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SENATE FILE 2217

BY COMMITTEE ON NATURAL RESOURCES
Approved 2/24 (p. 541)
(FORMERLY SSB 2014)

Passed Senate, Date 3-16-84 (p. 878) Passed House, Date 3-29-84 (P. 1485)
Vote: Ayes 30 Nays 6 Vote: Ayes 83 Nays 12
Approved April 30, 1984

*Motion to reconsider (p. 879)
" lost 3/20 (p. 924)*

A BILL FOR

1 An Act establishing uniform enforcement remedies for the
2 department of water, air and waste management, and
3 imposing civil penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S. 2217

5299, 5273
amended
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1 Section 1. NEW SECTION. 455B.109 ENFORCEMENT.

2 1. When the commission or executive director has evidence
3 that a provision of this chapter or a rule, permit or order
4 adopted or issued under this chapter has been violated or
5 is being violated, any remedy provided in this section may
6 be used.

7 2. a. The executive director may issue a notice of viola-
8 tion. The notice shall be served upon the alleged violator
9 or an agent of the alleged violator by certified mail or by
10 personal service. The notice shall specify the particular
11 statute, rule, permit or order alleged to be violated, the
12 facts alleged to constitute a violation, and the right to
13 a hearing before the commission or its designee on the issuance
14 and terms of the notice. The notice may specify actions
15 deemed necessary to terminate the violation, a time schedule
16 for compliance, and where appropriate, a proposed penalty
17 to be administratively assessed for the violation pursuant
18 to the penalty schedule established by the commission under
19 subsection 3.

20 b. A person adversely affected by a notice of violation
21 shall have an opportunity for a hearing. A request for a
22 hearing must be postmarked or delivered to the department
23 by the end of the thirtieth day following receipt of the
24 notice and must specify the provisions of the notice contested
25 and the reasons the provisions are contested. The hearing
26 shall be conducted as a contested case pursuant to chapter
27 17A. After hearing, the commission or its designee shall
28 affirm, modify or rescind the notice of violation, assess
29 a penalty under subsection 3, refer the violation to the
30 attorney general under subsection 6 or 7, or take other action
31 as appropriate. A notice of violation for which a hearing
32 is not timely requested and a decision of the commission after
33 hearing is a final order enforceable by civil action in the
34 district court.

35 3. a. The commission may establish, by rule, a schedule

1 or range of civil penalties which may be administratively
2 assessed. The schedule shall provide procedures and criteria
3 for the administrative assessment of penalties of not more
4 than one thousand dollars for minor violations of this chapter
5 or rules, permits or orders adopted or issued under this
6 chapter. In adopting a schedule or range of penalties and
7 in proposing or assessing a penalty, the commission and
8 executive director shall consider among other relevant factors
9 the following:

10 (1) The costs saved or likely to be saved by noncompliance
11 by the violator.

12 (2) The gravity of the violation.

13 (3) The degree of culpability of the violator.

14 (4) The maximum penalty authorized for that violation
15 under subsection 5.

16 Penalties may be administratively assessed only after an op-
17 portunity for a contested case hearing which may be combined
18 with a hearing held pursuant to subsection 2. Major
19 violations, violations not fitting within the schedule, or
20 violations which the commission determines should be referred
21 to the attorney general for legal action shall not be governed
22 by the schedule established under this subsection.

23 b. If the commission establishes a schedule for minor
24 violations, the commission shall provide, by rule, a procedure
25 for the screening of alleged violations to determine which
26 cases may be appropriate for the administrative assessment
27 of penalties. However, the screening procedure shall not
28 limit the discretion of the department to refer any case to
29 the attorney general for legal action pursuant to subsection
30 6 or 7.

31 c. A penalty assessed by the department shall be paid
32 by a cashier's or certified check payable to the treasurer
33 of state. The check shall be delivered to the department
34 within thirty days of a final order assessing the penalty.
35 A person who fails to timely pay a civil penalty assessed

1 by the department shall pay, in addition, interest at the
2 rate of one and one-half percent of the unpaid balance of
3 the assessed penalty for each month or part of a month that
4 the penalty remains unpaid, except for a period in which the
5 civil penalty is stayed by the commission or the reviewing
6 court pending judicial review under subsection 8.

