

Reprint 3/9

Agriculture: Hughes, Chair; Muhlbauer and Stueland.

Amend per 5374 & Do Pass 3/2 (p. 680)

JAN 18 1984

HOUSE FILE 2100

BY COCHRAN and MAULSBY

NATURAL RESOURCES

Passed House, Date 3-7-84 (p. 781) Passed Senate, Date 4-4-84 (p. 1303)

Vote: Ayes 95 Nays 0 Vote: Ayes 45 Nays 2

Approved May 14, 1984

A BILL FOR

1 An Act relating to the location and operation of anhydrous
2 ammonia plants and defining nuisance as the term relates
3 to the plants.

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

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HF 2100

1 Section 1. NEW SECTION. 172E.1 DEFINITIONS. As used
2 in this chapter, unless the context otherwise requires:

3 1. "Anhydrous ammonia plant" means a facility used for
53 4 the manufacture of the compound formed by the combination
5 of two gaseous elements, nitrogen and hydrogen, in the
6 proportion of one part nitrogen to three parts hydrogen by
7 volume.

8 2. "City" means a municipal corporation, but not including
9 a county, township, school district, or a special-purpose
10 district or authority.

11 3. "Established date of operation" means the date on which
12 an anhydrous ammonia plant commenced operating. If the
13 physical facilities of the plant are subsequently expanded,
14 the established date of operation for each expansion is deemed
15 to be a separate and independent "established date of
16 operation" established as of the date of commencement of the
17 expanded operations. The commencement of expanded operations
18 does not divest the plant of a previously established date
19 of operation.

20 4. "Established date of ownership" means the date of the
21 recording of an appropriate instrument of title establishing
22 the ownership of real estate.

23 5. "Rule" means a rule as defined in section 17A.2 which
24 materially affects the operation of an anhydrous ammonia
25 plant. The term includes a rule which was in effect prior
26 to July 1, 1984. Except as specifically provided in section
27 172E.3, subsection 2, paragraph "b", subparagraph (5) and
28 paragraph "c", subparagraph (5), this chapter does not
29 authorize the making of any rule.

30 6. "Materially affects" means prohibits or regulates with
31 respect to the location, or the emission of noise, effluent,
32 odors, sewage, waste, or similar products resulting from the
33 operation or the location or use of buildings, machinery,
34 vehicles, equipment, or other real or personal property used
35 in the operation of an anhydrous ammonia plant.

1 7. "Nuisance" means public or private nuisance as defined
2 by statute or by the common law.

3 8. "Nuisance action or proceeding" means an action, claim
4 or proceeding brought at law, in equity, or as an
5 administrative proceeding, which is based on nuisance.

6 9. "Owner" means the person holding record title to real
7 estate, and includes both legal and equitable interests under
8 recorded real estate contracts.

9 10. "Zoning requirement" means a regulation or ordinance,
10 which has been adopted by a city or county, and which
11 materially affects the operation of an anhydrous ammonia
12 plant. This chapter does not empower an entity described
13 in this subsection to make a regulation or ordinance.

14 12. A rule pertaining to "anhydrous ammonia plant
15 management standards" means a rule, the implementation of
16 which, or the compliance with which, requires the expenditure
17 of funds not in excess of two percent of the establishment
18 cost of an anhydrous ammonia plant.

19 13. A rule pertaining to "anhydrous ammonia plant design
20 standards" means a rule, the implementation of which, or the
21 compliance with which, requires the expenditure of funds in
22 excess of two percent of the establishment cost of an anhydrous
23 ammonia plant.

24 14. "Establishment cost of an anhydrous ammonia plant"
25 means the cost or value of an anhydrous ammonia plant on its
26 established date of operation and includes the cost or value
27 of the building, machinery, vehicles, equipment or other real
28 or personal property used in the operation of an anhydrous
29 ammonia plant.

30 Sec. 2. NEW SECTION. 172E.2 COMPLIANCE--A DEFENSE TO
31 NUISANCE ACTIONS. In a nuisance action or proceeding against
32 an anhydrous ammonia plant brought by or on behalf of a person
33 whose established date of ownership is subsequent to the
34 established date of operation of an anhydrous ammonia plant,
35 proof of compliance with sections 172E.3 and 172E.4 is an

1 absolute defense, provided that the conditions or circumstances
2 alleged to constitute a nuisance are subject to regulatory
3 jurisdiction in accordance with either section 172E.3 or
4 172E.4.

