

MAR 6 1984

Place On Calendar

HOUSE FILE 2471

BY COMMITTEE ON ENERGY

(Formerly House File 2141)

Passed House, Date 3-13-84 (p. 994) Passed Senate, Date 3-28-84 (p. 1147)
 Vote: Ayes 78 Nays 17 Vote: Ayes 38 Nays 9
 Approved April 19, 1984

A BILL FOR

1 An Act creating a hazardous waste remedial fund and providing
 2 for the cleanup of hazardous conditions and the management
 3 and cleanup of abandoned or uncontrolled hazardous waste
 4 disposal sites.

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

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HOUSE FILE 2471

H-5625

1 Amend House File 2471 as follows:
 2 1. Page 8, by inserting after line 14 the following:
 3 "d. Influent waste water to a treatment facility
 4 which is subject to regulation under either 33 U.S.C.
 5 1317(b) or 33 U.S.C. 1342."

12 H-5625 FILED MARCH 12, 1984 BY OSTERBERG of Linn

13 Adopted 3/13 (p. 992)

HF 2471

1 Section 1. Section 455B.381, Code 1983, is amended by
2 adding the following new subsections:

3 NEW SUBSECTION. 6. "Cleanup" means actions necessary
4 to contain, collect, control, identify, analyze, clean up,
5 treat, disperse, remove, or dispose of a hazardous substance.

6 NEW SUBSECTION. 7. "Cleanup costs" means costs incurred
7 by the state or its political subdivisions or their agents,
8 or by any other person participating with the approval of
9 the executive director in the prevention or mitigation of
10 damages from a hazardous condition or the cleanup of a
11 hazardous substance involved in a hazardous condition.

12 NEW SUBSECTION. 8. "Person having control over a hazardous
13 substance" means a person who at any time produces, handles,
14 stores, uses, transports, refines, or disposes of a hazardous
15 substance the release of which creates a hazardous condition,
16 including bailees, carriers, and any other person in control
17 of a hazardous substance when a hazardous condition occurs,
18 whether the person owns the hazardous substance or is operating
19 under a lease, contract, or other agreement with the legal
20 owner of the hazardous substance.

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

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

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

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

33 NEW SUBSECTION. 10. "Waters of the state" means rivers,
34 streams, lakes and any other bodies of surface and subsurface
35 water lying within or forming a part of the boundaries of

1 the state which are not entirely confined and located com-
2 pletely upon lands owned, leased or otherwise controlled by
3 a single person or by two or more persons jointly or as tenants
4 in common. "Waters of the state" includes waters of the
5 United States lying within the state.

6 Sec. 2. Section 455B.386, Code 1983, is amended to read
7 as follows:

8 455B.386 NOTIFICATION OF SPILLS. Any A person
9 manufacturing, storing, handling, transporting, or disposing
10 of a hazardous substance shall notify the department, the
11 local police department, or the office of the sheriff of the
12 affected county of the occurrence of a hazardous condition
13 as soon as possible but not later than six hours after the
14 onset of the hazardous condition or discovery of the hazardous
15 condition. A sheriff or police chief who has been notified
16 of a hazardous condition shall immediately notify the
17 department. Persons If requested, a person shall submit a
18 written report of particulars of the incident. A person
19 violating this section ~~shall-be~~ is subject to a civil penalty
20 of not more than ~~five-hundred~~ one thousand dollars.

21 Sec. 3. Section 455B.387, Code Supplement 1983, is amended
22 by adding the following new subsection:

23 NEW SUBSECTION. 3. An action taken by a person to abate,
24 control, or clean up a hazardous substance involved in a
25 hazardous condition shall not be construed as an admission
26 of liability for a hazardous condition.

27 Sec. 4. NEW SECTION. 455B.392 LIABILITY FOR CLEANUP
28 COSTS.

29 1. A person having control over a hazardous substance
30 is strictly liable to the state for all of the following:

31 a. The reasonable cleanup costs incurred by the state
32 as a result of the failure of the person to clean up a
33 hazardous substance involved in a hazardous condition caused
34 by that person.

35 b. The reasonable costs incurred by the state to evacuate

1 people from the area threatened by a hazardous condition
2 caused by the person.

3 c. The reasonable damages to the state for the injury
4 to, destruction of, or loss of natural resources resulting
5 from a hazardous condition caused by that person including
6 the costs of assessing the injury, destruction, or loss.

7 If the failure is willful, the person is liable for punitive
8 damages not to exceed triple the cleanup costs incurred by
9 the state. Prompt and good faith notification to the executive
10 director by the person having control over a hazardous
11 substance that the person does not have the resources or
12 managerial capability to begin or continue cleanup, or a good
13 faith effort to clean up, relieves the person of liability
14 for punitive damages, but not for actual cleanup costs. The
15 executive director shall keep a record of all expenses incurred
16 in carrying out a project or activity authorized by this part.

17 2. Liability under subsection 1 is limited to following
18 maximum dollar limitatins:

19 a. Five million dollars for any vehicle, boat, aircraft,
20 pipeline, or other manner of conveyance which transports a
21 hazardous substance.

22 b. Fifty million dollars for any facility generating,
23 storing, or disposing of a hazardous substance.

24 3. There is no liability under this section for a person
25 otherwise liable if the hazardous condition is solely resulting
26 from one or more of the following:

27 a. An act of God.

28 b. An act of war.

29 c. An act or omission of a third party if the person
30 establishes both of the following:

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

34 (2) That the person otherwise liable took precautions
35 against the foreseeable acts or omissions of the third party

1 and the foreseeable consequences.

2 As used in this paragraph, "third party" does not include
3 an employee or agent of the person otherwise liable or a third
4 party whose act or omission occurs directly or indirectly
5 in connection with a contractual-relationship with the person
6 otherwise liable.

7 3. Money collected pursuant to this section shall be
8 deposited in the hazardous waste remedial fund created in
9 section 455B.423 and shall be used for control, abatement,
10 analysis, cleanup, investigation and other reasonable costs
11 incurred when responding to hazardous conditions. All other
12 costs of the department necessary to carry out this part shall
13 be appropriated from general revenue or from available federal
14 funds.

15 4. This section does not deny any person any legal or
16 equitable rights, remedies or defenses or affect any legal
17 relationship other than the legal relationship between the
18 state and a person having control over a hazardous substance
19 pursuant to subsection 1.

20 Sec. 5. NEW SECTION. 455B.393 LIABILITY OF STATE EM-
21 PLOYEES OR PERSONS PROVIDING ASSISTANCE.

22 1. A person employed by the state is not liable for damages
23 incurred as a result of actions taken by the person when
24 acting in the person's official capacity pursuant to this
25 part, rules adopted pursuant to this part and the hazardous
26 condition contingency plan.

27 2. A person who provides assistance at the request of
28 the department or by previous agreement with the department
29 in the event of a hazardous condition is not liable in a civil
30 action for damages as a result of that person's acts or
31 omissions in rendering the assistance. This section does
32 not relieve a person from civil damages in any of the following
33 circumstances:

34 a. If the person providing assistance is also the person
35 having control over the hazardous substance which created

1 the hazardous condition.

2 b. If the person rendered assistance for payment beyond
3 reimbursement for out-of-pocket expenses or with the
4 expectation of such payment.

5 c. For acts or omissions which result from intentional
6 wrongdoing or gross negligence.

7 Sec. 6. NEW SECTION. 455B.394 RIGHT OF ENTRY. A person
8 shall not refuse entry or access to, or harass or obstruct
9 an authorized representative of the department who seeks entry
10 or access for the purpose of investigating or responding to
11 a hazardous condition. The representative shall present
12 appropriate credentials. Upon a showing of probable cause
13 in writing and made under oath, a judge or magistrate having
14 proper jurisdiction shall issue a suitably restricted search
15 warrant to the representative of the department for the
16 purposes of enabling the representative to investigate or
17 respond to a hazardous condition.

18 Sec. 7. NEW SECTION. 455B.395 PUBLIC INFORMATION. In-
19 formation obtained under this part or a rule, order or con-
20 dition adopted or issued under this part, or an investigation
21 authorized thereby, shall be available to the public unless
22 the information constitutes trade secrets or information which
23 is entitled to confidential treatment in order to protect
24 a plan, process, tool, mechanism, or compound which is known
25 only to the person claiming confidential treatment and con-
26 fidential treatment is necessary to protect the person's
27 trade, business or manufacturing process.

28 Sec. 8. Section 455B.411, Code 1983, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 6. "Abandoned or uncontrolled hazardous
31 waste disposal site" means real property which has been used
32 for the disposal of hazardous waste either illegally or prior
33 to regulation under this chapter.

