F I N A L R E P O R T

HAZARDOUS WASTE SUBCOMMITTEE
OF THE
SENATE STANDING COMMITTEE ON ENERGY

December, 1978

The United States Resource Conservation and Recovery Act of 1976 provides for a federal hazardous waste regulatory program. The program would include, in addition to the listing and identification of hazardous wastes, standards for generators and transporters of hazardous wastes and standards and a permit system for owners and operators of storage, treatment and disposal facilities. The Act enables the states to develop and administer their own regulatory programs which must be consistent with federal guidelines. While a state program is not required, this alternative is deemed desirable by both the regulated industry and the state regulatory agency because it is less cumbersome for the person being regulated to deal with a state as compared to a federal agency.

In 1978 the House Committee on Energy developed legislation creating a state hazardous waste regulatory program to be administered by the Iowa Department of Environmental Quality. The bill, House File 2169, also made several changes in current solid waste disposal statutes and addressed transportation and disposal problems unique to radioactive materials. House File 2169 was approved by the House in 1978. The Senate however, did not consider the bill prior to adjournment. At the request of the Senate Committee on Energy the Legislative Council appointed the following Subcommittee to study House File 2169 during the 1978 interim:

Senator Norman Rodgers, Chairperson
Senator James Gallagher
Senator Gene Glenn
Senator James Briles
Senator Stephen Bisenius

The Subcommittee held two meetings. At the first meeting the Subcommittee agreed to consider as a working document an amendment to House File 2169 that was prepared in the Senate during the final days of the 1978 Legislative Session.

The amendment eliminated the following items from House File 2169:

1. Amendments to the current solid waste disposal law including the authority for the Department of Environmental Quality to require permits for disposal of solid waste from commercial or manufacturing activities on private property owned by the generator.

2. A requirement that transporters of radioactive material notify the Department of Transportation prior to entry of the shipment into the state.

3. A requirement that the Iowa Geological Survey must designate a proposed site for nuclear waste disposal as geologically suitable for such disposal before a permit for the site can be issued.

4. Limitations on rules promulgated by the Department of Environmental Quality regarding plastic pipe.

5. A provision allowing the general assembly to disapprove by resolution of a rule promulgated by the Department of Environmental Quality after the effective date of the rule is delayed by the Administrative Rules Review Committee.

The Subcommittee received comments from the Iowa Department of Environmental Quality (DEQ) and Transportation (DOT) and the Iowa Manufacturer's Association (IMA). At the request of the IMA the Subcommittee approved a change in the definition of "hazardous waste" that is intended to provide the DEQ with definite parameters for examining the characteristics of a waste to determine whether it should be designated a hazardous waste. The DEQ emphasized the importance of repealing the present exemption from permit requirements for persons who dispose of solid waste from commercial and manufacturing activities on their own property. While the bill recommended by the Subcommittee would require a permit for the disposal of hazardous wastes from such activities on private property, the DEQ feels that certain solid wastes which cannot be characterized as hazardous wastes may pose sufficient environmental problems if improperly disposed of to warrant regulation. The Subcommittee prefers to limit their recommended legislation to the subject of hazardous waste only.

In their discussions with representatives from the DOT, the Subcommittee expressed concern over the current lack of a monitering system for interstate shipments of hazardous waste. Subcommittee members requested the DOT to investigate the possibility of establishing a permit system for transporters of hazardous waste under the Department's current rule making authority. The Department concludes that they do have the authority to require transporters of hazardous waste to obtain a permit, however they do point out that a permit system or routing authority may not be economically practical depending on the extent and specifics of the program. The Department also questioned whether a permit system would be considered an unreasonable burden on interstate commerce and therefore a violation of federal law and pointed out that the concept may present problems regarding the tort liability of the state for injuries incurred while transporting a hazardous waste under a state permit or over a state approved route. The Subcommittee emphasizes that the monitoring

effort should remain simple and could be limited to the filing of a copy of a manifest with the DOT with notification of the proposed route prior to shipment. The Subcommittee urges the DOT to continue to pursue these and other possibilities to insure the safe transportation of hazardous wastes through the state.

LEGISLATIVE RECOMMENDATIONS

The Subcommittee reports the attached bill draft to the Senate Committee on Energy with a "do pass" recommendation.