5 Sec. 3. NEW SECTION. 172E.3 COMPLIANCE WITH RULES OF
6 THE DEPARTMENT.

5374 7 1. Requirement. A person who operates an anhydrous ammonia
8 plant shall comply with applicable rules of the department
9 of water, air and waste management or the Iowa department
10 of agriculture. A person complies with this subsection as
11 a matter of law if no applicable rule of the department of
12 water, air and waste management or department of agriculture
13 exists.

5374 14 2. Applicability of rules.

15 a. Exclusion for federally mandated requirements. This
16 section applies to the department of agriculture and the
17 department of water, air and waste management except for rules
18 required for delegation of the national pollutant discharge
19 elimination system permit program pursuant to the federal
20 Water Pollution Control Act, Title 33, United States Code,
21 chapter 126, as amended, and 40 Code of Federal Regulations,
22 Part 124.

23 b. Applicability of rules of the department of agriculture
24 and the department of water, air and waste management other
25 than those relating to air quality under division II of chapter
26 455B.

27 (1) A rule of either department in effect on July 1, 1984
28 applies to an anhydrous ammonia plant with an established
29 date of operation prior to July 1, 1984.

30 (2) A rule of either department applies to an anhydrous
31 ammonia plant with an established date of operation subsequent
32 to the effective date of the rule.

33 (3) A rule of either department adopted after July 1,
34 1984 does not apply to an anhydrous ammonia plant holding
35 a department of water, air and waste management permit and

1 having an established date of operation prior to the effective
2 date of the rule until either the expiration of the term of
3 the permit in effect on the effective date of the rule, or
4 ten years from the established date of operation of the
5 anhydrous ammonia plant, whichever time period is greater.

6 (4) A rule of either department adopted after July 1,
7 1984 does not apply to an anhydrous ammonia plant not
8 previously required to hold a department of water, air and
9 waste management permit and having an established date of
10 operation prior to the effective date of the rule for either
11 a period of ten years from the established date of operation
12 of the anhydrous ammonia plant or five years from the effective
13 date of the rule, whichever time period is greater.

14 (5) To achieve compliance with applicable rules the
15 department of agriculture and the department of water, air
16 and waste management shall each issue an appropriate compliance
17 schedule.

18 c. Applicability of rules of the department of water,
19 air and waste management relating to air quality under division
20 II of chapter 455B.

21 (1) A rule in effect on July 1, 1984 applies to an
22 anhydrous ammonia plant with an established date of operation
23 prior to July 1, 1984.

24 (2) A rule applies to an anhydrous ammonia plant with
25 an established date of operation subsequent to the effective
26 date of the rule.

27 (3) A rule pertaining to anhydrous ammonia plant management
28 standards adopted after July 1, 1984 does not apply to an
29 anhydrous ammonia plant having an established date of operation
30 prior to the effective date of the rule until one year after
31 the effective date of the rule.

32 (4) A rule pertaining to anhydrous ammonia plant design
33 standards adopted after July 1, 1984 does not apply to an
34 anhydrous ammonia plant having an established date of operation
35 prior to the effective date of the rule for either a period

1 of ten years from the established date of operation of the
2 anhydrous ammonia plant or two years from the effective date
3 of the rule, whichever time period is greater. However, a
4 design standard rule pertaining to the siting of an anhydrous
5 ammonia plant applies only to an anhydrous ammonia plant with
6 an established date of operation subsequent to the effective
7 date of the rule.

8 (5) To achieve compliance with applicable rules the
9 department shall issue an appropriate compliance schedule.

10 Sec. 4. NEW SECTION. 172E.4 COMPLIANCE WITH ZONING
11 REQUIREMENTS.

12 1. Requirement. A person who operates an anhydrous ammonia
13 plant shall comply with applicable zoning requirements. A
14 person complies with this section as a matter of law if no
15 applicable zoning requirement exists.

16 2. Applicability.

17 a. A zoning requirement which is in effect on July 1,
18 1984, applies to an anhydrous ammonia plant with an established
19 date of operation prior to July 1, 1984.

