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:

(a) A requirement that the site cleanup report do all of the following:

(i) Identify the nature and level of contamination resulting from the release.

(ii) 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 "*a*", subparagraph (4).

(iii) Provide supporting data and a recommendation of the need for corrective action.

(iv) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(b) 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.

(c) 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.

(d) 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:

(i) The extent of remediation required to reclassify the site as a low risk site.

(ii) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.

(iii) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

(iv) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(v) 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.

(vi) 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**.

(vii) 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.

(e) 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 within ninety days of receipt of a corrective action design report, the department identifies material information in the corrective action design report that is 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 notify the groundwater professional that the corrective action design report is not accepted, and the department shall work with the groundwater professional to correct the material information or to obtain the additional information necessary to appropriately determine the corrective action response requirements as soon as practicable. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a corrective action design report is not accepted based on material information that is found to be inaccurate or incomplete. 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 **this section**.

(f) 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. A site that has maintained less than the applicable target level for four consecutive sampling events shall be reclassified as a no action required site regardless of exit monitoring criteria and guidance.

(g) 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 subparagraph (6), shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of **section 455G.9**, unless otherwise previously agreed to by the board and the owner or operator pursuant to **section 455G.9, subsection 7**. Corrective action taken by an owner or operator due to the department's failure to meet the time requirements provided in subparagraph division (e) shall be considered corrective action for purposes of **section 455G.9**.

(h) 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 division, "*bioremediation*" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(i) 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.

(j) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this subparagraph (6) are

reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(k) 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 subparagraph (6). Any order taken by the director pursuant to this subparagraph division shall be reviewed at the next meeting of the environmental protection commission.

(7) 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.

(8) Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(a) 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 by a groundwater professional, unless within ninety days of receipt of the report submitted by the groundwater professional classifying the site, the department notifies the groundwater professional that the report and site classification are not accepted and the department identifies material information in the report that is inaccurate or incomplete which causes the department to be unable to accept the classification of the site. An owner or operator shall not be responsible for additional assessment, monitoring, or corrective action activities at a site that is issued a no further action certificate unless it is determined that the certificate was issued based upon false material statements that were knowingly or intentionally made by a groundwater professional and the false material statements resulted in the incorrect classification of the site.

(b) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(c) A certificate shall be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this subparagraph (8), or a subsequent purchaser of the site shall not be required to perform further corrective action because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

(9) Establishing a certified compliance inspector program administered by the department for underground storage tank facility compliance inspections.

(a) The certified compliance inspector program shall provide for, but not be limited to, all of the following:

(i) Mandatory periodic underground storage tank facility compliance inspections by owners and operators using inspectors certified by the department.

(ii) Compliance inspector qualifications, certification procedures, certification and renewal fees sufficient to cover administrative costs, continuing education requirements, inspector discipline standards including certification suspension and revocation for good cause, compliance inspection standards, professional liability bonding or insurance requirements, and any other requirements as the commission may deem appropriate. Certification and renewal fees received by the department are appropriated to the department for purposes of the administration of the certified compliance inspector program.

(b) The department shall continue to conduct independent inspections as provided in **section 455B.475** as deemed appropriate to assure effective compliance and enforcement and for the purpose of auditing the accuracy and completeness of inspections conducted by certified compliance inspectors.

(c) Acts or omissions by a certified compliance inspector, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions, rules, or regulations arising out of the certification, inspections, or duties imposed by **this section** shall not be cause for a claim against the state or the department within the meaning of **chapter 669** or any other provision of the Iowa Code.

b. 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.

c. 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. (1) 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.

(2) 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 subparagraph 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 G57-78 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.

8. Requirements as may be necessary to maintain state program approval and which are consistent with applicable provisions of the federal Energy Policy Act of 2005, Pub. L. No.

