

Energy: Ritsema, Chair; Carl, Cook, Howell and Poffenberger.

FILED MAR 26 1981

SENATE FILE 485

BY COMMITTEE ON ENERGY

(FORMERLY SSB 233)

Approved 5/26/81 (p. 981)

Passed Senate, Date 4-8-81 (p. 1121) Passed House, Date 4-23-81 (p. 1345)

Vote: Ayes 46 Nays 0 Vote: Ayes 96 Nays 2

Approved May 14, 1981  
for House Amendment 3564  
4-29-81 (p. 1476)  
46-0

### A BILL FOR

1 An Act relating to hazardous waste management, including  
2 new prohibited acts and providing penalties for  
3 violations.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5  
6

#### HOUSE AMENDMENT TO SENATE FILE 485

S-3564

1 Amend Senate File 485, as passed by the Senate,  
2 as follows:

3 1. Page 2, by striking lines 18 through 21 and  
4 inserting in lieu thereof the following: "facility  
5 or site to conduct reasonable monitoring, testing,  
6 analysis, and reporting with respect to the facility  
7 or site to determine the nature and extent of the  
8 hazard."

9 2. Page 3, by striking lines 18 and 19 and  
10 inserting in lieu thereof the words "reasonable  
11 monitoring, testing, or analysis to determine the  
12 nature and extent of the".

13 3. Page 4, line 11, by striking the word "Destroys,  
14 alters or conceals" and inserting in lieu thereof  
15 the words "Destroy, alter or conceal".

16 4. Page 5, line 7, by inserting after the word  
17 "exclusive" the word "substantial".

S-3564 FILED  
APRIL 27, 1981

RECEIVED FROM THE HOUSE

Senate concurred 4/29/81 (p. 1475)

23  
24  
25

1 Section 1. Section 455B.130, subsection 2, paragraph b,  
2 subparagraph 2, Code 1981, is amended by striking the sub-  
3 paragraph.

4 Sec. 2. Section 455B.133, subsection 3, Code 1981, is  
5 amended by striking the subsection and inserting in lieu  
6 thereof the following:

7 3. When the commission amends a rule adopted under section  
8 455B.131, subsection 2, identifying additional characteristics  
9 of hazardous waste or listing an additional substance as  
10 hazardous waste, the commission may require a person to file  
11 the notification required by subsection 1 or 2 of this section.

12 Sec. 3. Section 455B.135, subsections 1 and 2, Code 1981,  
13 are amended to read as follows:

14 1. For purposes of developing a rule, ~~or~~ conducting a  
15 study of hazardous waste management, compiling a site  
16 inventory, or enforcing sections 455B.130 to 455B.140, a  
17 person who generates, stores, treats, transports, disposes  
18 of or otherwise handles or has handled hazardous waste shall,  
19 upon request of the executive director, furnish ~~or~~ information  
20 relating to the hazardous waste and permit the executive  
21 director at reasonable times to have access to and copy records  
22 relating to the waste. For the purpose of developing a rule  
23 or enforcing sections 455B.130 to 455B.140, the executive  
24 director may:

25 a. Enter at reasonable times an establishment or other  
26 place ~~maintained-by-a-person~~ where hazardous waste is or has  
27 been generated, stored, treated or disposed of, or a vehicle  
28 transporting hazardous waste.

29 b. Inspect and obtain samples from a person of a hazardous  
30 waste and of containers or labeling associated with the waste.

31 c. Install, service and take samples from monitoring  
32 equipment on the property.

33 The inspection shall be completed within a reasonable  
34 period of time.

35 2. If the ~~officer-or-employee~~ executive director obtains

1 a sample, prior to leaving the premises, the ~~officer~~-  
2 ~~employee~~ executive director shall give the owner, operator,  
3 or agent in charge a receipt describing the sample obtained  
4 and if requested a portion of each sample equal in volume  
5 or weight to the portion retained. If the sample is analyzed,  
6 a copy of the results of the analysis shall be furnished  
7 promptly to the owner, operator, or agent in charge.