7 d. Upon failure to timely pay a civil penalty assessed
8 by the department, the attorney general shall institute, at
9 the request of the department, summary proceedings to recover
10 any unpaid civil penalty assessed by the department and any
11 interest on the penalty. When the person against whom a civil
12 penalty is assessed has failed to seek timely judicial review
13 of a final order as provided in chapter 17A, the Iowa
14 administrative procedure Act, the court shall enter a judgment
15 for the amount of the civil penalty assessed plus the interest
16 accrued on the penalty.

17 e. All civil penalties assessed by the department and
18 interest on the penalties shall be deposited in the general
19 fund of the state.

20 4. The executive director may issue an emergency order
21 without prior notice of hearing if necessary to prevent ir-
22 reparable damage to the public health or safety or the environ-
23 ment. An emergency order may be oral or written, may require
24 the violator to cease and desist in any operation causing
25 or contributing to the emergency, and may require the violator
26 to take affirmative action deemed necessary to abate the
27 emergency. An oral order shall be confirmed by a written
28 copy to be personally delivered or sent by certified mail
29 within twenty-four hours excluding a Sunday or a legal holiday
30 after issuance of the oral order. An emergency order is
31 effective immediately and remains effective until the order
32 is stayed, modified, or vacated by the department or by a
33 court. A person adversely affected by the emergency order
34 may request an immediate informal hearing before the executive
35 director for relief from the terms of the emergency order

1 and may request that a full contested case hearing be held
2 as quickly as possible.

3 5. The following civil penalties may be assessed for the
4 violations specified in this subsection:

5 a. For a violation of division II or a permit or rule
6 issued under division II, a civil penalty not to exceed five
7 thousand dollars for each day of violation.

8 b. For a violation of part 1 of division III or a permit
9 or rule issued under part 1 of division III, a civil penalty
10 not to exceed five thousand dollars for each day of violation.

11 c. For a violation of part 2 of division III or a rule
12 issued under part 2 of division III or under chapter 258A,
13 a civil penalty not to exceed five hundred dollars for each
14 day of violation.

15 d. For a violation of part 4 of division III or a permit
16 or rule issued under part 4 of division III, a civil penalty
17 not to exceed five hundred dollars for each day of violation.

18 e. For a violation of part 1 of division IV or a permit
19 or rule issued under part 1 of division IV, a civil penalty
20 not to exceed five hundred dollars for each day of violation.

21 f. For a violation of part 2 of division IV or a permit
22 or rule issued under part 2 of division IV, a civil penalty
23 not to exceed one thousand dollars for each day of violation.

24 g. For a violation of part 4 of division IV or a rule
25 or permit issued under part 4 of division IV, a civil penalty
26 not to exceed five hundred dollars for each day of violation.

27 h. For a violation of parts 5 and 6 of division IV, a
28 civil penalty not to exceed ten thousand dollars for each
29 violation or for each day of continuing violation.

30 i. For a violation of a final order issued under sub-
31 section 1 and for a violation of an emergency order issued
32 under subsection 3, a civil penalty not to exceed ten thou-
33 sand dollars for each day of violation.

34 6. The commission or the executive director with the
35 approval of the commission may request the attorney general

1 or the appropriate county attorney to institute a criminal
2 action for the offenses and fines or imprisonments provided
3 in section 455B.187, subsection 2 and 3, and in section
4 455B.417, subsections 1 and 2. However, this subsection does
5 not prohibit the attorney general or county attorneys from
6 instituting criminal actions for these offenses and fines
7 or imprisonments in the absence of a request from the executive
8 director or commission.

9 7. a. The department shall notify the attorney general
10 who may implement legal proceedings necessary to enforce
11 the penalty provisions of this chapter or to obtain compliance
12 with this chapter or a rule adopted or permit or order issued
13 pursuant to this chapter. The legal proceedings may include,
14 but are not limited to, an action for an injunction or a
15 temporary injunction, mandamus, abatement or other equitable
16 relief appropriate to obtain compliance or abate construction
17 or conditions caused in violation of this chapter or a rule
18 adopted or permit or order issued pursuant to this chapter.
19 The costs of implementation of the equitable remedy shall
20 be borne by the violator.

21 b. In an action for a temporary injunction to enforce
22 a final order under subsection 2, the court shall issue the
23 injunction if the department shows that the order has been
24 violated.