20 b. A zoning requirement applies to an anhydrous ammonia
21 plant with an established date of operation subsequent to
22 the effective date of the zoning requirement.

23 c. A zoning requirement adopted after July 1, 1984, other
24 than one adopted by a city, does not apply to an anhydrous
25 ammonia plant with an established date of operation prior
26 to the effective date of the zoning requirement for a period
27 of ten years from the effective date of that zoning
28 requirement.

29 d. A zoning requirement adopted by a city applies to an
30 anhydrous ammonia plant located within an incorporated or
31 unincorporated area which is subject to regulation by that
32 city as of July 1, 1984, regardless of the established date
33 of operation of the anhydrous ammonia plant, except as provided
34 in paragraph "e".

35 e. A zoning requirement adopted by a city does not apply

1 to an anhydrous ammonia plant which becomes located within
2 an incorporated or unincorporated area subject to regulation
3 by that city by virtue of an incorporation or annexation which
4 takes effect after July 1, 1984, for a period of ten years
5 from the effective date of the incorporation or annexation.

6 EXPLANATION

7 This bill provides that anhydrous ammonia plants that
8 operate in compliance with rules of the department of water,
9 air and waste management and the department of agriculture
10 may not be found to be a nuisance to any owner of real property
11 whose date of ownership is subsequent to the established date
12 of operation of the plant. Also, the bill limits the appli-
13 cation of zoning ordinances to anhydrous ammonia plants.

14 The protections provided for anhydrous ammonia plants would
15 be similar to current protections for livestock feedlots.

16 A new chapter 172E is created and internal references are
17 made to the new sections.

18 This bill will become effective July 1 following enact-
19 ment.

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HOUSE FILE 2100

H-5374

- 1 Amend House File 2100 as follows:
2 1. Page 1, line 4, by inserting after the word
3 "manufacture" the words "or distribution".
4 2. Page 3, by striking line 9.
5 3. Page 3, by striking line 12 and inserting in
6 lieu thereof the word "agriculture".
7 4. By striking page 3, line 14 through page 5,
8 line 9 and inserting in lieu thereof the following:
9 "2. Applicability of rules of the department of
10 agriculture.
11 a. A rule of the department of agriculture in
12 effect on July 1, 1984 applies to an anhydrous ammonia
13 plant with an established date of operation prior
14 to July 1, 1984.
15 b. A rule of the department of agriculture applies
16 to an anhydrous ammonia plant with an established
17 date of operation subsequent to the effective date
18 of the rule.
19 c. A rule of the department of agriculture adopted
20 after July 1, 1984 does not apply to an anhydrous
21 ammonia plant holding a department of agriculture
22 permit and having an established date of operation
23 prior to the effective date of the rule until either
24 the expiration of the term of the permit in effect
25 on the effective date of the rule, or ten years from
26 the established date of operation of the anhydrous
27 ammonia plant, whichever time period is greater.
28 d. A rule of the department of agriculture adopted
29 after July 1, 1984 does not apply to an anhydrous
30 ammonia plant not previously required to hold a
31 department of agriculture permit and having an
32 established date of operation prior to the effective
33 date of the rule for either a period of ten years
34 from the established date of operation of the anhydrous
35 ammonia plant or five years from the effective date
36 of the rule, whichever time period is greater.
37 e. To achieve compliance with applicable rules
38 the department of agriculture shall each issue an
39 appropriate compliance schedule."

H-5374 FILED MARCH 2, 1984 BY COMMITTEE ON AGRICULTURE

Adopted 3/7 (p. 787)

HOUSE FILE 2100

Natural Resources
Hall, Chair
Goodwin
Hester

HOUSE FILE 2100

BY COCHRAN and MAULSBY
(As Amended and Passed by the House)

Passed House, Date 4-18-84 (p. 2172) Passed Senate, Date 4-4-84 (p. 1303)
Vote: Ayes 94 Nays 2 Vote: Ayes 45 Nays 2
Approved May 14, 1984

A BILL FOR

1 An Act relating to the location and operation of anhydrous
2 ammonia plants and defining nuisance as the term relates
3 to the plants.