8 Sec. 4. Section 455B.135, Code 1981, is amended by add-  
9 ing the following new subsection:

10 NEW SUBSECTION.

11 a. If upon receipt of any information, the executive di-  
12 rector determines that the presence of a hazardous waste at  
13 a facility or site at which hazardous waste is, or has been,  
14 stored, treated, or disposed of, or the release of the waste  
15 from the facility or site may present a substantial hazard  
16 to human health or the environment, the executive director  
17 may issue an order requiring the owner or operator of the  
18 facility or site to conduct monitoring, testing, analysis,  
19 and reporting with respect to the facility or site as the  
20 executive director deems reasonable to determine the nature  
21 and extent of the hazard.

22 b. In the case of a facility or site not in operation  
23 at the time a determination is made regarding the facility  
24 or site under this subsection, if the executive director finds  
25 that the owner of the facility or site could not reasonably  
26 be expected to have actual knowledge of the presence of  
27 hazardous waste at the facility or site and of its potential  
28 for release, the executive director may issue an order  
29 requiring the most recent previous owner or operator of the  
30 facility or site who could reasonably be expected to have  
31 actual knowledge to carry out the actions referred to in this  
32 subsection.

33 c. An order under this subsection shall require the person  
34 to whom the order is issued to submit to the executive director  
35 within thirty days from the issuance of the order a proposal

1 for carrying out the required monitoring, testing, analysis,  
2 and reporting. The executive director may, after providing  
3 the person with an opportunity to confer with the executive  
4 director on the proposal, require the person to carry out  
5 the monitoring, testing, analysis, and reporting in accordance  
6 with the proposal, which may be modified as the executive  
7 director deems reasonable to determine the nature and extent  
8 of the hazard or to remove the hazard.

9 d. If the executive director determines that no owner  
10 or operator referred to in this subsection is able to conduct  
11 monitoring, testing, analysis, or reporting satisfactory to  
12 the executive director, if the executive director deems any  
13 action carried out by an owner or operator to be  
14 unsatisfactory, or if the executive director cannot initially  
15 determine that there is an owner or operator referred to in  
16 this subsection who is able to conduct monitoring, testing,  
17 analysis, or reporting, the executive director may conduct  
18 monitoring, testing, or analysis which the executive director  
19 deems reasonable to determine the nature and extent of the  
20 hazard associated with the site. The executive director may  
21 require the owner or operator referred to in this subsection  
22 to reimburse the executive director or other authority or  
23 person for the costs of the monitoring, testing, analysis,  
24 or reporting. The executive director shall not order a person  
25 to pay the costs of monitoring, testing, analysis, or reporting  
26 carried out by the executive director which confirms the  
27 results of monitoring, testing, or analysis done pursuant  
28 to an earlier order of the executive director.

29 e. For purposes of carrying out this subsection, the  
30 executive director may exercise the powers set forth in  
31 subsection 1.

32 Sec. 5. Section 455B.136, subsection 1, paragraphs b and  
33 c, Code 1981, are amended to read as follows:

34 b. ~~Dispose~~ Treat, store, or dispose of a hazardous waste  
35 listed under sections 455B.130 to 455B.140 either without

1 having obtained a permit for the treatment, storage, or  
2 disposal under section 455B.134, subsection 1 or in violation  
3 of a material condition or requirement of a permit.

4 c. Make a false material statement or representation in  
5 an application, label, manifest, record, report, permit or  
6 other document filed, maintained or used for purposes of  
7 compliance with the provisions of sections 455B.130 to  
8 455B.140.

9 Sec. 6. Section 455B.136, subsection 1, Code 1981, is  
10 amended by adding the following new lettered paragraph:

11 NEW LETTERED PARAGRAPH. d. Destroys, alters or conceals  
12 after the effective date of this Act any record required to  
13 be kept under rules adopted by the commission under this part.  
14 This paragraph applies to all persons who generated, stored,  
15 treated, transported, disposed of, or otherwise handled hazar-  
16 dous waste after November 19, 1980.