34 Sec. 9. NEW SECTION. 455B.423 HAZARDOUS WASTE REMEDIAL
35 FUND.

1 1. A hazardous waste remedial fund is created within the
2 state treasury. Moneys received from fees, penalties, general
3 revenue, federal funds, gifts, bequests, donations, or other
4 moneys so designated shall be deposited in the state treasury
5 to the credit of the fund. Any unexpended balance in the
6 hazardous waste remedial fund at the end of each fiscal year
7 shall be retained in the fund. However, any unexpended balance
8 shall be transferred to the general fund to replace funds
9 appropriated from the general fund during fiscal year 1985
10 and fiscal year 1986 for the purposes for which expenditures
11 from the hazardous waste remedial fund are allowed.

12 2. The executive director may use the fund for any of
13 the following purposes:

14 a. Administrative services for the identification, as-
15 sessment and cleanup of abandoned or uncontrolled sites.

16 b. Payments to other state agencies for services consis-
17 tent with the management of abandoned or uncontrolled hazardous
18 waste sites.

19 c. Emergency response activities as provided in part 4
20 of this division.

21 d. Financing the nonfederal share of the cost of cleanup
22 and site rehabilitation activities as well as postclosure
23 operation and maintenance costs, pursuant to the federal
24 Comprehensive Environmental Response, Compensation and
25 Liability Act of 1980.

26 e. Financing the cost of cleanup and site rehabilitation
27 activities as well as postclosure operation and maintenance
28 costs of abandoned or uncontrolled hazardous waste disposal
29 sites that do not qualify for federal cost-sharing pursuant
30 to the federal Comprehensive Environmental Response,
31 Compensation and Liability Act of 1980.

32 f. Through agreements or contracts with other state
33 agencies, work with private industry to develop alternatives
34 to land disposal of hazardous waste including, but not limited
35 to, resource recovery, recycling, neutralization, and

1 reduction.

2 However, at least seventy-five percent of the fund shall
3 be used for the purposes stated in paragraphs "d" and "e".

4 3. Neither the state nor its officers, employees or agents
5 is liable for an injury caused by a dangerous condition at
6 an abandoned or uncontrolled site unless the condition is
7 the result of gross negligence on the part of the state, its
8 officers, employees or agents.

9 4. The executive director may contract with any person
10 to perform the acts authorized in this section.

11 5. Moneys shall not be used from the fund for abandoned
12 site cleanup unless the executive director has made all rea-
13 sonable efforts to secure voluntary agreement to pay the costs
14 of necessary remedial actions from owners or operators of
15 abandoned or uncontrolled hazardous waste sites or other
16 responsible persons.

17 6. The executive director shall make all reasonable ef-
18 forts to recover the full amount of funds expended from the
19 fund through litigation or cooperative agreements with re-
20 sponsible persons. Moneys recovered pursuant to this
21 subsection shall be deposited with the treasurer of state
22 and credited to the hazardous waste remedial fund.

23 Sec. 10. NEW SECTION. 455B.424 HAZARDOUS WASTE FEES.

24 1. The person who generates hazardous waste and the owner
25 or operator of a hazardous waste disposal facility who
26 transports hazardous wastes off of the site where the hazardous
27 waste was generated or off the disposal facility site shall
28 pay a fee of ten dollars for each ton of hazardous waste
29 transported off the site.

30 2. A person who generates hazardous waste or owns or
31 operates a facility which treats or disposes of hazardous
32 waste at the facility shall pay the following fees:

33 a. Forty dollars for each ton of hazardous wastes placed,
34 deposited, dumped or disposed of onto or into the land at
35 a disposal facility.

1 b. Two dollars for each ton of hazardous waste destroyed
2 or treated at the generator's site or at the disposal facility
3 to render the hazardous waste nonhazardous.

4 3. Fees specified in subsections 1 and 2 shall not be
5 imposed on the state or any of its political subdivisions.

6 4. Fees specified in subsections 1 and 2 shall not be
7 imposed on any of the following:

8 a. Hazardous waste that is reclaimed or reused for energy
9 or materials.

10 b. Hazardous waste that is transformed into new products
11 which are not wastes.

12 c. Hazardous wastes created or retrieved as a result of
13 remedial actions at an abandoned or uncontrolled hazardous
14 waste site.

15 5. Fees imposed by this section shall be paid to the
16 department on an annual basis not later than January 15.
17 The payment shall be accompanied by a return in the form
18 prescribed by the department.

19 6. A person required to pay fees by this section who fails
20 or refused to pay the fees imposed by this section shall be
21 assessed a penalty of fifteen percent of the fee due. The
22 penalty shall be paid in addition to the fee due.

23 7. Moneys collected or received by the department pursuant
24 to this section shall be transmitted to the treasurer of state
25 for deposit in the hazardous waste remedial fund.

26 Sec. 11. NEW SECTION. 455B.425 ANNUAL REPORT ON HAZARDOUS
27 WASTE REMEDIAL FUND. The executive director shall annually
28 on January 1 give a full accounting of moneys received, moneys
29 expended, sources and recipients, and purposes of the expendi-
30 tures for the preceding fiscal year in the hazardous waste
31 remedial fund to the general assembly and the governor.

32 Sec. 12. NEW SECTION. 455B.426 REGISTRY OF ABANDONED
33 OR UNCONTROLLED DISPOSAL SITES.

34 1. The executive director shall maintain and make avail-
35 able for public inspection a registry of confirmed abandoned

1 or uncontrolled hazardous waste disposal sites in the state.
2 The executive director shall take all necessary action to
3 ensure that the registry provides a complete listing of all
4 sites. The registry shall contain the exact location of each
5 site and identify the types of waste found at each site.

6 2. The executive director shall investigate all known
7 or suspected abandoned or uncontrolled sites and determine
8 whether each site should be included in the registry. In
9 the evaluation of known or suspected abandoned or uncontrolled
10 sites, the executive director may enter private property and
11 perform tests and analyses in the manner provided in section
12 455B.416.

13 Sec. 13. NEW SECTION. 455B.427 ANNUAL REPORT ON ABANDONED
14 OR UNCONTROLLED HAZARDOUS WASTE DISPOSAL SITES.

15 1. The executive director shall annually on January 1
16 transmit a report to the general assembly and the governor
17 identifying all abandoned or uncontrolled hazardous waste
18 disposal sites in the state listed on the registry. A copy
19 of the report shall also be sent to the board of supervisors
20 of every county containing a site.

21 2. The annual report shall include, but is not limited
22 to, the following information for each site:

23 a. A general description of the site, including the name
24 and address of the site, the type and quantity of the hazardous
25 waste disposed of at the site and the name of the current
26 owners of the site.

27 b. A summary of significant environmental problems at
28 or near the site.

29 c. A summary of serious health problems in the immediate
30 vicinity of the site and health problems deemed by the
31 executive director to be related to conditions at the site.

32 d. The status of testing, monitoring or remedial actions
33 in progress or recommended by the executive director.

34 e. The status of pending legal actions and federal, state
35 or local government permits concerning the site.

1 f. The relative priority for remedial action at each site.

2 g. The proximity of the site to private residences, public
3 buildings or property, school facilities, places of work or
4 other areas where individuals may be regularly present.

5 3. In developing and maintaining the annual report, the
6 executive director shall assess the relative priority of the
7 need for action at each site to remedy environmental and
8 health problems resulting from the presence of hazardous
9 wastes at the sites. In making its assessments of relative
10 priority, the executive director shall place every site in
11 one of the following classifications:

12 a. Causing or presenting an imminent danger of causing
13 irreversible or irreparable damage to the public health or
14 environment--immediate action required.

15 b. Significant threat to the environment--action required.

16 c. Not a significant threat to the public health or
17 environment--action may be deferred.

18 d. Site properly closed--requires continued management.

19 e. Site properly closed, no evidence of present or po-
20 tential adverse impact--no further action required.

21 4. A site classified as properly closed under subsection
22 3, paragraph "e", shall be removed from all subsequent annual
23 reports and the register of abandoned or uncontrolled sites.

24 5. The executive director shall work with the department
25 of health when assessing the effects of an abandoned or un-
26 controlled site on human health.

27 Sec. 14. NEW SECTION. 455B.428 INVESTIGATION OF SITES.

28 1. The executive director shall investigate each abandoned
29 or uncontrolled hazardous waste disposal site listed in the
30 registry to determine its relative priority.

31 2. The executive director shall identify each site by
32 providing all of the following:

33 a. The address and site boundaries.

34 b. The time period of use for disposal of hazardous waste.

35 c. The name of the current owner and operator and names

1 of reported owners and operators during the time period of
2 use for disposal of hazardous waste.

3 d. The names of persons responsible for the generation
4 and transportation of the hazardous waste disposed of at the
5 site.