The bill requires or includes the following:

1. The development by DEQ of a comprehensive state plan and program for hazardous waste management.

2. Identification and listing of hazardous wastes to be regulated.

3. Notification of the DEQ of generation, storage, treatment, transportation and disposal activities involving hazardous wastes.

4. A permit system for hazardous waste treatment, disposal and storage activities.

5. A certification system for operators of hazardous waste treatment, disposal or storage facilities that are required to obtain a permit.

REVIEWED AND APPROVED BY THE HAZARDOUS WASTE SUBCOMMITTEE AND REFERRED TO THE SENATE STANDING COMMITTEE ON ENERGY WITH A "DO PASS" RECOMMENDATION.

December, 1978

Passed Senate, Date_____ Passed House, Date_____

Vote: Ayes_____ Nays_____ Vote: Ayes_____ Nays_____

Approved_____

A BILL FOR

1 An Act relating to hazardous waste management and providing
2 penalties and injunctive relief.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. Chapter four hundred fifty-five B (455B), Code
2 1979, is amended by adding sections two (2) through nine (9)
3 of this Act as a new part of Division four (IV).
4 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act,
5 unless the context otherwise requires:
6 1. "Commission" means the solid waste disposal commission
7 of the department.
8 2. "Disposal" means the discharge, deposit, injection,
9 dumping, spilling, leaking or placing of a hazardous waste
10 into or on land or water so that the hazardous waste or a
11 constituent of the hazardous waste may enter the environment
12 or be emitted into the air or discharged into any waters,
13 including ground waters.
14 3. "Hazardous waste" means a waste or combination of
15 wastes that, because of its quantity, concentration, or
16 physical, chemical, or infectious characteristics, has either
17 of the following effects:
18 a. Causes, or significantly contributes to an increase
19 in mortality or an increase in serious irreversible, or
20 incapacitating reversible, illness.
21 b. Poses a substantial danger to human health or the
22 environment. "Hazardous waste" may include but is not limited
23 to wastes that are toxic, corrosive or flammable or irritants,
24 strong sensitizers or explosives.
25 4. "Storage" means the containment of a hazardous waste,
26 either on a temporary basis or for a period of years, in a
27 manner that does not constitute disposal of the hazardous
28 waste.
29 5. "Treatment" means a method, technique, or process,
30 including neutralization, designed to change the physical,
31 chemical or biological character or composition of a hazardous
32 waste so as to neutralize the waste or to render the waste
33 nonhazardous, safer for transport, amenable for recovery,
34 amenable for storage, or to reduce the waste in volume.
35 Treatment includes any activity or processing designed to

1 change the physical form or chemical composition of hazardous
2 waste to render the waste nonhazardous.
3 Sec. 3. NEW SECTION. DUTIES OF THE COMMISSION. The
4 commission shall:
5 1. Develop comprehensive plans and programs for the state
6 for the management of hazardous waste. As part of the
7 hazardous waste management plan, the commission shall conduct
8 a study of and report to the general assembly on hazardous
9 waste management in Iowa. The study shall include the
10 following:
11 a. A description of current sources of hazardous waste
12 within the state, including the types and quantities of
13 hazardous wastes.
14 b. A description of current hazardous waste trans-
15 portation, storage, treatment and disposal practices and costs
16 within the state.
17 c. A description of practices and methods that would
18 reduce at the source the amount of hazardous waste generated.
19 d. Identification and evaluation of alternatives to land
20 disposal of hazardous wastes.
21 e. Identification of the general geologic and other
22 criteria for a site for land disposal of hazardous wastes
23 and the areas in Iowa that might meet the general criteria
24 if alternatives to land disposal are not feasible.
25 f. The proper role and activities of the state in addition
26 to those established in this part and the federal Solid Waste
27 Disposal Act in facilitating safe and efficient disposal of
28 hazardous waste.
29 2. Adopt rules establishing criteria for identifying
30 the characteristics of hazardous wastes and listing hazardous
31 wastes that are subject to the provisions of this part. The
32 commission shall consider toxicity, persistence and
33 degradability in nature, potential for accumulation in tissue,
34 and related factors including flammability, corrosiveness,
35 and other hazardous characteristics.