25 c. The payment of a civil penalty assessed pursuant to
26 subsection 3 or a conviction obtained in an action pursuant
27 to subsection 6 bars any action for a civil penalty specified
28 in subsection 5 for the same violation.

29 8. a. Judicial review of actions of the commission or
30 executive director may be sought only in accordance with the
31 terms of chapter 17A. Notwithstanding that chapter, petitions
32 for judicial review may be filed in the district court for
33 the county in which the violation was allegedly committed
34 or in Polk county.

35 b. In a legal proceeding to enforce a final order under

1 subsection 2, 3, or 4, the final order shall not be
2 collaterally attacked by any party which has been provided
3 notice and opportunity for hearing and opportunity for judicial
4 review of the order.

5 9. The issuance of a notice of violation or the decision
6 of the executive director to present an alleged violation
7 to the commission for action shall be regarded as the
8 commencement of a contested case for purposes of section
9 17A.17. An ex parte communication prior to commencement as
10 provided in section 17A.12 shall be placed in the record.

11 10. This chapter does not require the commission or the
12 executive director to pursue an administrative remedy prior
13 to seeking a remedy in the courts of this state.

14 11. This chapter does not impair an existing civil or
15 criminal remedy for a wrongful action which is a violation
16 of this chapter or a rule adopted under this chapter.

17 Sec. 2. Section 331.756, subsection 67, Code Supplement
18 1983, is amended to read as follows:

19 67. Institute proceedings to enjoin persons from violating
20 water treatment laws as provided in section ~~455B-224~~ 455B.109.

21 Sec. 3. Section 455B.134, subsection 9, Code 1983, is
22 amended by striking the subsection.

23 Sec. 4. Section 455B.145, unnumbered paragraph 1, Code
24 1983, is amended to read as follows:

25 When an air pollution control program conducted by a
26 political subdivision, or a combination thereof, is deemed
27 upon review as provided in section 455B.134, to be consistent
28 with the provisions of this division II or the rules
29 established thereunder, the executive director shall accept
30 such program in lieu of state administration and regulation
31 of air pollution within the political subdivisions involved.
32 Nothing contained in this section shall be construed to limit
33 the power of the executive director to take emergency action
34 under ~~the provisions of sections 455B-139 and 455B-141~~ section
35 455B.109 or to administer a part of the local program that

1 has been suspended.

2 Sec. 5. Section 455B.149, subsection 1, Code 1983, is
3 amended to read as follows:

4 1. Upon application by the owner or operator of a fuel-
5 burning stationary source, and after notice and opportunity
6 for public hearing, the commission may petition the president,
7 under section 110, subsection "f," paragraph 1 of the federal
8 Clean Air Act as amended to January 1, 1979, for a
9 determination that a national or regional energy emergency
10 exists. If the president determines an emergency exists,
11 the commission may suspend any requirement of this division
12 or a rule or permit issued under this division. A temporary
13 emergency suspension under this subsection shall be issued
14 only if there exists in the vicinity of the source a temporary
15 emergency involving high levels of unemployment or loss of
16 necessary energy supplies for residential buildings and if
17 the unemployment or loss can be totally or partially alleviated
18 by the suspension. Only one suspension may be issued for
19 a source on the basis of the same set of circumstances or
20 on the basis of the same emergency. A suspension shall remain
21 in effect for a maximum of four months. The commission may
22 include in a suspension a provision directing the executive
23 director to delay for a period identical to the period of
24 the suspension a compliance schedule or increment of progress
25 to which the source is subject under section ~~455B.138~~ 455B.109,
26 if the source is unable to comply with the schedule or
27 increment solely because of the conditions on the basis of
28 which the suspension was issued.

29 Sec. 6. Section 455B.187, subsections 1, 4, 5, and 6,
30 Code 1983, are amended by striking the subsections.

31 Sec. 7. Section 455B.275, subsection 1, Code Supplement
32 1983, is amended to read as follows:

33 1. A person shall not permit, erect, use or maintain a
34 structure, dam, obstruction, deposit, or excavation in or
35 on a floodway or flood plains, which will adversely affect

1 the efficiency of or unduly restrict the capacity of the
2 floodway, or adversely affect the control, development,
3 protection, allocation, or utilization of the water resources
4 of the state, and ~~the same~~ structures, dams, obstructions,
5 deposits, or excavations which violate this prohibition are
6 ~~declared-to-be~~ public nuisances. However, this subsection
7 does not apply to dams constructed and operated under ~~the~~
8 ~~authority-of~~ chapter 469. Notwithstanding section 93A.11,
9 a structure, dam, obstruction, deposit, or excavation on a
10 floodway or flood plain in an agricultural area established
11 under chapter 93A is not exempt from sections of this part
12 which relate to regulation of flood plains and floodways.