6 e. The type, quantity and manner of hazardous waste dis-
7 posal.

8 3. When preliminary evidence suggests further assessment
9 is necessary, the executive director may assess any of the
10 following:

11 a. The depth of the water table at the site.

12 b. The nature of soils at the site.

13 c. The location, nature and size of aquifers at the site.

14 d. The direction of present and historic groundwater flows
15 at the site.

16 e. The location and nature of surface waters at and near
17 the site.

18 f. The levels of contaminants in groundwater, surface
19 water, air and soils at and near the site resulting from
20 hazardous wastes disposed of at the site.

21 g. The current quality of all drinking water drawn from
22 or distributed through the area in which the site is located
23 if the executive director determines that water quality may
24 have been affected by the site.

25 4. The executive director shall maintain a site assess-
26 ment file for each site listed in the registry. The file
27 shall contain all information obtained pursuant to this section
28 and shall be open to the public. Information in the file
29 may be reproduced by any person at a charge not to exceed
30 the actual cost of reproduction for copies of file information.

31 Sec. 15. NEW SECTION. 455B.429 NOTIFICATION TO OWNERS-
32 -APPEALS.

33 1. Within sixty days after the effective date of this
34 Act, the executive director shall notify the owner of any
35 part of a site to be included in the registry required by

1 section 455B.426. The notice shall be sent by certified mail
2 to the owner's last known address. Thirty days before a site
3 is added to the registry, the executive director shall notify
4 the owner of any part of the site by certified mail of the
5 proposed addition to the registry. The notice shall be sent
6 by certified mail to the owner's last known address.

7 2. An owner or operator of a site proposed for listing
8 in the registry or listed in the registry pursuant to section
9 455B.426, may petition the executive director for deletion
10 of the site, modification of the site classification, or
11 modification of any information regarding the site. A site
12 shall not be listed on the registry until a final determination
13 has been made on any appeal initiated under this section.
14 An appeal is a contested case for the purposes of chapter
15 17A.

16 3. Within ninety days after the submission of an appeal,
17 the department shall conduct a hearing to review the deter-
18 mination. At least thirty days prior to the hearing the de-
19 partment shall publish a notice of hearing in a newspaper
20 of general circulation in the county in which the site is
21 located. The department shall also notify in writing the
22 owner or operator of the site at least thirty days prior to
23 the hearing.

24 4. At least thirty days following the hearing, the de-
25 partment shall provide the owner or operator with a written
26 determination accompanied by reasons for the determination
27 on the appeal.

28 5. Within ten days of a determination, the executive di-
29 rector shall notify the local governments with jurisdiction
30 over the site whenever a change is made in the registry
31 pursuant to this section.

32 Sec. 16. NEW SECTION. 455B.430 USE AND TRANSFER OF
33 SITES.

34 1. A person shall not substantially change the manner
35 in which an abandoned or uncontrolled hazardous waste disposal

1 site on the registry pursuant to section 455B.426 is used
2 without the written approval of the executive director.

3 2. A person shall not sell, convey or transfer title to
4 an abandoned or uncontrolled hazardous waste disposal site
5 which is on the registry pursuant to section 455B.426 without
6 the written approval of the executive director. The executive
7 director shall respond to a request for a change of ownership
8 within thirty days of its receipt.

9 3. Decisions of the executive director concerning the
10 use or transfer of an abandoned or uncontrolled hazardous
11 waste site may be appealed in the manner provided in section
12 455B.429.

13 4. If the executive director has reason to believe this
14 section has been violated, or is in imminent danger of being
15 violated, the executive director may institute a civil action
16 in district court for injunctive relief to prevent the
17 violation and for the assessment of a civil penalty not to
18 exceed one thousand dollars per day for each day of violation.
19 Moneys collected under this subsection shall be deposited
20 in the hazardous waste remedial fund.

21 Sec. 17. NEW SECTION. 455B.431 RECORDING OF SITE DESIGNA-
22 TION. When the executive director places a site on the
23 registry as provided in section 455B.426, then the executive
24 director shall file with the county recorder a statement
25 disclosing the period during which the site was used as a
26 hazardous waste disposal area. When the executive director
27 finds that a site on the registry has been properly closed
28 under section 455B.427, subsection 3, paragraph "e", with
29 no evidence of potential adverse impact, this finding shall
30 be filed with the county recorder. The finding shall state
31 that the executive director's finding does not warrant to
32 a future purchaser of the site that the site will be free
33 from any future adverse impacts as a result of use of the
34 site as a hazardous waste disposal site.

35 Sec. 18. NEW SECTION. 455B.432 LIABILITY. Acts or

1 omissions of the executive director or the department in
 2 carrying out the duties imposed by sections 455B.423 through
 3 455B.431 shall not be cause for a claim against the state
 4 within the meaning of chapter 25A.

5 EXPLANATION

6 This bill establishes a hazardous waste remedial fund
 7 within the department of water, air and waste management.
 8 The fund shall be used for the identification, assessment,
 9 and cleanup of abandoned and uncontrolled hazardous disposal
 10 sites, the cleanup and abatement of hazardous conditions,
 11 the cleanup and site rehabilitation of hazardous waste disposal
 12 sites.

13 The bill provides for identifying, prioritizing, and
 14 managing abandoned or uncontrolled hazardous disposal sites
 15 by the department of water, air and waste management.

HOUSE FILE 2471

FISCAL NOTE

REQUESTED BY REPRESENTATIVE OSTERBERG

In compliance with a written request received March 4, 1984,
 there is hereby submitted a Fiscal Note for HOUSE FILE 2471
 pursuant to Joint Rule 17. Background information used in devel-
 oping this Fiscal Note is available from the Legislative Fiscal
 Bureau, to members of the General Assembly upon request.

House File 2471 establishes a hazardous waste remedial fund within
 the department of water, air and waste management. The fund would
 be used for the identification, assessment and cleanup of aban-
 doned and uncontrolled hazardous disposal sites, cleanup of
 hazardous conditions, and rehabilitation of hazardous waste
 disposal sites.

The department does not anticipate the need for any additional
 personnel or resources to carry out duties mandated by House File
 2471.

Fiscal Impact: It is estimated that revenue generated from fees
 imposed by this bill would be approximately \$2.4 million per year.
 This fund should reduce or eliminate the need for future general
 fund appropriations for hazardous waste site clean-up.

(4210H, 84-231F, AHS)

Source: Department of Water, Air and Waste Management

FILED MARCH 26, 1984

BY DENNIS PROUTY, FISCAL DIRECTOR

LSB 4210H 70

HOUSE FILE 2471

H-5609

- 1 Amend House File 2471 as follows:
- 2 1. Page 7, line 24, by striking the word "and"
- 3 and inserting in lieu thereof the word "or".

H-5609 FILED MARCH 12, 1984 BY SPEAR of Lee

Adopted 3/13 (p. 990)

HOUSE FILE 2471

H-5613

- 1 Amend House File 2471 as follows:
- 2 1. Page 10, line 31, by inserting after the
- 3 word "each" the words "abandoned or uncontrolled".

H-5613 FILED MARCH 12, 1984 BY HERMANN of Scott

Adopted 3/13 (p. 993)

HOUSE FILE 2471

H-5614

- 1 Amend House File 2471 as follows:
- 2 1. Page 8, line 16, by striking the word
- 3 "January" and inserting in lieu thereof the word
- 4 "February".

H-5614 FILED MARCH 12, 1984 BY HERMANN of Scott

W/O 3/13 (p. 992)

HOUSE FILE 2471

H-5615

- 1 Amend House File 2471 as follows:
- 2 1. Page 7, line 29, by inserting after the word
- 3 "site" the following: ", excluding the water content
- 4 of any waste that is transported to another facility
- 5 under the ownership of the generator for the purposes
- 6 of waste treatment or recycling".

H-5615 FILED MARCH 12, 1984 BY SHOULTZ of Black Hawk

Adopted 3/13 (p. 991)

HOUSE FILE 2471

H-5622

- 1 Amend House File 2471 as follows:
- 2 1. Page 8, by striking line 16 and inserting in
- 3 lieu thereof the following: "department on a quarterly
- 4 basis. Fees are due on January 15, April 15, July
- 5 15, and October 15 for the previous quarter."
- 6 2. Page 14, by inserting after line 4 the
- 7 following:
- 8 "Sec. 19. The fees imposed by section 455B.424,
- 9 subsection 2, shall not begin to accrue until January
- 10 1, 1985. However, by October 15, 1984, and January
- 11 15, 1985, a person who would have been required to
- 12 pay fees, except for this section, shall file a report
- 13 with the department stating the amounts of hazardous
- 14 wastes generated, transported, or disposed of by the
- 15 person in the previous quarter and a calculation of
- 16 the amount of fees that would have been due if the
- 17 imposition of the fees had not been delayed."