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

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House Amendments _____
Deleted Language *

5-2-82
amended
see

1 Section 1. NEW SECTION. 172E.1 DEFINITIONS. As used
2 in this chapter, unless the context otherwise requires:

3 1. "Anhydrous ammonia plant" means a facility used for
4 the manufacture or distribution of the compound formed by
5 the combination of two gaseous elements, nitrogen and hydrogen,
6 in the proportion of one part nitrogen to three parts hydrogen
7 by volume.

8 2. "City" means a municipal corporation, but not including
9 a county, township, school district, or a special-purpose
10 district or authority.

11 3. "Established date of operation" means the date on which
12 an anhydrous ammonia plant commenced operating. If the
13 physical facilities of the plant are subsequently expanded,
14 the established date of operation for each expansion is deemed
15 to be a separate and independent "established date of
16 operation" established as of the date of commencement of the
17 expanded operations. The commencement of expanded operations
18 does not divest the plant of a previously established date
19 of operation.

20 4. "Established date of ownership" means the date of the
21 recording of an appropriate instrument of title establishing
22 the ownership of real estate.

23 5. "Rule" means a rule as defined in section 17A.2 which
24 materially affects the operation of an anhydrous ammonia
25 plant. The term includes a rule which was in effect prior
26 to July 1, 1984. Except as specifically provided in section
27 172E.3, subsection 2, paragraph "b", subparagraph (5) and
28 paragraph "c", subparagraph (5), this chapter does not
29 authorize the making of any rule.

30 6. "Materially affects" means prohibits or regulates with
31 respect to the location, or the emission of noise, effluent,
32 odors, sewage, waste, or similar products resulting from the
33 operation or the location or use of buildings, machinery,
34 vehicles, equipment, or other real or personal property used
35 in the operation of an anhydrous ammonia plant.

1 7. "Nuisance" means public or private nuisance as defined
2 by statute or by the common law.

3 8. "Nuisance action or proceeding" means an action, claim
4 or proceeding brought at law, in equity, or as an
5 administrative proceeding, which is based on nuisance.

6 9. "Owner" means the person holding record title to real
7 estate, and includes both legal and equitable interests under
8 recorded real estate contracts.

9 10. "Zoning requirement" means a regulation or ordinance,
10 which has been adopted by a city or county, and which
11 materially affects the operation of an anhydrous ammonia
12 plant. This chapter does not empower an entity described
13 in this subsection to make a regulation or ordinance.

14 12. A rule pertaining to "anhydrous ammonia plant
15 management standards" means a rule, the implementation of
16 which, or the compliance with which, requires the expenditure
17 of funds not in excess of two percent of the establishment
18 cost of an anhydrous ammonia plant.

19 13. A rule pertaining to "anhydrous ammonia plant design
20 standards" means a rule, the implementation of which, or the
21 compliance with which, requires the expenditure of funds in
22 excess of two percent of the establishment cost of an anhydrous
23 ammonia plant.

24 14. "Establishment cost of an anhydrous ammonia plant"
25 means the cost or value of an anhydrous ammonia plant on its
26 established date of operation and includes the cost or value
27 of the building, machinery, vehicles, equipment or other real
28 or personal property used in the operation of an anhydrous
29 ammonia plant.

30 Sec. 2. NEW SECTION. 172E.2 COMPLIANCE--A DEFENSE TO
31 NUISANCE ACTIONS. In a nuisance action or proceeding against
32 an anhydrous ammonia plant brought by or on behalf of a person
33 whose established date of ownership is subsequent to the
34 established date of operation of an anhydrous ammonia plant,
35 proof of compliance with sections 172E.3 and 172E.4 is an

5721 1 absolute defense, provided that the conditions or circumstances
2 alleged to constitute a nuisance are subject to regulatory
3 jurisdiction in accordance with either section 172E.3 or
4 172E.4.

5 Sec. 3. NEW SECTION. 172E.3 COMPLIANCE WITH RULES OF
6 THE DEPARTMENT.

7 1. Requirement. A person who operates an anhydrous ammonia
8 plant shall comply with applicable rules of the department
* 9 of agriculture. A person complies with this subsection as
10 a matter of law if no applicable rule of the department of
11 agriculture exists.

12 2. Applicability of rules of the department of agriculture.