17 Sec. 7. Section 455B.136, subsection 2, Code 1981, is  
18 amended to read as follows:

19 2. A person who violates ~~the provisions of~~ subsection  
20 ~~1 of this section~~ is subject upon conviction to a fine of  
21 not more than twenty-five thousand dollars or to imprisonment  
22 for not to exceed one year, or both for each day of violation.  
23 If the conviction is for a violation committed after a first  
24 conviction, punishment shall be by a fine of not more than  
25 fifty thousand dollars or by imprisonment for not more than  
26 two years, or both for each day of violation.

27 Sec. 8. Section 455B.136, Code 1981, is amended by add-  
28 ing the following new subsections:

29 NEW SUBSECTION. A person who fails or refuses to comply  
30 with an order issued under section 4 of this Act is subject  
31 to a civil penalty of not more than five thousand dollars  
32 for each day the failure or refusal occurs and the court may  
33 require the person to comply with the order.

34 NEW SUBSECTION. A person who violates a requirement of  
35 this part or of a rule adopted under this part is in addition

1 to the penalty provided in subsection 2 subject to a civil  
2 penalty not to exceed twenty-five thousand dollars for each  
3 violation. Each day of violation constitutes a separate vio-  
4 lation.

5 Sec. 9. Section 455B.137, subsection 1, unnumbered para-  
6 graph 1, Code 1981, is amended to read as follows:

7 If the executive director has ~~conclusive~~ evidence that  
8 a person has violated or is violating a provision of sections  
9 455B.130 to 455B.140, or of a rule or standard established  
10 or permit issued pursuant to sections 455B.130 to 455B.140  
11 ~~and-if-subsection-4-of-this-section-does-not-apply:~~

12 Sec. 10. Section 455B.137, subsection 1, paragraph a,  
13 Code 1981, is amended to read as follows:

14 a. The executive director may issue an order directing  
15 the person to desist in the practice that constitutes the  
16 violation or to take corrective action as necessary to ensure  
17 that the violation will cease. ~~Before-issuing-the-order-the~~  
18 ~~executive-director-shall-notify-the-person-of-the-violation~~  
19 ~~and-that-if-compliance-is-not-achieved-within-thirty-days~~  
20 ~~following-the-receipt-of-the-notice-the-order-may-be-issued-~~  
21 The person to whom the order is issued may commence a contested  
22 case within the meaning of chapter 17A by filing with the  
23 executive director within thirty days of receipt of the order  
24 a notice of appeal to the commission. On appeal, the  
25 commission may affirm, modify or vacate the order of the  
26 executive director.

27 Sec. 11. Section 455B.137, subsection 4, Code 1981, is  
28 amended by striking the subsection.

29 Sec. 12. Section 455B.139, Code 1981, is amended to read  
30 as follows:

31 455B.139 RULES. Rules adopted by the commission under  
32 sections 455B.130 to 455B.140 shall be consistent with and  
33 shall not exceed the requirements of 42 U.S.C. ~~6921--6931~~  
34 ~~{1979}~~ secs. 6921-6934 as amended to ~~March-15-1979~~ January  
35 1, 1981 and rules and regulations ~~promulgated~~ adopted pursuant

1 to those sections.

2 EXPLANATION

3 This bill makes several changes in the law enacted in 1979  
4 relating to hazardous waste management, including changes  
5 necessary to make the Iowa law compatible with the federal  
6 law and regulations.

7 Section 1 strikes the exclusion of sewage sludge from  
8 publicly owned treatment works from being classified as  
9 hazardous waste. This would allow such sludge to be included  
10 as hazardous waste only if it exhibited any of the  
11 characteristics of hazardous waste. This change follows the  
12 EPA rules.

13 Section 2 strikes the small generator exclusion from regu-  
14 lation and replaces it with language that gives the commission  
15 flexibility regarding notice requirements. EPA increased  
16 the amount of hazardous waste a person can generate before  
17 being subject to regulation. By striking the exclusion DEQ  
18 can by rule establish limits that conform to federal  
19 requirements.