H-5622 FILED MARCH 12, 1984 BY ROSENBERG of Story

Adopted 3/13 (p. 992)

HOUSE FILE 2471

H-5620

1 Amend House File 2471 as follows:
 2 1. Page 8, by inserting after line 25 the
 3 following:
 4 "8. The fees imposed by this section shall be
 5 suspended if after collection of the fees due from
 6 the previous quarter, the hazardous waste remedial
 7 fund has a balance in excess of six million dollars.
 8 If the balance falls below three million dollars,
 9 the fees shall be reimposed commencing the beginning
 10 of the next calendar quarter."

BY VAN CAMP of Scott

H-5620 FILED MARCH 12, 1984 OSTERBERG of Linn

Adopted 3/13 (p. 993)

HOUSE FILE 2471

H-5619

1 Amend House File 2471 as follows:
 2 1. By striking page 7, line 32 through page 8,
 3 line 3 and inserting in lieu thereof the following:
 4 "waste at the facility shall pay forty dollars for
 5 each ton of hazardous wastes placed, deposited, dumped
 6 or disposed of onto or into the land at a disposal
 7 facility."

BY WELDEN of Hardin

COPENHAVER of Buchanan

HERMANN of Scott

VAN CAMP of Scott

H-5619 FILED MARCH 12, 1984 COOPER of Lucas

Adopted 3/13 (p. 992)

HOUSE FILE 2471

H-5621

1 Amend House File 2471 as follows:
 2 1. Page 4, by striking lines 9 through 14 and
 3 inserting in lieu thereof the following: "section
 4 455B.423 and used in the manner permitted for the
 5 fund."

H-5621 FILED MARCH 12, 1984 BY OSTERBERG of Linn

Adopted 3/13 (p. 990)

HOUSE FILE 2471

H-5612

1 Amend House File 2471 as follows:
 2 1. Page 8, by inserting after line 25 the following:
 3 "8. No fee shall be collected under this section
 4 after January 1, 1990."

H-5612 FILED MARCH 12, 1984 BY HERMANN of Scott

Adopted 3/13 (p. 993)

Gen Energy 3/20 Dr Pass 3/21 (8953)

HOUSE FILE 2471

Energy
Colten, Chair
Rife
C. Miller
Gallagher
Hultman

HOUSE FILE 2471

BY COMMITTEE ON ENERGY

(As Amended and Passed by the House)

Passed House, Date 4-4-84 (p. 1665) Passed Senate, Date 5-29-84 (p. 1147)

Vote: Ayes 84 Nays 13 Vote: Ayes 38 Nays 9

Approved April 19, 1984 (p. 2397)
Repassed Senate 4-10-84 (p. 1414)
39-6

A BILL FOR

1 An Act creating a hazardous waste remedial fund and providing
2 for the cleanup of hazardous conditions and the management
3 and cleanup of abandoned or uncontrolled hazardous waste
4 disposal sites.

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

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House Amendments _____

1 Section 1. Section 455B.381, Code 1983, is amended by
2 adding the following new subsections:

3 NEW SUBSECTION. 6. "Cleanup" means actions necessary
4 to contain, collect, control, identify, analyze, clean up,
5 treat, disperse, remove, or dispose of a hazardous substance.

6 NEW SUBSECTION. 7. "Cleanup costs" means costs incurred
7 by the state or its political subdivisions or their agents,
8 or by any other person participating with the approval of
9 the executive director in the prevention or mitigation of
10 damages from a hazardous condition or the cleanup of a
11 hazardous substance involved in a hazardous condition.

12 NEW SUBSECTION. 8. "Person having control over a hazardous
13 substance" means a person who at any time produces, handles,
14 stores, uses, transports, refines, or disposes of a hazardous
15 substance the release of which creates a hazardous condition,
16 including bailees, carriers, and any other person in control
17 of a hazardous substance when a hazardous condition occurs,
18 whether the person owns the hazardous substance or is operating
19 under a lease, contract, or other agreement with the legal
20 owner of the hazardous substance.

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

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

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

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

33 NEW SUBSECTION. 10. "Waters of the state" means rivers,
34 streams, lakes and any other bodies of surface and subsurface
35 water lying within or forming a part of the boundaries of

1 the state which are not entirely confined and located com-
2 pletely upon lands owned, leased or otherwise controlled by
3 a single person or by two or more persons jointly or as tenants
4 in common. "Waters of the state" includes waters of the
5 United States lying within the state.

6 Sec. 2. Section 455B.386, Code 1983, is amended to read
7 as follows:

8 455B.386 NOTIFICATION OF SPILLS. Any A person
9 manufacturing, storing, handling, transporting, or disposing
10 of a hazardous substance shall notify the department, the
11 local police department, or the office of the sheriff of the
12 affected county of the occurrence of a hazardous condition
13 as soon as possible but not later than six hours after the
14 onset of the hazardous condition or discovery of the hazardous
15 condition. A sheriff or police chief who has been notified
16 of a hazardous condition shall immediately notify the
17 department. Persons If requested, a person shall submit a
18 written report of particulars of the incident. A person
19 violating this section ~~shall~~-be is subject to a civil penalty
20 of not more than ~~five-hundred~~ one thousand dollars.

21 Sec. 3. Section 455B.387, Code Supplement 1983, is amended
22 by adding the following new subsection:

23 NEW SUBSECTION. 3. An action taken by a person to abate,
24 control, or clean up a hazardous substance involved in a
25 hazardous condition shall not be construed as an admission
26 of liability for a hazardous condition.

27 Sec. 4. NEW SECTION. 455B.392 LIABILITY FOR CLEANUP
28 COSTS.

29 1. A person having control over a hazardous substance
30 is strictly liable to the state for all of the following:

31 a. The reasonable cleanup costs incurred by the state
32 as a result of the failure of the person to clean up a
33 hazardous substance involved in a hazardous condition caused
34 by that person.

35 b. The reasonable costs incurred by the state to evacuate

1 people from the area threatened by a hazardous condition
2 caused by the person.

3 c. The reasonable damages to the state for the injury
4 to, destruction of, or loss of natural resources resulting
5 from a hazardous condition caused by that person including
6 the costs of assessing the injury, destruction, or loss.

7 If the failure is willful, the person is liable for punitive
8 damages not to exceed triple the cleanup costs incurred by
9 the state. Prompt and good faith notification to the executive
10 director by the person having control over a hazardous
11 substance that the person does not have the resources or
12 managerial capability to begin or continue cleanup, or a good
13 faith effort to clean up, relieves the person of liability
14 for punitive damages, but not for actual cleanup costs. The
15 executive director shall keep a record of all expenses incurred
16 in carrying out a project or activity authorized by this part.

17 2. Liability under subsection 1 is limited to following
18 maximum dollar limitatins:

19 a. Five million dollars for any vehicle, boat, aircraft,
20 pipeline, or other manner of conveyance which transports a
21 hazardous substance.

22 b. Fifty million dollars for any facility generating,
23 storing, or disposing of a hazardous substance.

24 3. There is no liability under this section for a person
25 otherwise liable if the hazardous condition is solely resulting
26 from one or more of the following:

27 a. An act of God.

28 b. An act of war.

29 c. An act or omission of a third party if the person
30 establishes both of the following:

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

34 (2) That the person otherwise liable took precautions
35 against the foreseeable acts or omissions of the third party

1 and the foreseeable consequences.

2 As used in this paragraph, "third party" does not include
3 an employee or agent of the person otherwise liable or a third
4 party whose act or omission occurs directly or indirectly
5 in connection with a contractual-relationship with the person
6 otherwise liable.

7 3. Money collected pursuant to this section shall be
8 deposited in the hazardous waste remedial fund created in
9 section 455B.423 and used in the manner permitted for the
10 fund.

11 4. This section does not deny any person any legal or
12 equitable rights, remedies or defenses or affect any legal
13 relationship other than the legal relationship between the
14 state and a person having control over a hazardous substance
15 pursuant to subsection 1.

16 Sec. 5. NEW SECTION. 455B.393 LIABILITY OF STATE EM-
17 PLOYEES OR PERSONS PROVIDING ASSISTANCE.

18 1. A person employed by the state is not liable for damages
19 incurred as a result of actions taken by the person when
20 acting in the person's official capacity pursuant to this
21 part, rules adopted pursuant to this part and the hazardous
22 condition contingency plan.