109-58, Tit. XV, Subtit. B, Underground Storage Tank Compliance, as codified in 42 U.S.C. §6991 et seq.

a. The commission shall adopt rules establishing a training program applicable to owners and operators of underground storage tanks. The rules may include provisions for department certification of operators, self-certification by owners and operators, education and training requirements, owner requirements to assure operator qualifications, and assessment of education, training, and certification fees. The rules shall be consistent with and sufficient to comply with the operator training requirements as provided in 42 U.S.C. §6991i, guidance adopted pursuant to that provision by the administrator of the United States environmental protection agency, and state program approval requirements under 42 U.S.C. §6991i(b).

b. The commission shall adopt rules related to the prohibition on the delivery of regulated substances consistent with and sufficient to comply with the provisions of 42 U.S.C. §6991k, guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision, and state program approval requirements under 42 U.S.C. §6991k(a)(3).

c. The commission shall adopt rules applicable to secondary containment requirements consistent with and sufficient to comply with the provisions of Pub. L. No. 109-58, Tit. XV, §1530(a), as codified at 42 U.S.C. §6991b(i)(1), and guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision. Each new underground storage tank or piping connected to any such new tank installed after July 1, 2007, or any existing underground storage tank or existing piping connected to such existing underground storage tank that is replaced after August 1, 2007, shall be secondarily contained if the installation is within one thousand feet of any existing community water system or any existing potable drinking water well as provided in Pub. L. No. 109-58, Tit. XV, §1530(a), as codified at 42 U.S.C. §6991b(i)(1), and in guidance adopted by the United States environmental protection agency pursuant to that provision. Rules adopted under this paragraph shall not amend or modify the secondary containment requirements in **subsection 1**, paragraph "*a*", subparagraph (6), subparagraph division (i).

9. *a.* Groundwater professionals shall be certified. The commission shall adopt rules pursuant to **chapter 17A** for such certifications, and the rules shall include provisions for certification suspension or revocation for good cause.

b. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

(1) A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

(2) A professional engineer licensed in Iowa.

(3) A professional geologist certified by a national organization.

(4) Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences.

(5) Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(a) Possession of a bachelor's degree from an accredited college.

(b) Five years of related professional experience.

c. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department may impose and retain a fee for the certification of persons under **this subsection** sufficient to cover the costs of administration.

d. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of a groundwater professional certified pursuant to **this subsection**.

e. A person who requests certification under **this subsection** shall be required to attend a course of instruction and pass a certification examination. An applicant who successfully passes the examination shall be certified as a groundwater professional.

f. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the commission.

g. The commission may provide for exemption from the certification requirements of **this subsection** and rules adopted hereunder for a professional engineer licensed pursuant to **chapter 542B**, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

h. Notwithstanding the certification requirements of **this subsection**, a site cleanup report or corrective action design report submitted by a certified groundwater professional shall be accepted by the department in accordance with **subsection 1**, paragraph "*a*", subparagraph (4), subparagraph division (b), subparagraph subdivision (v), and paragraph "*a*", subparagraph (6), subparagraph division (e).

10. Requirements that persons and companies performing or providing services for underground storage tank installations, installation inspections, testing, permanent closure of underground storage tanks by removal or filling in place, and other closure activities as defined by rules adopted by the commission be certified by the department. This provision does not apply to persons performing services in their official capacity and as authorized by the state fire marshal's office or fire departments of political subdivisions of the state. The rules adopted by the commission shall include all of the following:

a. Establishing separate certification criteria applicable to underground storage tank installers and installation inspectors, underground storage tank testers, and persons conducting underground storage tank closure activities as required by commission rules.

b. Establishing minimum qualifications for certification including but not limited to considerations based on education, character, professional ethics, experience, manufacturer or other private agency certification, training and apprenticeship, and field demonstration of competence. The rules may provide for exemption from education, experience, and training requirements for a licensed engineer for whom underground storage tank installation is within the scope of their license and practice but shall require compliance with other certification requirements.

c. Requiring a written examination developed and administered by the department or by some other qualified public or private entity identified by the department. The department may contract with a public or private entity to administer the department's examination or a department-approved third party examination. The examination shall, at a minimum, be sufficient to establish knowledge of all applicable underground storage tank rules adopted under **this section**, private industry standards, federal standards, and other applicable standards adopted by the state fire marshal's office pursuant to **chapter 101**.