20 Section 3 makes several changes relating to DEQ's authority  
21 to conduct inspections.

22 Section 4 gives the executive director the authority to  
23 issue an order to a person responsible for a facility or a  
24 site requiring the person to develop and implement a monitoring  
25 and testing program when the executive director determines  
26 a waste presents a substantial hazard to human health or the  
27 environment. Section 8 provides a civil penalty of up to  
28 \$5000 per day for failing to obey an order.

29 Section 5 adds treatment or storage of hazardous waste  
30 without a permit to the list of prohibited acts. It makes  
31 violation of a material condition or requirement of a permit  
32 a criminal act. Section 6 makes it a crime to alter or destroy  
33 records that must be kept.

34 Section 7 makes each day of continued performance of a  
35 prohibited act a separate crime, as it is under federal law.

1 Section 8 provides a civil penalty for violation of program  
2 requirements which would be in addition to criminal penalties  
3 already provided for.

4 Section 9 strikes the requirement that the executive  
5 director must have conclusive evidence before enforcement  
6 actions may be taken.

7 Section 10 strikes language that requires the executive  
8 director to wait 30 days before issuing an order requiring  
9 compliance with hazardous waste requirements. This change  
10 conforms to the federal law.

11 Section 11 strikes language that attempts to limit the  
12 extent to which the state can require the owner of a site  
13 existing before the 1979 law to take remedial action.

14 Section 12 updates references to the federal law.

15 The bill takes effect July 1 following enactment.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

H-3767

1 Amend Senate File 485, as passed by the Senate,  
2 as follows:

3 1. Page 6, by inserting after line 1, the follow-  
4 ing section:

5 "Sec. \_\_\_\_ Section 455B.141, Code 1981, is amend-  
6 ed to read as follows:

7 455B.141 ACQUISITION AND LEASE OF SITES. The  
8 commission shall adopt rules establishing criteria  
9 for the identification of land areas or sites which  
10 are suitable for the operation of a treatment or dis-  
11 posal facility. Upon request, the department shall  
12 assist the executive council in locating suitable sites  
13 for the location of a treatment or disposal facility.  
14 The commission may recommend to the executive council  
15 the purchase or condemnation of land to be leased for  
16 the operation of a treatment or disposal facility.  
17 The executive council may purchase or may condemn the  
18 land subject to chapter 471. Consideration for a  
19 contract for purchase of land shall not be in excess of  
20 funds appropriated by the general assembly for that  
21 purpose. The executive council upon recommendation  
22 of the commission may lease land purchased under this  
23 section to any person except the state or a state  
24 agency. ~~This section does not authorize the state to own~~  
25 ~~or operate a hazardous waste treatment or disposal~~  
26 ~~facility and the state shall not own or operate such~~  
27 ~~a facility.~~ The terms of the lease shall establish  
28 responsibility for long-term monitoring and mainten-  
29 ance of the site. The lessee is subject to all  
30 applicable requirements of this part including  
31 permit and licensing requirements. The commission may  
32 require the lessee to post bond conditioned upon  
33 performance of conditions of the lease relating to  
34 long-term monitoring and maintenance. The leasehold  
35 interest including improvements made to the property  
36 shall be listed, assessed and valued as any other real  
37 property as provided by law.

H-3767 FILED APRIL 22, 1981 BY HOWELL of Floyd

*Revised not germane 4/23/81 (p. 1345)*

H-3774

1 Amend amendment H-3767 to Senate File 485, as  
2 passed by the Senate, as follows:

3 1. Page 1, by striking lines 23 through 27  
4 and inserting in lieu thereof the following:

5 "section to any person except the state or a state  
6 agency. This section does not authorize the state  
7 to own or operate a hazardous waste treatment or dis-  
8 posal facility and the state shall not own or operate  
9 such a facility. The terms of the lease shall estab-  
10 lish".