23 2. A person who provides assistance at the request of
24 the department or by previous agreement with the department
25 in the event of a hazardous condition is not liable in a civil
26 action for damages as a result of that person's acts or
27 omissions in rendering the assistance. This section does
28 not relieve a person from civil damages in any of the following
29 circumstances:

30 a. If the person providing assistance is also the person
31 having control over the hazardous substance which created
32 the hazardous condition.

33 b. If the person rendered assistance for payment beyond
34 reimbursement for out-of-pocket expenses or with the
35 expectation of such payment.

1 c. For acts or omissions which result from intentional
2 wrongdoing or gross negligence.

3 Sec. 6. NEW SECTION. 455B.394 RIGHT OF ENTRY. A person
4 shall not refuse entry or access to, or harass or obstruct
5 an authorized representative of the department who seeks entry
6 or access for the purpose of investigating or responding to
7 a hazardous condition. The representative shall present
8 appropriate credentials. Upon a showing of probable cause
9 in writing and made under oath, a judge or magistrate having
10 proper jurisdiction shall issue a suitably restricted search
11 warrant to the representative of the department for the
12 purposes of enabling the representative to investigate or
13 respond to a hazardous condition.

14 Sec. 7. NEW SECTION. 455B.395 PUBLIC INFORMATION. In-
15 formation obtained under this part or a rule, order or con-
16 dition adopted or issued under this part, or an investigation
17 authorized thereby, shall be available to the public unless
18 the information constitutes trade secrets or information which
19 is entitled to confidential treatment in order to protect
20 a plan, process, tool, mechanism, or compound which is known
21 only to the person claiming confidential treatment and con-
22 fidential treatment is necessary to protect the person's
23 trade, business or manufacturing process.

24 Sec. 8. Section 455B.411, Code 1983, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 6. "Abandoned or uncontrolled hazardous
27 waste disposal site" means real property which has been used
28 for the disposal of hazardous waste either illegally or prior
29 to regulation under this chapter.

30 Sec. 9. NEW SECTION. 455B.423 HAZARDOUS WASTE REMEDIAL
31 FUND.

32 1. A hazardous waste remedial fund is created within the
33 state treasury. Moneys received from fees, penalties, general
34 revenue, federal funds, gifts, bequests, donations, or other
35 moneys so designated shall be deposited in the state treasury

1 to the credit of the fund. Any unexpended balance in the
2 hazardous waste remedial fund at the end of each fiscal year
3 shall be retained in the fund. However, any unexpended balance
4 shall be transferred to the general fund to replace funds
5 appropriated from the general fund during fiscal year 1985
6 and fiscal year 1986 for the purposes for which expenditures
7 from the hazardous waste remedial fund are allowed.

8 2. The executive director may use the fund for any of
9 the following purposes:

10 a. Administrative services for the identification, as-
11 sessment and cleanup of abandoned or uncontrolled sites.

12 b. Payments to other state agencies for services consis-
13 tent with the management of abandoned or uncontrolled hazardous
14 waste sites.

15 c. Emergency response activities as provided in part 4
16 of this division.

17 d. Financing the nonfederal share of the cost of cleanup
18 and site rehabilitation activities as well as postclosure
19 operation and maintenance costs, pursuant to the federal
20 Comprehensive Environmental Response, Compensation and
21 Liability Act of 1980.

22 e. Financing the cost of cleanup and site rehabilitation
23 activities as well as postclosure operation and maintenance
24 costs of abandoned or uncontrolled hazardous waste disposal
25 sites that do not qualify for federal cost-sharing pursuant
26 to the federal Comprehensive Environmental Response,
27 Compensation and Liability Act of 1980.

28 f. Through agreements or contracts with other state
29 agencies, work with private industry to develop alternatives
30 to land disposal of hazardous waste including, but not limited
31 to, resource recovery, recycling, neutralization, and
32 reduction.

33 However, at least seventy-five percent of the fund shall
34 be used for the purposes stated in paragraphs "d" and "e".

35 3. Neither the state nor its officers, employees or agents

1 is liable for an injury caused by a dangerous condition at
2 an abandoned or uncontrolled site unless the condition is
3 the result of gross negligence on the part of the state, its
4 officers, employees or agents.

5 4. The executive director may contract with any person
6 to perform the acts authorized in this section.

7 5. Moneys shall not be used from the fund for abandoned
8 site cleanup unless the executive director has made all rea-
9 sonable efforts to secure voluntary agreement to pay the costs
10 of necessary remedial actions from owners or operators of
11 abandoned or uncontrolled hazardous waste sites or other
12 responsible persons.

13 6. The executive director shall make all reasonable ef-
14 forts to recover the full amount of funds expended from the
15 fund through litigation or cooperative agreements with re-
16 sponsible persons. Moneys recovered pursuant to this
17 subsection shall be deposited with the treasurer of state
18 and credited to the hazardous waste remedial fund.

19 Sec. 10. NEW SECTION. 455B.424 HAZARDOUS WASTE FEES.

20 1. The person who generates hazardous waste or the owner
21 or operator of a hazardous waste disposal facility who
22 transports hazardous wastes off of the site where the hazardous
23 waste was generated or off the disposal facility site shall
24 pay a fee of ten dollars for each ton of hazardous waste
25 transported off the site, excluding the water content of any
26 waste that is transported to another facility under the
27 ownership of the generator for the purposes of waste treatment
28 or recycling.

29 2. A person who generates hazardous waste or owns or
30 operates a facility which treats or disposes of hazardous
31 waste at the facility shall pay the following fees:

32 a. Forty dollars for each ton of hazardous wastes placed,
33 deposited, dumped or disposed of onto or into the land at
34 a disposal facility.

35 b. Two dollars for each ton of hazardous waste destroyed

1 or treated at the generator's site or at the disposal facility
2 to render the hazardous waste nonhazardous.

3 3. Fees specified in subsections 1 and 2 shall not be
4 imposed on the state or any of its political subdivisions.

5 4. Fees specified in subsections 1 and 2 shall not be
6 imposed on any of the following:

7 a. Hazardous waste that is reclaimed or reused for energy
8 or materials.

9 b. Hazardous waste that is transformed into new products
10 which are not wastes.

11 c. Hazardous wastes created or retrieved as a result of
12 remedial actions at an abandoned or uncontrolled hazardous
13 waste site.

14 d. Influent waste water to a treatment facility which
15 is subject to regulation under either 33 U.S.C. 1317(b) or
16 U.S.C. 1342.

17 5. Fees imposed by this section shall be paid to the
18 department on a quarterly basis. Fees are due on January
19 15, April 15, July 15, and October 15 for the previous quarter.

20 The payment shall be accompanied by a return in the form
21 prescribed by the department.

22 6. A person required to pay fees by this section who fails
23 or refused to pay the fees imposed by this section shall be
24 assessed a penalty of fifteen percent of the fee due. The
25 penalty shall be paid in addition to the fee due.

26 7. Moneys collected or received by the department pursuant
27 to this section shall be transmitted to the treasurer of state
28 for deposit in the hazardous waste remedial fund.

29 8. The fees imposed by this section shall be suspended
30 if after collection of the fees due from the previous quarter,
31 the hazardous waste remedial fund has a balance in excess
32 of six million dollars. If the balance falls below three
33 million dollars, the fees shall be reimposed commencing the
34 beginning of the next calendar quarter.

35 Sec. 11. NEW SECTION. 455B.425 ANNUAL REPORT ON HAZARDOUS

1 WASTE REMEDIAL FUND. The executive director shall annually
2 on January 1 give a full accounting of moneys received, moneys
3 expended, sources and recipients, and purposes of the expendi-
4 tures for the preceding fiscal year in the hazardous waste
5 remedial fund to the general assembly and the governor.

6 Sec. 12. NEW SECTION. 455B.426 REGISTRY OF ABANDONED
7 OR UNCONTROLLED DISPOSAL SITES.

8 1. The executive director shall maintain and make avail-
9 able for public inspection a registry of confirmed abandoned
10 or uncontrolled hazardous waste disposal sites in the state.
11 The executive director shall take all necessary action to
12 ensure that the registry provides a complete listing of all
13 sites. The registry shall contain the exact location of each
14 site and identify the types of waste found at each site.

15 2. The executive director shall investigate all known
16 or suspected abandoned or uncontrolled sites and determine
17 whether each site should be included in the registry. In
18 the evaluation of known or suspected abandoned or uncontrolled
19 sites, the executive director may enter private property and
20 perform tests and analyses in the manner provided in section
21 455B.416.

22 Sec. 13. NEW SECTION. 455B.427 ANNUAL REPORT ON ABANDONED
23 OR UNCONTROLLED HAZARDOUS WASTE DISPOSAL SITES.

24 1. The executive director shall annually on January 1
25 transmit a report to the general assembly and the governor
26 identifying all abandoned or uncontrolled hazardous waste
27 disposal sites in the state listed on the registry. A copy
28 of the report shall also be sent to the board of supervisors
29 of every county containing a site.