13 Sec. 8. Section 455B.275, subsections 2 and 4, Code
14 Supplement 1983, are amended by striking the subsections.

15 Sec. 9. Section 455B.304, unnumbered paragraph 2, Code
16 1983, is amended to read as follows:

17 The commission shall adopt rules that allow the use of
18 wet or dry sludge from publicly owned treatment works for
19 land application. A sale of wet or dry sludge for the purpose
20 of land application shall be accompanied by a written agreement
21 signed by both parties which contains a general analysis of
22 the contents of the sludge. The heavy metal content of the
23 sludge shall not exceed that allowed by rules of the
24 commission. An owner of a publicly owned treatment works
25 which sells wet or dry sludge is not subject to criminal
26 liability for acts or omissions in connection with a sale,
27 and is not subject to any action by the purchaser to recover
28 damages for harm to person or property caused by sludge that
29 is delivered pursuant to a sale unless it is a result of a
30 violation of the written agreement or if the heavy metal
31 content of the sludge exceeds that allowed by rules of the
32 commission. Nothing in this section shall provide immunity
33 to any person from action by the department pursuant to section
34 ~~455B.307~~ 455B.109. The rules promulgated under this paragraph
35 shall be generally consistent with those rules of the

1 department existing on January 1, 1982 regarding the land
2 application of municipal sewage sludge except that they may
3 provide for different methods of application for wet sludge
4 and dry sludge.

5 Sec. 10. Section 455B.307, subsections 2 and 3, Code 1983,
6 are amended by striking the subsections.

7 Sec. 11. Section 455B.391, subsection 1, Code 1983, is
8 amended by striking the subsection.

9 Sec. 12. Section 455B.412, subsection 1, paragraph f,
10 Code 1983, is amended to read as follows:

11 f. The proper role and activities of the state in addition
12 to those established in sections 455B.411 to ~~455B.421~~ 455B.420
13 and the federal Solid Waste Disposal Act in facilitating safe
14 and efficient disposal of hazardous waste, including but not
15 limited to a determination of the most appropriate procedures
16 for receiving public comments and approving permits for siting
17 hazardous waste disposal facilities.

18 Sec. 13. Section 455B.412, subsection 2, Code 1983, is
19 amended to read as follows:

20 2. Adopt rules establishing criteria for identifying the
21 characteristics of hazardous wastes and listing hazardous
22 wastes that are subject to sections 455B.411 to ~~455B.421~~
23 455B.420. The commission shall consider toxicity, persistence
24 and degradability in nature, potential for accumulation in
25 tissue, and related factors including flammability,
26 corrosiveness, and other hazardous characteristics.

27 Sec. 14. Section 455B.413, subsection 3, Code 1983, is
28 amended to read as follows:

29 3. Inspect and investigate hazardous waste generators
30 and transporters and treatment, storage and disposal facilities
31 as may be necessary to determine compliance with sections
32 455B.411 to ~~455B.421~~ 455B.420 and rules adopted and permits
33 and orders issued pursuant to sections 455B.411 to ~~455B.421~~
34 455B.420. The executive director shall periodically survey
35 or inspect the construction, operation and monitoring,

1 reporting and record-keeping systems of hazardous waste
2 generators and transporters and treatment, storage and disposal
3 facilities.

4 Sec. 15. Section 455B.414, subsection 1, Code 1983, is
5 amended to read as follows:

6 1. A person who on the effective date of a rule adopted
7 under section 455B.412, subsection 2 listing a hazardous waste
8 as subject to sections 455B.411 to ~~455B.421~~ 455B.420 is
9 generating or transporting the listed hazardous waste or owns
10 or is operating a treatment, storage or disposal facility
11 handling the listed hazardous waste shall file with the
12 executive director a notification stating the waste handled
13 by the person and the location and a general description of
14 the activity involving the waste. The notice shall be given
15 within ninety days after the effective date of the rule listing
16 the waste.