1 3. Adopt rules, applicable to generators or transporters
2 of or owners or operators of facilities for the treatment,
3 storage, or disposal of hazardous waste listed by the
4 commission under subsection two (2) of this section, as
5 necessary to protect human health and the environment.
6 4. Adopt rules establishing standards and procedures
7 for the certification of supervisory personnel and operators
8 at hazardous waste treatment, storage or disposal facilities
9 required to have a permit under section six (6) of this Act.
10 Sec. 4. NEW SECTION. EXECUTIVE DIRECTOR'S DUTIES. The
11 executive director shall:
12 1. Issue, revoke, suspend, modify or deny permits for
13 persons owning or operating a facility for the treatment,
14 storage or disposal of a hazardous waste listed by the
15 commission under section three (3), subsection two (2) of
16 this Act. Permits shall be issued for such period as the
17 commission may by rule prescribe. A permit shall not be
18 issued for a facility for the treatment, storage or disposal
19 of a hazardous waste listed by the commission under section
20 three (3), subsection two (2) of this Act unless the appli-
21 cant presents evidence of financial responsibility and
22 continuity of operation consistent with the degree and dura-
23 tion of risks associated with the treatment, storage or dis-
24 posal of the hazardous waste.
25 2. Administer examinations to determine the competence
26 of operators and supervisory personnel at facilities for the
27 treatment, storage or disposal of hazardous waste that are
28 required to have a permit under section six (6) of this Act.
29 The executive director shall issue, revoke, suspend, or deny
30 certificates of competency for persons as supervisory or
31 operating personnel at facilities for the treatment, storage
32 or disposal of hazardous waste.
33 3. Inspect and investigate hazardous waste generators
34 and transporters and treatment, storage and disposal facilities
35 as may be necessary to demine compliance with this part and

1 rules adopted and permits and orders issued pursuant to
2 sections two (2) through nine (9) of this Act. The executive
3 director shall periodically survey or inspect the construction,
4 operation and monitoring, reporting and record-keeping systems
5 of hazardous waste generators and transporters and treat-
6 ment, storage and disposal facilities.
7 Sec. 5. NEW SECTION. HAZARDOUS WASTE NOTIFICACATION.
8 A person generating or transporting a hazardous waste listed
9 by the commission under section three (3), subsection two
10 (2) of this Act or owning or operating a facility for
11 treatment, storage or disposal of a hazardous waste listed
12 under the commission's rules shall file with the executive
13 director a notification stating the location and general
14 description of the activity and the hazardous waste handled
15 by the person. The notice shall be given within ninety days
16 after the listing of the waste under section three (3),
17 subsection two (2) of this Act or within ninety days after
18 the activity is commenced.
19 Sec. 6. NEW SECTION. PERMIT REQUIRED.
20 1. A person owning or operating a facility for the
21 treatment, storage or disposal of a hazardous waste listed
22 by the commission under section three (3), subsection two
23 (2) of this Act shall obtain a permit for the facility within
24 six months of the effective date of the rule listing the
25 hazardous waste. The commission may, by rule, specify the
26 information required to be submitted with the application
27 and the conditions under which the executive director shall
28 issue, deny, revoke, suspend or modify permits for treatment,
29 storage and disposal facilities. However, a person is not
30 required to obtain a permit for the storage of a hazardous
31 waste when the only purpose of the storage is to accumulate
32 sufficient quantities of the waste for transportation,
33 treatment or disposal unless a permit for the storage is
34 required pursuant to federal law. A person owning or operating
35 a facility for the treatment storage or disposal of a hazardous