30 2. The annual report shall include, but is not limited
31 to, the following information for each site:

32 a. A general description of the site, including the name
33 and address of the site, the type and quantity of the hazardous
34 waste disposed of at the site and the name of the current
35 owners of the site.

1 b. A summary of significant environmental problems at
2 or near the site.

3 c. A summary of serious health problems in the immediate
4 vicinity of the site and health problems deemed by the
5 executive director to be related to conditions at the site.

6 d. The status of testing, monitoring or remedial actions
7 in progress or recommended by the executive director.

8 e. The status of pending legal actions and federal, state
9 or local government permits concerning the site.

10 f. The relative priority for remedial action at each site.

11 g. The proximity of the site to private residences, public
12 buildings or property, school facilities, places of work or
13 other areas where individuals may be regularly present.

14 3. In developing and maintaining the annual report, the
15 executive director shall assess the relative priority of the
16 need for action at each site to remedy environmental and
17 health problems resulting from the presence of hazardous
18 wastes at the sites. In making its assessments of relative
19 priority, the executive director shall place every site in
20 one of the following classifications:

21 a. Causing or presenting an imminent danger of causing
22 irreversible or irreparable damage to the public health or
23 environment--immediate action required.

24 b. Significant threat to the environment--action required.

25 c. Not a significant threat to the public health or
26 environment--action may be deferred.

27 d. Site properly closed--requires continued management.

28 e. Site properly closed, no evidence of present or po-
29 tential adverse impact--no further action required.

30 4. A site classified as properly closed under subsection
31 3, paragraph "e", shall be removed from all subsequent annual
32 reports and the register of abandoned or uncontrolled sites.

33 5. The executive director shall work with the department
34 of health when assessing the effects of an abandoned or un-
35 controlled site on human health.

1 Sec. 14. NEW SECTION. 455B.428 INVESTIGATION OF SITES.

2 1. The executive director shall investigate each abandoned
3 or uncontrolled hazardous waste disposal site listed in the
4 registry to determine its relative priority.

5 2. The executive director shall identify each abandoned
6 or uncontrolled site by providing all of the following:

- 7 a. The address and site boundaries.
- 8 b. The time period of use for disposal of hazardous waste.
- 9 c. The name of the current owner and operator and names
10 of reported owners and operators during the time period of
11 use for disposal of hazardous waste.
- 12 d. The names of persons responsible for the generation
13 and transportation of the hazardous waste disposed of at the
14 site.
- 15 e. The type, quantity and manner of hazardous waste dis-
16 posal.

17 3. When preliminary evidence suggests further assessment
18 is necessary, the executive director may assess any of the
19 following:

- 20 a. The depth of the water table at the site.
- 21 b. The nature of soils at the site.
- 22 c. The location, nature and size of aquifers at the site.
- 23 d. The direction of present and historic groundwater flows
24 at the site.
- 25 e. The location and nature of surface waters at and near
26 the site.
- 27 f. The levels of contaminants in groundwater, surface
28 water, air and soils at and near the site resulting from
29 hazardous wastes disposed of at the site.
- 30 g. The current quality of all drinking water drawn from
31 or distributed through the area in which the site is located
32 if the executive director determines that water quality may
33 have been affected by the site.

34 4. The executive director shall maintain a site assess-
35 ment file for each site listed in the registry. The file

1 shall contain all information obtained pursuant to this section
2 and shall be open to the public. Information in the file
3 may be reproduced by any person at a charge not to exceed
4 the actual cost of reproduction for copies of file information.

5 Sec. 15. NEW SECTION. 455B.429 NOTIFICATION TO OWNERS-
6 APPEALS.

7 1. Within sixty days after the effective date of this
8 Act, the executive director shall notify the owner of any
9 part of a site to be included in the registry required by
10 section 455B.426. The notice shall be sent by certified mail
11 to the owner's last known address. Thirty days before a site
12 is added to the registry, the executive director shall notify
13 the owner of any part of the site by certified mail of the
14 proposed addition to the registry. The notice shall be sent
15 by certified mail to the owner's last known address.

16 2. An owner or operator of a site proposed for listing
17 in the registry or listed in the registry pursuant to section
18 455B.426, may petition the executive director for deletion
19 of the site, modification of the site classification, or
20 modification of any information regarding the site. A site
21 shall not be listed on the registry until a final determination
22 has been made on any appeal initiated under this section.
23 An appeal is a contested case for the purposes of chapter
24 17A.

25 3. Within ninety days after the submission of an appeal,
26 the department shall conduct a hearing to review the deter-
27 mination. At least thirty days prior to the hearing the de-
28 partment shall publish a notice of hearing in a newspaper
29 of general circulation in the county in which the site is
30 located. The department shall also notify in writing the
31 owner or operator of the site at least thirty days prior to
32 the hearing.

33 4. At least thirty days following the hearing, the de-
34 partment shall provide the owner or operator with a written
35 determination accompanied by reasons for the determination

1 on the appeal.

2 5. Within ten days of a determination, the executive di-
3 rector shall notify the local governments with jurisdiction
4 over the site whenever a change is made in the registry
5 pursuant to this section.

6 Sec. 16. NEW SECTION. 455B.430 USE AND TRANSFER OF
7 SITES.

8 1. A person shall not substantially change the manner
9 in which an abandoned or uncontrolled hazardous waste disposal
10 site on the registry pursuant to section 455B.426 is used
11 without the written approval of the executive director.

12 2. A person shall not sell, convey or transfer title to
13 an abandoned or uncontrolled hazardous waste disposal site
14 which is on the registry pursuant to section 455B.426 without
15 the written approval of the executive director. The executive
16 director shall respond to a request for a change of ownership
17 within thirty days of its receipt.

18 3. Decisions of the executive director concerning the
19 use or transfer of an abandoned or uncontrolled hazardous
20 waste site may be appealed in the manner provided in section
21 455B.429.

22 4. If the executive director has reason to believe this
23 section has been violated, or is in imminent danger of being
24 violated, the executive director may institute a civil action
25 in district court for injunctive relief to prevent the
26 violation and for the assessment of a civil penalty not to
27 exceed one thousand dollars per day for each day of violation.
28 Moneys collected under this subsection shall be deposited
29 in the hazardous waste remedial fund.

30 Sec. 17. NEW SECTION. 455B.431 RECORDING OF SITE DESIGNA-
31 TION. When the executive director places a site on the
32 registry as provided in section 455B.426, then the executive
33 director shall file with the county recorder a statement
34 disclosing the period during which the site was used as a
35 hazardous waste disposal area. When the executive director

1 finds that a site on the registry has been properly closed
2 under section 455B.427, subsection 3, paragraph "e", with
3 no evidence of potential adverse impact, this finding shall
4 be filed with the county recorder. The finding shall state
5 that the executive director's finding does not warrant to
6 a future purchaser of the site that the site will be free
7 from any future adverse impacts as a result of use of the
8 site as a hazardous waste disposal site.

9 Sec. 18. NEW SECTION. 455B.432 LIABILITY. Acts or
10 omissions of the executive director or the department in
11 carrying out the duties imposed by sections 455B.423 through
12 455B.431 shall not be cause for a claim against the state
13 within the meaning of chapter 25A.

14 Sec. 19. The fees imposed by section 455B.424, subsection
15 2, shall not begin to accrue until January 1, 1985. However,
16 by October 15, 1984, and January 15, 1985, a person who would
17 have been required to pay fees, except for this section, shall
18 file a report with the department stating the amounts of
19 hazardous wastes generated, transported, or disposed of by
20 the person in the previous quarter and a calculation of the
21 amount of fees that would have been due if the imposition
22 of the fees had not been delayed.

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HOUSE FILE 2471

S-5624

1 Amend House File 2471 as amended, passed and
2 reprinted by the House, as follows:

- 3 1. Page 8, by inserting after line 16 the
4 following:
5 "e. A hazardous waste which due to its intrinsic
6 physical, chemical or biological composition degrades,
7 decomposes or changes physical characteristics so
8 as to be rendered or considered nonhazardous without
9 any form of external mechanical, physical or chemical
10 treatment being introduced. However, such change
11 to a nonhazardous nature must occur within twenty-
12 four hours of the generation of the hazardous waste
13 before the exemption granted in this paragraph is
14 applicable."

S-5624 FILED

BY MILO COLTON

MARCH 28, 1984

Adopted 3/29 (p. 1146)

HOUSE FILE 2471

S-5625

- 1 Amend House File 2471 as amended, passed and
2 reprinted by the House, as follows:
3 1. Page 2, line 17, by inserting after the word
4 "submit" the words "within thirty days of the
5 departments' request".