H-3774 FILED APRIL 23, 1981 BY HOWELL of Floyd

ADOPTED (p. 1344)

H-3672

1 Amend Senate File 485, as passed by the Senate,  
2 as follows:

3 1. Page 2, by striking lines 18 through 21 and  
4 inserting in lieu thereof the following: "facility  
5 or site to conduct reasonable monitoring, testing,  
6 analysis, and reporting with respect to the facility  
7 or site to determine the nature and extent of the  
8 hazard."

9 2. Page 3, by striking lines 18 and 19 and  
10 inserting in lieu thereof the words "reasonable  
11 monitoring, testing, or analysis to determine the  
12 nature and extent of the".

13 3. Page 4, line 11, by striking the words "Destroys,  
14 alters or conceals" and inserting in lieu thereof  
15 the words "Destroy, alter or conceal".

16 4. Page 5, line 7, by inserting after the word  
17 "exclusive" the word "substantial".

H-3672 FILED  
APRIL 21, 1981

*Adopted 4/23/81 (p. 1343)*

BY COMMITTEE ON ENERGY  
PELTON, Chair

## SENATE FILE 485

## AN ACT

## RELATING TO HAZARDOUS WASTE MANAGEMENT, INCLUDING NEW PROHIBITED ACTS AND PROVIDING PENALTIES FOR VIOLATIONS.

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

Section 1. Section 455B.130, subsection 2, paragraph b, subparagraph (2), Code 1981, is amended by striking the subparagraph.

Sec. 2. Section 455B.133, subsection 3, Code 1981, is amended by striking the subsection and inserting in lieu thereof the following:

3. When the commission amends a rule adopted under section 455B.131, subsection 2, identifying additional characteristics of hazardous waste or listing an additional substance as hazardous waste, the commission may require a person to file the notification required by subsection 1 or 2 of this section.

Sec. 3. Section 455B.135, subsections 1 and 2, Code 1981, are amended to read as follows:

1. For purposes of developing a rule, or conducting a study of hazardous waste management, compiling a site inventory, or enforcing sections 455B.130 to 455B.140, a person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous waste shall, upon request of the executive director, furnish or information relating to the hazardous waste and permit the executive director at reasonable times to have access to and copy records relating to the waste. For the purpose of developing a rule or enforcing sections 455B.130 to 455B.140, the executive director may:

a. Enter at reasonable times an establishment or other place maintained-by-a-person where hazardous waste is or has been generated, stored, treated or disposed of, or a vehicle transporting hazardous waste.

b. Inspect and obtain samples from a person of a hazardous waste and of containers or labeling associated with the waste.

c. Install, service and take samples from monitoring equipment on the property.

The inspection shall be completed within a reasonable period of time.

2. If the officer-or-employee executive director obtains a sample, prior to leaving the premises, the officer-or-employee executive 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.

Sec. 4. Section 455B.135, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION.

a. If upon receipt of any information, the executive director determines that the presence of a hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of the waste from the facility or site may present a substantial hazard to human health or the environment, the executive director may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the facility or site to determine the nature and extent of the hazard.

b. In the case of a facility or site not in operation at the time a determination is made regarding the facility or site under this subsection, if the executive director finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the executive director may issue an order requiring the most recent previous owner or operator of the

facility or site who could reasonably be expected to have actual knowledge to carry out the actions referred to in this subsection.

c. An order under this subsection shall require the person to whom the order is issued to submit to the executive director within thirty days from the issuance of the order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The executive director may, after providing the person with an opportunity to confer with the executive director on the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, which may be modified as the executive director deems reasonable to determine the nature and extent of the hazard or to remove the hazard.

d. If the executive director determines that no owner or operator referred to in this subsection is able to conduct monitoring, testing, analysis, or reporting satisfactory to the executive director, if the executive director deems any action carried out by an owner or operator to be unsatisfactory, or if the executive director cannot initially determine that there is an owner or operator referred to in this subsection who is able to conduct monitoring, testing, analysis, or reporting, the executive director may conduct reasonable monitoring, testing, or analysis to determine the nature and extent of the hazard associated with the site. The executive director may require the owner or operator referred to in this subsection to reimburse the executive director or other authority or person for the costs of the monitoring, testing, analysis, or reporting. The executive director shall not order a person to pay the costs of monitoring, testing, analysis, or reporting carried out by the executive director which confirms the results of monitoring, testing, or analysis done pursuant to an earlier order of the executive director.

e. For purposes of carrying out this subsection, the executive director may exercise the powers set forth in subsection 1.