1 waste that existed on the effective date of the rule listing
2 the waste and that is required to have a permit under this
3 Act is considered to have a permit until such time as final
4 administrative determination is made if the person meets the
5 following conditions:
6 a. The person has given notice as required by section
7 five (5) of this Act.
8 b. The person has applied for a permit.
9 c. The executive director has determined that the failure
10 to issue the permit is not the result of the failure of the
11 applicant to furnish information reasonably required or
12 requested to process the application.
13 2. A permit issued pursuant to this section shall be in
14 addition to other licenses, permits or variances authorized
15 or required by law, including, but not limited to, the
16 requirements of chapter three hundred fifty-eight A (358A)
17 of the Code.
18 3. If the executive director denies a permit, the executive
19 director shall inform the applicant in writing of the reasons
20 for the denial. The applicant may appeal to the commission
21 from the denial of a permit or from a condition of a permit
22 if the applicant files a notice of appeal with the executive
23 director within thirty days of receipt of the denial or
24 issuance of the permit.
25 Sec. 7. NEW SECTION. INSPECTIONS.
26 1. For purposes of developing a rule, or conducting a
27 study of hazardous waste management, or enforcing the
28 provisions of this part, a person who generates, stores,
29 treats, transports, disposes of or otherwise handles hazardous
30 waste shall, upon request of the executive director, furnish
31 or permit the executive director at reasonable times to have
32 access to and copy records relating to the waste. For the
33 purpose of developing a rule or enforcing the provisions of
34 this part, the executive director may:
35 a. Enter at reasonable times an establishment or other

1 place maintained by a person where hazardous waste is
2 generated, stored, treated or disposed of, or a vehicle
3 transporting hazardous waste.
4 b. Inspect and obtain samples from a person of a hazardous
5 waste and of containers or labeling associated with the waste.
6 c. Install, service and take samples from monitoring
7 equipment on the property.
8 The inspection shall be commenced and completed with
9 reasonable promptness.
10 2. If the officer or employee obtains a sample, prior
11 to leaving the premises, the officer or employee shall give
12 the owner, operator, or agent in charge a receipt describing
13 the sample obtained and if requested a portion of each sample
14 equal in volume or weight to the portion retained. If the
15 sample is analyzed, a copy of the results of the analysis
16 shall be furnished promptly to the owner, operator, or agent
17 in charge.
18 3. Documents or information obtained from a person under
19 this section shall be available to the public except as
20 provided in this subsection. Upon a showing satisfactory
21 to the executive director by a person that documents or
22 information, or a particular part of the documents or
23 information to which the executive director has access under
24 this section if made public would divulge commercial or
25 financial information obtained from a person and privileged
26 or confidential or a trade secret, the executive director
27 shall consider the documents or information or the particular
28 portion of the documents or information confidential. However
29 the document or information may be disclosed to officers,
30 employees or authorized representatives of the United States
31 charged with implementing the federal Solid Waste Disposal
32 Act, to employees of the state of Iowa or of other states
33 when the document or information is relevant to the discharge
34 of their official duties, and when relevant in any proceeding
35 under the federal Solid Waste Disposal Act or this part.

1 Sec. 8. NEW SECTION. PROHIBITED ACTS--PENALTIES.
2 1. A person shall not knowingly do any of the following
3 acts:
4 a. Transport a hazardous waste listed under the
5 commission's rules to a hazardous waste storage, treatment
6 of disposal facility that is located in Iowa that does not
7 have a permit under section six (6), subsection one (1) of
8 this Act.
9 b. Dispose of a hazardous waste listed under this Act
10 without having obtained a permit for the disposal under section
11 six (6), subsection one (1) of this Act.
12 c. Make a false statement or representation in an
13 application, label, manifest, record, report, permit or other
14 document filed, maintained or used for purposes of compliance
15 with the provisions of this Act.
16 2. A person who violates the provisions of subsection
17 one (1) of this section is subject upon conviction to a fine
18 of not more than twenty-five thousand dollars for each day
19 of violation, or to imprisonment for not to exceed one year,
20 or both. If the conviction is for a violation committed after
21 a first conviction, punishment shall be by a fine of not more
22 than fifty thousand dollars for each day of violation, or
23 by imprisonment for not more than two years, or both.
24 3. A person who fails to take corrective action within
25 the time specified in an order issued pursuant to section
26 nine (9), subsection one (1), paragraphs a or b of this Act
27 is subject to a civil penalty of not more than twenty-five
28 thousand dollars for each day of continued noncompliance.
29 4. A person shall not transport, treat, store or dispose
30 of a hazardous waste listed by the commission under section
31 three (3), subsection two (2) of this Act unless notification
32 has been given in accordance with rules adopted under section
33 three (3), subsection three (3) of this Act. A person who
34 violates this subsection is subject to a civil penalty not
35 to exceed five hundred dollars for each day of violation.