S-5625 FILED

BY MILO COLTON

MARCH 28, 1984

Adopted 3/28 (p. 1145)

HOUSE FILE 2471

S-5641

- 1 Amend House File 2471 as amended, passed, and
2 reprinted by the House as follows:

- A 3 1. Page 1, line 13, by striking the words "at
4 any time".
B 5 2. Page 7, line 34, by inserting after the word
6 "facility" the words "in Iowa".
7 3. Page 8, by striking line 1 and inserting in
c 8 lieu thereof the words "or treated at a facility other
9 than a facility of the generator".

S-5641 FILED

BY FORREST V. SCHWENGELS

MARCH 29, 1984

DIVISIONS A, B, C--LOST (p. 1144)

HOUSE FILE 2471

S-5659

- 1 Amend the amendment S-5596 to House File 2471 as
2 amended, passed, and reprinted by the House as follows:
3 1. Page 1, by striking lines 19 through 21 and
4 inserting in lieu thereof the words "not begin to accrue
until July 1, 1985."

S-5659 FILED & ADOPTED

BY CALVIN O. HULTMAN

MARCH 29, 1984 (p. 1147)

HOUSE FILE 2471

S-5596

1 Amend House File 2471 as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 3, line 18, by striking the word
4 "limitatins" and inserting in lieu thereof the word
5 "limitations".

6 2. Page 4, line 7, by striking the figure "3"
7 and inserting in lieu thereof the figure "4".

8 3. Page 4, line 11, by striking the figure "4"
9 and inserting in lieu thereof the figure "5".

10 4. Page 10, line 5, by inserting after the word
11 "director" the words "in cooperation with the state
12 department of health".

13 5. Page 10, line 19, by inserting after the word
14 "director" the words ", in cooperation with the state
15 department of health on matters relating to public
16 health,".

17 6. Page 14, by striking lines 15 and 16 and
18 inserting in lieu thereof the following: "2, shall
19 not begin to accrue until July 1, 1985. However,
20 by October 15, 1984, January 15, 1985, April 15, 1985,
21 and July 15, 1985, a person who would".

S-5596 FILED

BY JAMES V. GALLAGHER

MARCH 28, 1984

MILO COLTON

CHARLES BRUNER

A-Adopted 3/29 (p. 1145)

BASS VAN GILST

JOE BROWN

B-Adopted as amended

DALE TIEDEN

NORMAN RODGERS

by 5659 (p. 1147)

CHARLES MILLER

CALVIN O. HULTMAN

HOUSE FILE 2471

S-5623

1 Amend House File 2471 as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 4, by inserting after line 6 the following:

4 "3A. There is no liability under this section
5 for a person otherwise liable if all of the following
6 conditions exist:

7 a. The liability arises during the transportation
8 of a hazardous substance.

9 b. The fact that the hazardous substance is a
10 hazardous substance has been misrepresented to the
11 person transporting the hazardous substance.

12 c. The person transporting the hazardous substance
13 does not know or have reason to know that the
14 misrepresentation has been made."

S-5623 FILED

BY MILO COLTON

MARCH 28, 1984

Adopted 3/29 (p. 1146)

SENATE AMENDMENT TO HOUSE FILE 2471

H-5983

1 Amend House File 2471 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 2, line 17, by inserting after the word
4 "submit" the words "within thirty days of the
5 department's request".

6 2. Page 3, line 18, by striking the word
7 "limitatins" and inserting in lieu thereof the word
8 "limitations".

9 3. Page 4, by inserting after line 6 the following:

10 "3A. There is no liability under this section
11 for a person otherwise liable if all of the following
12 conditions exist:

13 a. The liability arises during the transportation
14 of a hazardous substance.

15 b. The fact that the hazardous substance is a
16 hazardous substance has been misrepresented to the
17 person transporting the hazardous substance.

18 c. The person transporting the hazardous substance
19 does not know or have reason to know that the
20 misrepresentation has been made."

21 4. Page 4, line 7, by striking the figure "3"
22 and inserting in lieu thereof the figure "4".

23 5. Page 4, line 11, by striking the figure "4"
24 and inserting in lieu thereof the figure "5".

25 6. Page 8, by inserting after line 16 the
26 following:

27 "e. A hazardous waste which due to its intrinsic
28 physical, chemical or biological composition degrades,
29 decomposes or changes physical characteristics so
30 as to be rendered or considered nonhazardous without
31 any form of external mechanical, physical or chemical
32 treatment being introduced. However, such change
33 to a nonhazardous nature must occur within twenty-
34 four hours of the generation of the hazardous waste
35 before the exemption granted in this paragraph is
36 applicable."

37 7. Page 10, line 5, by inserting after the word
38 "director" the words "in cooperation with the state
39 department of health".

40 8. Page 10, line 19, by inserting after the word
41 "director" the words ", in cooperation with the state
42 department of health on matters relating to public
43 health,".

44 9. Page 14, by striking lines 15 and 16 and
45 inserting in lieu thereof the following: "2, shall
46 not begin to accrue until July 1, 1985."

H-5983 FILED MARCH 29, 1984

RECEIVED FROM THE SENATE

House amended (6065, 6078) & concurred 4/6 (p. 16-2)

HOUSE FILE 2471

H-6046

1 Amend Senate amendment H-5983 to House File 2471
2 as amended, passed and reprinted by the House, as
3 follows:

4 1. Page 1, by striking lines 30 through 32 and
5 inserting in lieu thereof the following: "as to be
6 rendered or considered nonhazardous. However, such
7 change".

8 2. Page 1, line 44, by striking the word and
9 figure "and 16" and inserting in lieu thereof the
10 word and figure "through 22".

H-6046 FILED APRIL 3, 1984 BY VAN CAMP of Scott

A - Lock, B - Out of order 4/4 (p. 1664)

HOUSE FILE 2471

H-6065

1 Amend H-5983, the Senate amendment to House File
2 2471 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 1, by inserting after line 24, the following:
5 "_____. Page 7, line 34, by striking the word "facility."
6 and inserting in lieu thereof the following: "facility in
7 Iowa." "

H-6065 FILED APRIL 3, 1984 BY CLARK of Cerro Gordo

Adapted 4/4 (p. 1663)

HOUSE FILE 2471

H-6078

1 Amend the Senate amendment H-5983 to House File
2 2471 as amended, passed and reprinted by the House
3 as follows:

4 1. Page 1, by inserting after line 36 the
5 following:

6 "_____. Page 8, by striking lines 18 and 19 and
7 inserting in lieu thereof the following: "department
8 on an annual basis. Fees are due on April 15 for
9 the previous calendar year.""

10 2. Page 1, line 44, by striking the word and
11 figure "and 16" and inserting in lieu thereof the
12 word and figure "through 22".

H-6078 FILED APRIL 3, 1984 BY OSTERBERG of Linn

Adapted 4/4 (p. 1664)

SENATE 7
APRIL 10, 1984

HOUSE FILE 2471

5841

Amend House File 2471 as amended, passed and
reprinted by the House as follows:
1. Page 7, by striking lines 20 through 23 and
inserting in lieu thereof the following:
"1. The person who generates hazardous waste who
transports the hazardous waste off the site where
the hazardous waste was generated shall".
2. By striking page 7, line 29 through page 8,
line 2 and inserting in lieu thereof the following:
"2. A person who generates hazardous waste shall
pay the twenty dollars for each ton of hazardous waste
placed, deposited, dumped or disposed of onto or into
the land at a disposal facility whether that facility
is located in the state or outside the state. A
credit shall be given against the fee for any
comparable fee paid in another state if that state
would grant a reciprocal credit to a fee paid in Iowa
under similar circumstances."
3. Page 8, by striking lines 3 and 4.
4. Renumber as necessary.

S-5841 FILED
APRIL 9, 1984

BY RAY TAYLOR

Out of order 4/10 (p. 1414)

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 2471

S-5818

Amend the Senate amendment H-5983 to House File
2471 as amended, passed and reprinted by the House
as follows:
1. Page 1, by inserting after line 24, the
following:
"_____. Page 7, line 34, by striking the word
"facility." and inserting in lieu thereof the
following: "facility in Iowa."
2. Page 1, by inserting after line 36 the
following:
"_____. Page 8, by striking lines 18 and 19 and
inserting in lieu thereof the following: "department
on an annual basis. Fees are due on April 15 for
the previous calendar year."
3. Page 1, line 44, by striking the word and
figure "and 16" and inserting in lieu thereof the
word and figure "through 22".