17 Sec. 16. Section 455B.415, subsection 2, unnumbered para-
18 graph 1, Code Supplement 1983, is amended to read as follows:

19 The owner or operator of a facility for the treatment,
20 storage or disposal of a hazardous waste listed under section
21 455B.412, subsection 2 existing on the effective date of the
22 rule listing the waste shall obtain a permit for the facility
23 within six months of the effective date of the rule. A person
24 owning or operating a facility for the treatment, storage
25 or disposal of a hazardous waste that existed on the effective
26 date of the rule listing the waste and that is required to
27 have a permit under sections 455B.411 to ~~455B.421~~ 455B.420
28 is considered to have a permit until such time as final
29 administrative determination is made if the person meets the
30 following conditions:

31 Sec. 17. Section 455B.416, subsection 1, unnumbered para-
32 graph 1, Code 1983, is amended to read as follows:

33 For purposes of developing a rule, conducting a study of
34 hazardous waste management, compiling a site inventory, or
35 enforcing sections 455B.411 to ~~455B.421~~ 455B.420, a person

1 who generates, stores, treats, transports, disposes of or
2 otherwise handles or has handled hazardous waste shall, upon
3 request of the executive director, furnish information relating
4 to the hazardous waste and permit the executive director at
5 reasonable times to have access to and copy records relating
6 to the waste. For the purpose of developing a rule or
7 enforcing sections 455B.411 to ~~455B.421~~ 455B.420, the executive
8 director may:

9 Sec. 18. Section 455B.417, subsection 1, paragraphs b
10 and c, Code 1983, are amended to read as follows:

11 b. Treat, store, or dispose of a hazardous waste listed
12 under sections 455B.411 to ~~455B.421~~ 455B.420 either without
13 having obtained a permit for the treatment, storage, or
14 disposal under section 455B.415, subsection 1, or in violation
15 of a material condition or requirement of a permit.

16 c. Make a false material statement or representation in
17 an application, label, manifest, record, report, permit or
18 other document filed, maintained or used for purposes of
19 compliance with the provisions of sections 455B.411 to ~~455B.421~~
20 455B.420.

21 Sec. 19. Section 455B.417, subsections 3, 4, 5, and 6,
22 Code 1983, are amended by striking the subsections.

23 Sec. 20. Section 455B.418, subsection 1, Code 1983, is
24 amended by striking the subsection and inserting in lieu
25 thereof the following:

26 1. When the executive director determines that a disposal
27 site contains hazardous waste in an amount and under conditions
28 that cause an imminent threat to human health and that the
29 person responsible for the site will not properly and promptly
30 remove the waste or eliminate the threat, the executive
31 director may take action as necessary to remove the waste
32 or permanently alleviate or eliminate the threat to human
33 health. The costs of removing the waste or alleviating or
34 eliminating the threat shall be recovered from the person
35 responsible for the disposal site.

1 Sec. 21. Section 455B.418, subsection 2, Code 1983, is
2 amended by striking the subsection.

3 Sec. 22. Section 455B.419, unnumbered paragraph 1, Code
4 1983, is amended to read as follows:

5 A person using or disposing of federally approved agricul-
6 tural chemicals or the empty containers thereof shall not
7 be in violation of sections 455B.411 to ~~455B.421~~ 455B.420
8 by reason of such use or disposal provided that the person:

9 Sec. 23. Section 455B.420, Code 1983, is amended to read
10 as follows:

11 455B.420 RULES. Rules adopted by the commission under
12 sections 455B.411 to ~~455B.421~~ 455B.420 shall be consistent
13 with and shall not exceed the requirements of 42 U.S.C. secs.
14 6921-6934 as amended to January 1, 1981, and rules and
15 regulations adopted pursuant to those sections.

16 Sec. 24.

17 1. Sections 455B.138, 455B.139, 455B.140, 455B.141,
18 455B.142, 455B.146, 455B.178, 455B.180, 455B.182, 455B.224,
19 455B.308, 455B.336, 455B.337, 455B.338, 455B.339, 455B.340,
20 455B.388, 455B.389, and 455B.421, Code 1983, are repealed.