d. Providing for a minimum two-year renewable certification period. A person may apply for a combined certificate applicable to underground storage tank installer and installer inspector certification, tester certification, and closure certification.

e. Providing that certificate holders obtain and provide proof of financial responsibility for environmental liability with minimum liability limits of one million dollars per occurrence and in the aggregate. The rules may provide exemptions where the certificate holder is employed by the owner or operator of the underground storage tank system and the underground storage tank system is covered by a financial responsibility mechanism under **subsection 2**.

f. Providing criteria for the department to take disciplinary action including issuance of warnings, reprimands, suspension and probation, and revocation. Any certificate holder subject to suspension or revocation shall be entitled to notice and an opportunity for an evidentiary hearing as provided in **section 17A.18**.

g. Providing for certification reciprocity between states upon demonstration that the out-of-state certification criteria is substantially equivalent to rules adopted by the commission.

h. Providing for assessment of fees sufficient to cover the costs of administration of the certification program. A separate fee may be established for persons applying for a

combination of installer and installer inspector, testing, or closure certifications. Fees received by the department pursuant to **this subsection** are appropriated to the department for purposes of the administration of activities under **this subsection**.

i. Notwithstanding **subsection 7**, the commission may adopt rules requiring that all underground storage tank installations, installation inspections, testing, and closure activities be conducted by persons certified in accordance with **this subsection**.

j. Acts or omissions of a person certified under **this subsection**, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions including department onsite supervision of certified activities, rules, or regulations arising out of the certification, shall not be cause for a claim against the state or the department within the meaning of **chapter 669** or any other provision of the Code.

85 Acts, ch 162, §4; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §606; 88 Acts, ch 1244, §4 – 7, 9; 89 Acts, ch 131, §36, 37; 91 Acts, ch 252, §5, 6; 92 Acts, ch 1163, §95; 95 Acts, ch 215, §5 – 10; 2000 Acts, ch 1058, §44, 45; 2004 Acts, ch 1086, §106; 2005 Acts, ch 102, §2; 2007 Acts, ch 171, §1 – 6; 2009 Acts, ch 41, §263; 2010 Acts, ch 1069, §57; 2010 Acts, ch 1193, §169 – 174; 2011 Acts, ch 25, §107, 137, 138, 143; 2012 Acts, ch 1023, §60 – 62

Referred to in **§159A.14**, **§455B.471**, **§455B.473**, **§455B.474A**, **§455G.9**, **§455H.105**

Section not amended; editorial changes applied

455B.474A Rules consistent with federal regulations.

The rules adopted by the commission under **section 455B.474** 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 **section 455B.474, subsection 1**, paragraph "*a*", subparagraph (6), and **section 455B.474, subsection 3**, paragraph "*d*". It is the intent of the general assembly that state rules adopted pursuant to **section 455B.474, subsection 1**, paragraph "*a*", subparagraph (6), and **section 455B.474, 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.

2010 Acts, ch 1069, §58; 2011 Acts, ch 25, §139; 2013 Acts, ch 30, §101

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
Referred to in §455B.474

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
Referred to in §455B.473

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
Referred to in **§29C.8A**, **§455B.476**, **§455B.478**

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
Referred to in **§455B.477**

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. The fees collected shall be deposited in the storage tank management account of the groundwater protection fund.

87 Acts, ch 225, §607; 89 Acts, ch 131, §38; 2010 Acts, ch 1193, §175
Referred to in **§455E.11**

PART 9

WASTE MANAGEMENT ASSISTANCE

Legislative findings and purpose; 87 Acts, ch 180, §2

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 management of solid, hazardous, and low-level radioactive wastes in Iowa.