1 Sec. 9. NEW SECTION. ENFORCEMENT.
2 1. If the executive director has conclusive evidence that
3 a person has violated or is violating a provision of this
4 part, or of a rule or standard established or permit issued
5 pursuant to this part:
6 a. The executive director may issue an order directing
7 the person to desist in the practice that constitutes the
8 violation or to take corrective action as necessary to ensure
9 that the violation will cease. Before issuing the order the
10 executive director shall notify the person of the violation
11 and that if compliance is not achieved within thirty days
12 following the receipt of the notice the order may be issued.
13 The person to whom the order is issued may commence a contested
14 case within the meaning of chapter seventeen A (17A) of the
15 Code by filing with the executive director within thirty days
16 of receipt of the order a notice of appeal to the commission.
17 On appeal, the commission may affirm, modify or vacate the
18 order of the executive director.
19 b. If it is determined by the executive director that
20 an emergency exists, the executive director may issue without
21 notice or hearing an order necessary to terminate the
22 emergency. The order shall be binding and effective im-
23 mediately and until the order is modified or vacated at a
24 hearing before the commission or by a court. "Emergency"
25 as used in this subsection means a situation where the
26 handling, storage, treatment, transportation or disposal of
27 a hazardous waste is presenting an imminent and substantial
28 threat to human health or the environment.
29 c. The executive director with the approval of the
30 commission, may request the attorney general to institute
31 legal proceedings pursuant to subsection two (2) of this
32 section.
33 2. The attorney general shall, at the request of the
34 executive director pursuant to paragraph c of subsection one
35 (1) of this section, institute legal proceedings, including

1 an action for an injunction, necessary to enforce the penalty
2 provisions of this Act or to obtain compliance with this Act
3 or a rule promulgated or a condition of a permit or order
4 issued under this Act. In the action, previous findings of
5 fact by the commission in a contested case shall be conclusive
6 if supported by substantial evidence in the record made before
7 the commission when that record is viewed as a whole.
8 3. If the attorney general has instituted legal proceedings
9 in accordance with subsection two (2) of this section, all
10 related issues which could otherwise be raised by the alleged
11 violator in a proceeding for judicial review under section
12 four hundred fifty-five B point eighty-three (455B.83) of
13 the Code shall be raised in the legal proceedings instituted
14 in accordance with this section.
15 Sec. 10. NEW SECTION. JUDICIAL REVIEW. Judicial review
16 of actions of the commission or the executive director may
17 be sought in accordance with the provision of chapter seventeen
18 A (17A) of the Code. Notwithstanding the provisions of chapter
19 seventeen A (17A) of the Code, petitions for judicial review
20 may be filed in the district court of the county where the
21 acts in issue occurred.
22 Sec. 11. Section three hundred seven point ten (307.10),
23 Code 1979, is amended by adding the following new subsection:
24 NEW SUBSECTION. The commission may adopt, after consulta-
25 tion with the department of environmental quality and the
26 department of public safety, rules to enforce the rules regard-
27 ing transportation of hazardous wastes promulgated by the
28 solid waste disposal commission of the department of environ-
29 mental quality under section three (3), subsection two (2)
30 of this Act. The department and the division of the highway
31 safety patrol of the department of public safety shall carry
32 out the rules through the use of the director's powers and
33 duties of enforcement and inspection.
34 Sec. 12. This Act is effective January first following
35 its enactment.

EXPLANATION

This bill gives the Iowa department of environmental quality the authority to regulate the storage, treatment, transportation and disposal of hazardous wastes. It is intended to conform to the provisions of the federal Resource Conservation and Recovery Act of 1976.

The bill requires the solid waste disposal commission to identify hazardous wastes that would be subject to the Act. Persons owning or operating a facility for the treatment, storage or disposal of a hazardous waste must obtain a permit for the activity from the executive director. Generators and transporters must notify the executive director of their activity.

The bill also provides for the certification of hazardous waste treatment, disposal and storage facility operators and supervisory personnel.

Penalties are provided as well as enforcement authority, including the authority to seek injunctive relief.

The Act is effective January first following its enactment.