21 2. Sections 455B.175 and 455B.279, Code Supplement 1983,
22 are repealed.

23 EXPLANATION

24 This bill provides for the consolidation of the enforcement
25 authority of the department of water, air and waste management
26 by striking most of the existing enforcement provisions in
27 the four divisions of chapter 455B, and creating a new
28 enforcement section applicable to the entire chapter. The
29 bill changes the remedy for a violation of an operator
30 certification and the radioactive waste provisions of chapter
31 455B from a criminal action to a civil action. The bill also
32 authorizes the water, air and waste management commission
33 to establish a schedule of penalties for minor violations
34 of specific statutory provisions, or rules, permits or orders
35 issued under those provisions, and to administratively assess

1 penalties for those violations. The maximum penalty which
2 could be administratively assessed would be \$1,000 and would
3 be an alternative to the higher civil penalties provided in
4 the existing statute. The bill also provides procedural re-
5 quirements relating to opportunity for hearing, ex parte
6 communications, and judicial review.

7 This bill takes effect July 1 following its enactment.

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S-5299

Amend Senate File 2217 as follows:

1. By striking everything after the enacting clause and inserting in lieu thereof the following:

"Section 1. NEW SECTION. 455B.109 SCHEDULE OF FINES--MINOR VIOLATIONS.

1. The commission may establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than one thousand dollars for minor violations of this chapter or rules, permits or orders adopted or issued under this chapter. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and executive director shall consider among other relevant factors the following:

- a. The costs saved or likely to be saved by noncompliance by the violator.
- b. The gravity of the violation.
- c. The degree of culpability of the violator.
- d. The maximum penalty authorized for that violation under this chapter.

Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Major violations, violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under this subsection.

2. If the commission establishes a schedule for minor violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

3. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and

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1 one-half percent of the unpaid balance of the assessed
2 penalty for each month or part of a month that the
3 penalty remains unpaid. The attorney general shall
4 institute, at the request of the department, summary
5 proceedings to recover the penalty and any accrued
6 interest.

7 4. All civil penalties assessed by the department
8 and interest on the penalties shall be deposited in
9 the general fund of the state.

10 5. This section does not require the commission
11 or the executive director to pursue an administrative
12 remedy before seeking a remedy in the courts of this
13 state."

S-5299 FILED

BY NORMAN RODGERS

MARCH 8, 1984

Adopted 3/16 (p. 878)

SENATE FILE 2217

S-5313

1 Amend the amendment, S-5299, to Senate File 2217
2 as follows:

3 1. By striking page 1, line 4 through page 2,
4 line 13 and inserting in lieu thereof the following:
5 "Section 1. PROPOSED SCHEDULE OF CIVIL PENALTIES-
6 -MINOR VIOLATIONS--DEPARTMENT OF WATER, AIR AND WASTE
7 MANAGEMENT.

8 1. The water, air and waste management commission
9 shall draft proposed administrative rules to establish
10 a schedule or range of civil penalties which may be
11 administratively assessed. The proposed rules shall
12 be delivered to the speaker of the house of
13 representatives and the president of the senate who
14 shall forward the proposed rules to the appropriate
15 standing committees of the two houses for legislative
16 consideration. The proposed schedule or range of
17 civil penalties shall provide procedures and criteria
18 for the administrative assessment of penalties of
19 not more than one thousand dollars for minor violations
20 of chapter 455B or rules, permits or orders adopted
21 or issued under chapter 455B. In drafting the proposed
22 schedule or range of penalties, the commission and
23 the executive director shall consider among other
24 relevant factors the following:

25 a. The costs saved or likely to be saved by
26 noncompliance by a violator.

27 b. The gravity of the violation.

28 c. The degree of culpability of a violator.

29 d. The maximum penalty authorized for that
30 violation under chapter 455B.

31 2. The water, air and waste management commission
32 shall include a procedure for the screening of alleged
33 violations to determine which cases may be appropriate
34 for the administrative assessment of penalties.
35 However, the screening procedure shall not limit the
36 discretion of the department to refer any case to
37 the attorney general for legal action.

38 2. Amend the title, by striking lines 1 through
39 3 and inserting in lieu thereof the following: "An
40 Act relating to a proposed schedule of civil penalties
41 for minor violations of chapter 455B.""