13 a. A rule of the department of agriculture in effect on
14 July 1, 1984 applies to an anhydrous ammonia plant with an
15 established date of operation prior to July 1, 1984.

16 b. A rule of the department of agriculture applies to
17 an anhydrous ammonia plant with an established date of
18 operation subsequent to the effective date of the rule.

19 c. A rule of the department of agriculture adopted after
20 July 1, 1984 does not apply to an anhydrous ammonia plant
21 holding a department of agriculture permit and having an
22 established date of operation prior to the effective date
23 of the rule until either the expiration of the term of the
24 permit in effect on the effective date of the rule, or ten
25 years from the established date of operation of the anhydrous
26 ammonia plant, whichever time period is greater.

27 d. A rule of the department of agriculture adopted after
28 July 1, 1984 does not apply to an anhydrous ammonia plant
29 not previously required to hold a department of agriculture
30 permit and having an established date of operation prior to
31 the effective date of the rule for either a period of ten
32 years from the established date of operation of the anhydrous
33 ammonia plant or five years from the effective date of the
34 rule, whichever time period is greater.

35 e. To achieve compliance with applicable rules the

55211 department of agriculture shall each issue an appropriate
2 compliance schedule.

5717 3 Sec. 4. NEW SECTION. 172E.4 COMPLIANCE WITH ZONING
4 REQUIREMENTS.

5 1. Requirement. A person who operates an anhydrous ammonia
6 plant shall comply with applicable zoning requirements. A
7 person complies with this section as a matter of law if no
8 applicable zoning requirement exists.

9 2. Applicability.

10 a. A zoning requirement which is in effect on July 1,
11 1984, applies to an anhydrous ammonia plant with an established
12 date of operation prior to July 1, 1984.

13 b. A zoning requirement applies to an anhydrous ammonia
14 plant with an established date of operation subsequent to
15 the effective date of the zoning requirement.

16 c. A zoning requirement adopted after July 1, 1984, other
17 than one adopted by a city, does not apply to an anhydrous
18 ammonia plant with an established date of operation prior
19 to the effective date of the zoning requirement for a period
20 of ten years from the effective date of that zoning
21 requirement.

22 d. A zoning requirement adopted by a city applies to an
23 anhydrous ammonia plant located within an incorporated or
24 unincorporated area which is subject to regulation by that
25 city as of July 1, 1984, regardless of the established date
26 of operation of the anhydrous ammonia plant, except as provided
27 in paragraph "e".

28 e. A zoning requirement adopted by a city does not apply
29 to an anhydrous ammonia plant which becomes located within
30 an incorporated or unincorporated area subject to regulation
31 by that city by virtue of an incorporation or annexation which
32 takes effect after July 1, 1984, for a period of ten years
33 from the effective date of the incorporation or annexation.

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SENATE AMENDMENT TO HOUSE FILE 2100

H-6084

1 Amend House File 2100 as amended, passed and
2 reprinted by the House, as follows:
3 1. By striking everything after the enacting
4 clause and inserting in lieu thereof the following:
5 "Section 1. Section 200.3, Code 1983, is amended
6 by adding the following new subsections:
7 NEW SUBSECTION. 20. "Anhydrous ammonia plant"
8 means a facility used for the manufacture or
9 distribution of the compound formed by the combination
10 of two gaseous elements, nitrogen and hydrogen, in
11 the proportion of one part nitrogen to three parts
12 hydrogen by volume.
13 NEW SUBSECTION. 21. "Established date of
14 operation" means the date on which an anhydrous ammonia
15 plant commenced operating. If the physical facilities
16 of the plant are subsequently expanded, the established
17 date of operation for each expansion is deemed to
18 be a separate and independent "established date of
19 operation" established as of the date of commencement
20 of the expanded operations. The commencement of
21 expanded operations does not divest the plant of a
22 previously established date of operation.
23 NEW SUBSECTION. 22. "Established date of
24 ownership" means the date of the recording of an
25 appropriate instrument of title establishing the
26 ownership of real estate.
27 NEW SUBSECTION. 23. "Rule" means a rule as defined
28 in section 17A.2 which materially affects the operation
29 of an anhydrous ammonia plant. The term includes
30 a rule which was in effect prior to July 1, 1984.
31 NEW SUBSECTION. 24. "Nuisance" means public or
32 private nuisance as defined by statute or by the
33 common law.
34 NEW SUBSECTION. 25. "Nuisance action or
35 proceeding" means an action, claim or proceeding
36 brought at law, in equity, or as an administrative
37 proceeding, which is based on nuisance.
38 NEW SUBSECTION. 26. "Owner" means the person
39 holding record title to real estate, and includes
40 both legal and equitable interest under recorded real
41 estate contracts.
42 Sec. 2. NEW SECTION. 200.21 COMPLIANCE--A DEFENSE
43 TO NUISANCE ACTIONS. In a nuisance action or
44 proceeding against an anhydrous ammonia plant brought
45 by or on behalf of the person whose established date
46 of ownership is subsequent to the established date
47 of operation of an anhydrous ammonia plant, proof
48 of compliance with applicable provisions of chapter
49 200 and applicable rules adopted pursuant to section
50 200.14 shall be a defense to a nuisance action or
Page Two
1 proceeding."