S-5818 FILED
APRIL 6, 1984

RECEIVED FROM THE HOUSE

Senate concurred 4/10 (p. 1414)

HOUSE FILE 2471

AN ACT

CREATING A HAZARDOUS WASTE REMEDIAL FUND AND PROVIDING FOR THE CLEANUP OF HAZARDOUS CONDITIONS AND THE MANAGEMENT AND CLEANUP OF ABANDONED OR UNCONTROLLED HAZARDOUS WASTE DISPOSAL SITES.

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

Section 1. Section 455B.381, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. 6. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

NEW SUBSECTION. 7. "Cleanup costs" means costs incurred by the state or its political subdivisions or their agents, or by any other person participating with the approval of the executive director in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.

NEW SUBSECTION. 8. "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.

NEW SUBSECTION. 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.

NEW SUBSECTION. 10. "Waters of the state" means rivers, streams, lakes and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. "Waters of the state" includes waters of the United States lying within the state.

Sec. 2. Section 455B.396, Code 1983, is amended to read as follows:

455B.396 NOTIFICATION OF SPILLS. Any A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department, 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. Persons 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 shall be is subject to a civil penalty of not more than five-hundred one thousand dollars.

Sec. 3. Section 455B.387, Code Supplement 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 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.

Sec. 4. NEW SECTION. 455B.392 LIABILITY FOR CLEANUP COSTS.

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

a. The reasonable cleanup costs incurred by the state as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

b. The reasonable costs incurred by the state to evacuate people from the area threatened by a hazardous condition caused by the person.

c. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.

If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the executive director by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The executive director shall keep a record of all expenses incurred in carrying out a project or activity authorized by this part.

2. Liability under subsection 1 is limited to following maximum dollar limitations:

a. Five million dollars for any vehicle, boat, aircraft, pipeline, or other manner of conveyance which transports a hazardous substance.

b. Fifty million dollars for any facility generating, storing, or disposing of a hazardous substance.

3. There is no liability under this section for a person otherwise liable if the hazardous condition is solely resulting from one or more of the following:

a. An act of God.

b. An act of war.

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

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

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

As used in this paragraph, "third party" does not include an employee or agent of the person otherwise liable or a third party whose act or omission occurs directly or indirectly in connection with a contractual-relationship with the person otherwise liable.

4. There is no liability under this section for a person otherwise liable if all of the following conditions exist:

a. The liability arises during the transportation of a hazardous substance.

b. The fact that the hazardous substance is a hazardous substance has been misrepresented to the person transporting the hazardous substance.

c. The person transporting the hazardous substance does not know or have reason to know that the misrepresentation has been made.

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423 and used in the manner permitted for the fund.

6. This section does not deny any person any legal or equitable rights, remedies or defenses or affect any legal relationship other than the legal relationship between the

state and a person having control over a hazardous substance pursuant to subsection 1.

Sec. 5. NEW SECTION. 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.

Sec. 6. NEW SECTION. 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.

Sec. 7. NEW SECTION. 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.

Sec. 8. Section 455B.411, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 6. "Abandoned or uncontrolled hazardous waste disposal site" means real property which has been used for the disposal of hazardous waste either illegally or prior to regulation under this chapter.

Sec. 9. NEW SECTION. 455B.423 HAZARDOUS WASTE REMEDIAL FUND.

1. A hazardous waste 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 hazardous waste remedial fund at the end of each fiscal year shall be retained in the fund. However, any unexpended balance shall be transferred to the general fund to replace funds appropriated from the general fund during fiscal year 1985 and fiscal year 1986 for the purposes for which expenditures from the hazardous waste remedial fund are allowed.

2. The executive director may use the fund for any of the following purposes:

a. Administrative services for the identification, assessment and cleanup of abandoned or uncontrolled sites.

b. Payments to other state agencies for services consistent with the management of abandoned or uncontrolled hazardous waste sites.

c. Emergency response activities as provided in part 4 of this division.

d. Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

e. Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of abandoned or uncontrolled hazardous waste disposal sites that do not qualify for federal cost-sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

f. Through agreements or contracts with other state agencies, work with private industry to develop alternatives to land disposal of hazardous waste including, but not limited to, resource recovery, recycling, neutralization, and reduction.

However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraphs "d" and "e".

3. Neither the state nor its officers, employees or agents is liable for an injury caused by a dangerous condition at an abandoned or uncontrolled site unless the condition is the result of gross negligence on the part of the state, its officers, employees or agents.

4. The executive director may contract with any person to perform the acts authorized in this section.

5. Moneys shall not be used from the fund for abandoned site cleanup unless the executive director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of abandoned or uncontrolled hazardous waste sites or other responsible persons.

6. The executive director shall make all reasonable efforts to recover the full amount of funds 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 hazardous waste remedial fund.

Sec. 10. NEW SECTION. 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 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 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 an abandoned or uncontrolled hazardous waste site.

d. Influent waste water to a treatment facility which is subject to regulation under either 33 U.S.C. 1317(b) or 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. 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.

6. A person required to pay fees by this section who fails or refused 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.

7. 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.

8. 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.

Sec. 11. NEW SECTION. 455B.425 ANNUAL REPORT ON HAZARDOUS WASTE REMEDIAL FUND. The executive 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 waste remedial fund to the general assembly and the governor.

Sec. 12. NEW SECTION. 455B.426 REGISTRY OF ABANDONED OR UNCONTROLLED DISPOSAL SITES.

1. The executive director shall maintain and make available for public inspection a registry of confirmed abandoned or uncontrolled hazardous waste disposal sites in the state. The executive 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 executive director shall investigate all known or suspected abandoned or uncontrolled sites and determine whether each site should be included in the registry. In the evaluation of known or suspected abandoned or uncontrolled sites, the executive director may enter private property and perform tests and analyses in the manner provided in section 455B.416.

Sec. 13. NEW SECTION. 455B.427 ANNUAL REPORT ON ABANDONED OR UNCONTROLLED HAZARDOUS WASTE DISPOSAL SITES.

1. The executive director shall annually on January 1 transmit a report to the general assembly and the governor identifying all abandoned or uncontrolled hazardous waste 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 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 executive director in cooperation with the state department of health to be related to conditions at the site.

- d. The status of testing, monitoring or remedial actions in progress or recommended by the executive 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 executive 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 at the sites. In making its assessments of relative priority, the executive director, in cooperation with the state department of 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 abandoned or uncontrolled sites.

5. The executive director shall work with the department of health when assessing the effects of an abandoned or uncontrolled site on human health.

Sec. 14. NEW SECTION. 455B.428 INVESTIGATION OF SITES.

1. The executive director shall investigate each abandoned or uncontrolled hazardous waste disposal site listed in the registry to determine its relative priority.

2. The executive director shall identify each abandoned or uncontrolled site by providing all of the following:

- a. The address and site boundaries.
- b. The time period of use for disposal of hazardous waste.
- 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.
- d. The names of persons responsible for the generation and transportation of the hazardous waste disposed of at the site.
- e. The type, quantity and manner of hazardous waste disposal.

3. When preliminary evidence suggests further assessment is necessary, the executive 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 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 executive director determines that water quality may have been affected by the site.

4. The executive 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.

Sec. 15. NEW SECTION. 455B.429 NOTIFICATION TO OWNERS-
-APPEALS.

1. Within sixty days after the effective date of this Act, the executive 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 executive 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 executive 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 executive director shall notify the local governments with jurisdiction over the site whenever a change is made in the registry pursuant to this section.

Sec. 16. NEW SECTION. 455B.430 USE AND TRANSFER OF
SITES.

1. A person shall not substantially change the manner in which an abandoned or uncontrolled hazardous waste disposal site on the registry pursuant to section 455B.426 is used without the written approval of the executive director.

2. A person shall not sell, convey or transfer title to an abandoned or uncontrolled hazardous waste disposal site which is on the registry pursuant to section 455B.426 without the written approval of the executive director. The executive director shall respond to a request for a change of ownership within thirty days of its receipt.

3. Decisions of the executive director concerning the use or transfer of an abandoned or uncontrolled hazardous waste site may be appealed in the manner provided in section 455B.429.

4. If the executive director has reason to believe this section has been violated, or is in imminent danger of being violated, the executive 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 hazardous waste remedial fund.

Sec. 17. NEW SECTION. 455B.431 RECORDING OF SITE DESIGNATION. When the executive director places a site on the registry as provided in section 455B.426, then the executive director shall file with the county recorder a statement disclosing the period during which the site was used as a hazardous waste disposal area. When the executive 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 executive 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 disposal site.

Sec. 18. NEW SECTION. 455B.432 LIABILITY. Acts or omissions of the executive 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 25A.

Sec. 19. The fees imposed by section 455B.424, subsection 2, shall not begin to accrue until July 1, 1985.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2471, Seventieth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved 4/19, 1984

TERRY E. BRANSTAD
Governor