2. The department, in cooperation with the Iowa waste reduction center for safe and economic management of solid waste and hazardous substances established in **section 268.4**, shall work with generators of hazardous wastes in the state to develop and implement aggressive waste minimization programs. The department shall provide and promote educational and informational programs, provide confidential, voluntary technical assistance to hazardous waste generators, promote assistance by the Iowa waste reduction center, and promote other voluntary activities by the public and private sectors that support the following pollution prevention hierarchy, in descending order of preference:

a. Source reduction for waste elimination.
b. Reuse.
c. On-site recycling.
d. Off-site recycling.
e. Waste treatment.

f. Combustion with energy recovery.

g. Land disposal.

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; 2013 Acts, ch 12, §1, 2

Referred to in **§455B.484**, **§455D.5**

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**.

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, paragraph *"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. *"Pollution prevention"* means employment of a practice that 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.

9. *"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.

10. *"Site"* means the geographic location of a facility.

11. *"Solid waste"* means solid waste as defined in **section 455B.301, subsection 20**.

12. *"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.

13. *"Storage"* means the temporary holding of waste for treatment or disposal.

14. *"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.

15. *"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; 2006 Acts, ch 1014, §7; 2008 Acts, ch 1032, §201; 2013 Acts, ch 12, §3

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. Implement the waste management policy provided in **section 455B.481**.
3. 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.
4. 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.

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, §50 – 52; 2003 Acts, ch 108, §75; 2006 Acts, ch 1014, §8; 2013 Acts, ch 12, §4, 5

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 pollution prevention 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; 2013 Acts, ch 12, §6

Referred to in **§455K.3**

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. 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.

87 Acts, ch 180, §7; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §10; 2002 Acts, ch 1162, §53; 2013 Acts, ch 12, §7

455B.486 Facility siting.

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; 2013 Acts, ch 12, §8

455B.487 Facility acquisition and operation.

1. 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 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 low-level radioactive waste facilities, subject to the approval of the general assembly.

2. 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.

3. *a.* 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.

b. 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.

4. 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.

5. 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.

6. *a.* 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.

b. Facilities acquired or operated pursuant to **this section** may be used for regional, statewide or multistate management of wastes.

c. 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.

7. 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.

87 Acts, ch 180, §9; 2012 Acts, ch 1021, §80; 2013 Acts, ch 12, §9, 10

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 Repealed by 89 Acts, ch 272, §41.

455B.490 Repealed by 92 Acts, ch 1018, §3.

DIVISION V

AGRICULTURAL CHEMICALS
REGULATION — WASTE
MANAGEMENT RESEARCH

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.

90 Acts, ch 1260, §26

DIVISION VI

INFECTIOUS WASTE

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

Local approval of infectious waste incinerator projects; **§455B.305A**

455B.502 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. Repealed by 2011 Acts, ch 9, §10.

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.

DIVISION VII

TOXICS POLLUTION PREVENTION PROGRAM

455B.516 Definitions. Repealed by 2013 Acts, ch 12, §26.

455B.517 Duties of department. Repealed by 2013 Acts, ch 12, §26.

455B.518 Toxics pollution prevention plans. Repealed by 2013 Acts, ch 12, §26.

455B.519 through 455B.600 Reserved.

DIVISION VIII

CONTAMINATED SITES

455B.601 and 455B.602 Repealed by 2011 Acts, ch 9, §10.

455B.603 through 455B.700 Reserved.

DIVISION IX

OIL SPILLS

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
Section not amended; editorial changes applied

455B.702 through 455B.750 Reserved.

DIVISION X

CONTAMINATED PROPERTY — FINANCIAL LIABILITY

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**, paragraph *"b"*, 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

Referred to in **§455B.751**, **§455B.753**

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

455B.755 through 455B.800 Reserved.

DIVISION XI

VEHICLE RECYCLING — MERCURY REDUCTION AND REMOVAL

Future repeal of division upon development and implementation of national mercury switch recovery program; conditions; department of natural resources to notify Code editor of federal program implementation; 2006 Acts, ch 1120, §11

455B.801 Short title.

This division shall be known and may be cited as the *"Mercury-Free Recycling Act"*.