H-6084 filed april 4, 1984

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RECEIVED FROM THE SENATE

House concurred 4/18 (p. 2171)

HOUSE FILE 2100

S-5521

- 1 Amend House File 2100 as amended, passed, and
- 2 reprinted by the House as follows:
- 3 1. Page 4, line 1, by striking the word "each".

S-5521 FILED

BY HURLEY W. HALL

MARCH 26, 1984

Out of order 4/4 (p. 1302)

HOUSE FILE 2100

S-5717

- 1 Amend House File 2100 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 4, by striking lines 3 through 33 and
- 4 inserting in lieu thereof the following:
- 5 "Sec. 4. NEW SECTION. 172E.4 COMPLIANCE WITH
- 6 ZONING AND LOCAL ORDINANCES.
- 7 1. A person who operates an anhydrous ammonia
- 8 plant shall comply with applicable zoning requirements.
- 9 A person complies with this section as a matter of
- 10 law if no applicable zoning requirement exists.
- 11 2. In addition a city council or county board
- 12 of supervisors may adopt and enforce an ordinance
- 13 relating to the activities of an anhydrous ammonia
- 14 plant to the extent necessary to protect human health
- 15 and safety."

S-5717 FILED

BY JAMES V. GALLAGHER

APRIL 2, 1984

Out of order 4/4 (1302)

HOUSE FILE 2100

S-5720

- 1 Amend the Hall amendment, S-5662, to House File
- 2 2100 as amended, passed and reprinted by the House
- 3 as follows:
- 4 1. Page 2, line 1, by inserting after the word
- 5 "proceeding." the words "However, a city council or
- 6 county board of supervisors may adopt and enforce
- 7 an ordinance relating to the activities of an anhydrous
- 8 ammonia plant to the extent necessary to protect human
- 9 health and safety."

S-5720 FILED

BY JAMES V. GALLAGHER

APRIL 2, 1984

Loss 4/4 (p. 1302)

HOUSE FILE 2100

S-5721

- 1 Amend House File 2100 as amended, passed, and re-
- 2 printed by the House as follows:
- 3 1. Page 2, line 35, by striking the word "an"
- 4 and inserting in lieu thereof the word "a".
- 5 2. Page 3, line 1, by striking the word "absolute".

S-5721 FILED

BY JAMES V. GALLAGHER

APRIL 2, 1984

Out of order 4/4 (1302)

HOUSE FILE 2100

S-5662

1 Amend House File 2100 as amended, passed and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting
4 clause and inserting in lieu thereof the following:
5 "Section 1. Section 200.3, Code 1983, is amended
6 by adding the following new subsections:

7 NEW SUBSECTION. 20. "Anhydrous ammonia plant"
8 means a facility used for the manufacture or
9 distribution of the compound formed by the combination
10 of two gaseous elements, nitrogen and hydrogen, in
11 the proportion of one part nitrogen to three parts
12 hydrogen by volume.

13 NEW SUBSECTION. 21. "Established date of
14 operation" means the date on which an anhydrous ammonia
15 plant commenced operating. If the physical facilities
16 of the plant are subsequently expanded, the established
17 date of operation for each expansion is deemed to
18 be a separate and independent "established date of
19 operation" established as of the date of commencement
20 of the expanded operations. The commencement of
21 expanded operations does not divest the plant of a
22 previously established date of operation.