Sec. 5. Section 455B.136, subsection 1, paragraphs b and c, Code 1981, are amended to read as follows:

b. ~~Dispose~~ Treat, store, or dispose of a hazardous waste listed under sections 455B.130 to 455B.140 either without having obtained a permit for the treatment, storage, or disposal under section 455B.134, subsection 1 or in violation of a material condition or requirement of a permit.

c. Make a false material statement or representation in an application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the provisions of sections 455B.130 to 455B.140.

Sec. 6. Section 455B.136, subsection 1, Code 1981, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH d. Destroy, alter or conceal after the effective date of this Act any record required to be kept under rules adopted by the commission under this part. This paragraph applies to all persons who generated, stored, treated, transported, disposed of, or otherwise handled hazardous waste after November 19, 1980.

Sec. 7. Section 455B.136, subsection 2, Code 1981, is amended to read as follows:

2. A person who violates ~~the provisions of~~ subsection 1 ~~of this section~~ is subject upon conviction to a fine of not more than twenty-five thousand dollars or to imprisonment for not to exceed one year, or both for each day of violation. If the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than fifty thousand dollars or by imprisonment for not more than two years, or both for each day of violation.

Sec. 8. Section 455B.136, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. A person who fails or refuses to comply with an order issued under section 4 of this Act is subject to a civil penalty of not more than five thousand dollars for each day the failure or refusal occurs and the court may require the person to comply with the order.

NEW SUBSECTION. A person who violates a requirement of this part or of a rule adopted under this part is in addition to the penalty provided in subsection 2 subject to a civil penalty not to exceed twenty-five thousand dollars for each violation. Each day of violation constitutes a separate violation.

Sec. 9. Section 455B.137, subsection 1, unnumbered paragraph 1, Code 1981, is amended to read as follows:

If the executive director has ~~conclusive~~ substantial evidence that a person has violated or is violating a provision of sections 455B.130 to 455B.140, or of a rule or standard established or permit issued pursuant to sections 455B.130 to 455B.140 ~~and-if-subsection-4-of-this-section-does-not apply:~~

Sec. 10. Section 455B.137, subsection 1, paragraph a, Code 1981, is amended to read as follows:

a. The executive director may issue an order directing the person to desist in the practice that constitutes the violation or to take corrective action as necessary to ensure that the violation will cease. ~~Before-issuing-the-order-the executive-director-shall-notify-the-person-of-the-violation and-that-if-compliance-is-not-achieved-within-thirty-days following-the-receipt-of-the-notice-the-order-may-be-issued.~~ The person to whom the order is issued may commence a contested case within the meaning of chapter 17A by filing with the executive director within thirty days of receipt of the order a notice of appeal to the commission. On appeal, the commission may affirm, modify or vacate the order of the executive director.

Sec. 11. Section 455B.137, subsection 4, Code 1981, is amended by striking the subsection.

Sec. 12. Section 455B.139, Code 1981, is amended to read as follows:

455B.139 RULES. Rules adopted by the commission under sections 455B.130 to 455B.140 shall be consistent with and shall not exceed the requirements of 42 U.S.C. 6921--6931 ~~(1979) secs. 6921-6934~~ as amended to ~~March-15-1979~~ January 1, 1981 and rules and regulations ~~promulgated~~ adopted pursuant to those sections.

\_\_\_\_\_  
TERRY E. BRANSTAD  
President of the Senate

\_\_\_\_\_  
DELWYN STROMER  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 485, Sixty-ninth General Assembly.

\_\_\_\_\_  
LINDA HOWARTH MACKAY  
Secretary of the Senate

Approved May 14, 1981

\_\_\_\_\_  
ROBERT D. RAY  
Governor

S.F. 485