2006 Acts, ch 1120, §2

Future repeal of division upon development and implementation of national mercury switch recovery program; conditions; department of natural resources to notify Code editor of federal program implementation; 2006 Acts, ch 1120, §11

455B.802 Definitions.

As used in **this division**, unless the context otherwise requires:

1. *"Capture rate"* means the amount of mercury removed, collected, and recovered from end-of-life vehicles, expressed as a percentage of the mercury available from mercury-added switches in end-of-life vehicles annually.

2. *"End-of-life vehicle"* means any vehicle which is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling and that does not exceed ten thousand pounds gross vehicle weight.

3. *"Manufacturer"* means any person that is the last person to produce or assemble a new vehicle that utilizes mercury-added switches, or in the case of an imported vehicle, the importer or domestic distributor of such vehicle. *"Manufacturer"* does not include a person that has never utilized a mercury-added switch in the production or assembly of a new vehicle.

4. *"Mercury-added switch"* means a light switch that contains mercury which was installed by a manufacturer in a motor vehicle.

5. *"Scrap recycling facility"* means a fixed location where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes.

6. *"Vehicle recycler"* means any person engaged in the business of acquiring, dismantling, or destroying six or more vehicles in a calendar year for the primary purpose of resale of the vehicles' parts.

2006 Acts, ch 1120, §3

Referred to in **§455B.808**

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.803 Plans for removal, collection, and recovery of vehicle mercury-added switches.

1. Within ninety days of July 1, 2006, each manufacturer of vehicles sold in this state shall, individually or as part of a group, develop and publish a plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles that were manufactured by the manufacturer. Publication shall be in accordance with **section 455B.807, subsection 2**.

2. *a.* The manufacturer shall implement a system to remove, collect, and recover mercury-added switches from end-of-life vehicles within ninety days of publication of the plan.

b. The system developed and implemented pursuant to **this section** shall provide, at a minimum, all of the following:

(1) Educational materials about the program to inform the public and other stakeholders about the purpose of the collection program and how to participate in the program.

(2) A method for implementing, operating, maintaining, and monitoring the system, in accordance with **subsection 3**. This may include the use of third-party contractors that are qualified and fully insured to perform these tasks.

(3) Information about mercury-added switches identifying all of the following:

(a) The make, model, and year of vehicles potentially containing mercury-added switches.

(b) A description of the mercury-added switches.

(c) The location of the mercury-added switches.

(d) The safe, cost-effective, and environmentally sound methods for the removal of the mercury-added switches from end-of-life vehicles.

(4) A method to arrange and pay for the transportation of the collected mercury-added switches to permitted facilities.

(5) A method to arrange and pay for the recycling of the mercury-added switches.

(6) A method to track participation and publish the progress of the mercury-added switch collection in accordance with **section 455B.807, subsection 2**.

(7) A database of participating vehicle recyclers, including all of the following:

(a) Documentation that the vehicle recycler joined the program.

(b) Records of all submissions by a vehicle recycler of any information required pursuant to subparagraph (6).

(c) Confirmation that the vehicle recycler has submitted switches at least once every twelve months since joining the program.

(8) A target mercury-added switch capture rate for vehicles manufactured by the manufacturer of ninety percent. A description of additional or alternative actions that shall be implemented by the manufacturer to improve the system and its operation in the event that the target capture rate is not met shall be published with the required tracking information no less than annually.

(9) The program shall not include inaccessible mercury-added switches from end-of-life vehicles with significant damage to the vehicle in the area surrounding the mercury-added switch location. All accessible mercury-added switches are expected to be collected under the provisions of **this division**.

c. In developing a removal, collection, and recovery system for end-of-life vehicles, a manufacturer shall, to the extent practicable, utilize the existing end-of-life vehicle recycling infrastructure.

d. If the commission determines that the manufacturer's plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles does not comply with **this section**, the commission may require the manufacturer to make any necessary modification to the plan.

e. On July 1, 2020, the commission shall cease enforcement of the removal, collection, and recovery plans under **this section**. On or before July 1, 2020, the commission shall review the mercury-added switch removal, collection, and recovery portion of **this division** and submit a recommendation to the general assembly regarding the necessity of continuing the enforcement of the removal, collection, and recovery plans under **this section**.