23 NEW SUBSECTION. 22. "Established date of
24 ownership" means the date of the recording of an
25 appropriate instrument of title establishing the
26 ownership of real estate.

27 NEW SUBSECTION. 23. "Rule" means a rule as defined
28 in section 17A.2 which materially affects the operation
29 of an anhydrous ammonia plant. The term includes
30 a rule which was in effect prior to July 1, 1984.

31 NEW SUBSECTION. 24. "Nuisance" means public or
32 private nuisance as defined by statute or by the
33 common law.

34 NEW SUBSECTION. 25. "Nuisance action or
35 proceeding" means an action, claim or proceeding
36 brought at law, in equity, or as an administrative
37 proceeding, which is based on nuisance.

38 NEW SUBSECTION. 26. "Owner" means the person
39 holding record title to real estate, and includes
40 both legal and equitable interest under recorded real
41 estate contracts.

42 Sec. 2. NEW SECTION. 200.21 COMPLIANCE--A DEFENSE
43 TO NUISANCE ACTIONS. In a nuisance action or
44 proceeding against an anhydrous ammonia plant brought
45 by or on behalf of the person whose established date
46 of ownership is subsequent to the established date
47 of operation of an anhydrous ammonia plant, proof
48 of compliance with applicable provisions of chapter
49 200 and applicable rules adopted pursuant to section
50 200.14 shall be an absolute defense to any nuisance

PAGE 2

57201 action or proceeding."

S-5662 FILED

MARCH 29, 1984

Adopted as amended by 5722 4/4 (1302)

BY HURLEY HALL

HOUSE FILE 2100

S-5722

- 1 Amend the amendment S-5662 to House File 2100 as
- 2 amended, passed, and reprinted by the House as follows:
- 3 1. Page 1, line 50, by striking the words "an
- 4 absolute defense to any" and inserting in lieu thereof
- 5 the words "a defense to a".

S-5722 FILED

BY JAMES V. GALLAGHER

APRIL 2, 1984

Adopted 4/4 (p. 130)

HOUSE FILE 2100

AN ACT

RELATING TO THE LOCATION AND OPERATION OF ANHYDROUS AMMONIA PLANTS AND DEFINING NUISANCE AS THE TERM RELATES TO THE PLANTS.

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

Section 1. Section 200.3, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. 20. "Anhydrous ammonia plant" means a facility used for the manufacture or distribution of the compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume.

NEW SUBSECTION. 21. "Established date of operation" means the date on which an anhydrous ammonia plant commenced operating. If the physical facilities of the plant are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of the date of commencement of the expanded operations. The commencement of expanded operations does not divest the plant of a previously established date of operation.

NEW SUBSECTION. 22. "Established date of ownership" means the date of the recording of an appropriate instrument of title establishing the ownership of real estate.

NEW SUBSECTION. 23. "Rule" means a rule as defined in section 17A.2 which materially affects the operation of an anhydrous ammonia plant. The term includes a rule which was in effect prior to July 1, 1984.

NEW SUBSECTION. 24. "Nuisance" means public or private nuisance as defined by statute or by the common law.

NEW SUBSECTION. 25. "Nuisance action or proceeding" means an action, claim or proceeding brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

NEW SUBSECTION. 26. "Owner" means the person holding record title to real estate, and includes both legal and equitable interest under recorded real estate contracts.

Sec. 2. NEW SECTION. 200.21 COMPLIANCE--A DEFENSE TO NUISANCE ACTIONS. In a nuisance action or proceeding against an anhydrous ammonia plant brought by or on behalf of the person whose established date of ownership is subsequent to the established date of operation of an anhydrous ammonia plant, proof of compliance with applicable provisions of chapter 200 and applicable rules adopted pursuant to section 200.14 shall be a defense to a nuisance action or proceeding.

DONALD D. AVENSON
Speaker of the House

CHARLES P. MILLER
President Pro Tempore of the
Senate

I hereby certify that this bill originated in the House and is known as House File 2100, Seventieth General Assembly.

Approved May 14, 1984

JOSEPH O'HERN
Chief Clerk of the House

TERRY E. BRANSTAD
Governor