3. The total cost of the removal, collection, and recovery system for mercury-added switches shall be paid by the manufacturer. Costs shall include but not be limited to all of the following:

a. Labor to remove mercury-added switches. Labor shall be reimbursed at a minimum rate of four dollars per mercury-added switch removed, or if the vehicle identification number of the source vehicle is required for reimbursement, at a minimum rate of five dollars.

b. Training.

c. Packaging in which to transport mercury-added switches to recycling, storage, or disposal facilities.

d. Shipping of mercury-added switches to recycling, storage, or disposal facilities.

e. Recycling, storage, or disposal of the mercury-added switches.

f. Public education materials and presentations.

g. Maintenance of all appropriate systems and procedures to protect the environment from mercury contamination from collected mercury-added switches.

4. A vehicle recycler that performs as required under a removal, collection, and recovery plan shall be afforded the protections provided in **section 613.18**.

2006 Acts, ch 1120, §4; 2007 Acts, ch 126, §78

Referred to in **§455B.808**

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.804 Prohibition and proper management of mercury-added vehicle switches.

1. Prior to delivery to a scrap recycling facility, a person who sells, gives, or otherwise conveys ownership of an end-of-life vehicle to the scrap recycling facility for recycling shall remove all mercury-added switches from such end-of-life vehicle unless the mercury-added switch is inaccessible due to significant damage to the end-of-life vehicle in the area where the mercury-added switch is located.

2. A person shall not represent that mercury-added switches have been removed from a vehicle or vehicle hulk being sold, given, or otherwise conveyed for recycling if that person has not removed such mercury-added switches or arranged with another person to remove such switches.

2006 Acts, ch 1120, §5

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.805 General compliance with other provisions.

Except as expressly provided in **this division**, compliance with **this division** shall not exempt a person from compliance with any other law.

2006 Acts, ch 1120, §6

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.806 Regulations.

The commission shall adopt rules pursuant to **chapter 17A** as necessary to implement the provisions of **this division**.

2006 Acts, ch 1120, §7

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.807 Public notification.

1. The department shall make available to the general public in an electronic format the plan of a manufacturer for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles and any report required under **section 455B.808**.

2. Publication of all required plans, information, reports, and educational materials under **this division** shall be through no less than two types of media available to the general public. One medium must be available twenty-four hours per day, seven days per week, and maintained with current information. Acceptable types of media include but are not limited to internet sites, periodicals, journals, and other publicly available media in the state.

2006 Acts, ch 1120, §8; 2013 Acts, ch 90, §257

Referred to in **§455B.803**

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.808 Reporting.

One year after the implementation of a removal, collection, and recovery system, and annually thereafter, a manufacturer subject to **section 455B.803** shall report to the department concerning the performance under the manufacturer's plan. The report shall include statistical information received under **section 455B.803**. The report shall also include but not be limited to all of the following:

1. The number of mercury-added switches collected.
2. An estimate of the amount of mercury contained in the collected switches.
3. The capture rate as defined in **section 455B.802**.
4. The estimated number of vehicles manufactured by the manufacturer containing mercury-added switches.
5. The estimated number of vehicles manufactured by the manufacturer that have been processed for recycling by vehicle recyclers.

2006 Acts, ch 1120, §9

Referred to in **§455B.807**

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.809 State procurement.

Notwithstanding other policies and guidelines for the procurement of vehicles, the state shall, within one year of July 1, 2006, revise its policies, rules, and procedures to give priority and preference to the purchase of vehicles free of mercury-added components taking into consideration competition, price, availability, and performance.

2006 Acts, ch 1120, §10

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.810 through 455B.850 Reserved.

DIVISION XII

IOWA CLIMATE CHANGE ADVISORY COUNCIL

455B.851 Iowa climate change advisory council. Repealed by its own terms; 2010 Acts, ch 1031, §259.