S-5313 FILED

BY EDGAR H. HOLDEN

MARCH 8, 1984

C. JOSEPH COLEMAN

W/D 3/13 (p. 877)

S-5273

1 Amend Senate File 2217 as follows:

2 1. By striking everything after the enacting
3 clause and inserting in lieu thereof the following:

4 "Section 1. NEW SECTION. 455B.109 SCHEDULE OF
5 FINES--MINOR VIOLATIONS.

6 1. The commission may establish, by rule, a
7 schedule or range of civil penalties which may be
8 administratively assessed. The schedule shall provide
9 procedures and criteria for the administrative
10 assessment of penalties of not more than one thousand
11 dollars for minor violations of this chapter or rules,
12 permits or orders adopted or issued under this chapter.
13 In adopting a schedule or range of penalties and in
14 proposing or assessing a penalty, the commission and
15 executive director shall consider among other relevant
16 factors the following:

17 a. The costs saved or likely to be saved by
18 noncompliance by the violator.

19 b. The gravity of the violation.

20 c. The degree of culpability of the violator.

21 d. The maximum penalty authorized for that
22 violation under this chapter.

23 Penalties may be administratively assessed only after
24 an opportunity for a contested case hearing which
25 may be combined with a hearing on the merits of the
26 alleged violation. Major violations, violations not
27 fitting within the schedule, or violations which the
28 commission determines should be referred to the at-
29 torney general for legal action shall not be governed
30 by the schedule established under this subsection.

31 2. If the commission establishes a schedule for
32 minor violations, the commission shall provide, by
33 rule, a procedure for the screening of alleged
34 violations to determine which cases may be appropriate
35 for the administrative assessment of penalties.
36 However, the screening procedure shall not limit the
37 discretion of the department to refer any case to
38 the attorney general for legal action.

39 3. A penalty shall be paid within thirty days
40 of the date the order assessing the penalty becomes
41 final. Additional judicial review may not be sought
42 after the order becomes final. When a person against
43 whom a civil penalty is assessed under this section
44 seeks timely judicial review of an order imposing
45 the penalty as provided under chapter 17A, the order
46 is not final for the purposes of this section until
47 all judicial review processes are completed. A person
48 who fails to timely pay a civil penalty assessed by
49 a final order of the department shall pay, in addition,
50 interest at the rate of one and one-half percent of

S-5273
PAGE 2

1 the unpaid balance of the assessed penalty for each
2 month or part of a month that the penalty remains
3 unpaid. The attorney general shall institute, at
4 the request of the department, summary proceedings
5 to recover the penalty and any accrued interest.
6 4. All civil penalties assessed by the department
7 and interest on the penalties shall be deposited in
8 the general fund of the state.
9 5. This section does not require the commission
10 or the executive director to pursue an administrative
11 remedy before seeking a remedy in the courts of this
12 state."

S-5273 FILED
MARCH 6, 1984

BY NORMAN RODGERS

Placed out of order 3/16 (p. 878)

SENATE FILE 2217

S-5374

1 Amend the amendment, S-5299, to Senate File 2217
2 as follows:
3 1. By striking page 1, line 4 through page 2,
4 line 13 and inserting in lieu thereof the following:
5 "Section 1. PROPOSED SCHEDULE OF CIVIL PENALTIES-
6 -MINOR VIOLATIONS--DEPARTMENT OF WATER, AIR AND WASTE
7 MANAGEMENT.
8 1. The water, air and waste management commission
9 shall provide a schedule or range of civil penalties
10 which may be administratively assessed. The proposed
11 schedule shall be delivered to the speaker of the
12 house of representatives and the president of the
13 senate who shall forward the proposed schedule to
14 the appropriate standing committees of the two houses
15 for legislative consideration. The proposed schedule
16 or range of civil penalties shall provide procedures
17 and criteria for the administrative assessment of
18 penalties of not more than one thousand dollars for
19 minor violations of chapter 455B or rules, permits
20 or orders adopted or issued under chapter 455B. In
21 drafting the proposed schedule or range of penalties,
22 the commission and the executive director shall
23 consider among other relevant factors the following:
24 a. The costs saved or likely to be saved by
25 noncompliance by a violator.
26 b. The gravity of the violation.
27 c. The degree of culpability of a violator.
28 d. The maximum penalty authorized for that
29 violation under chapter 455B.
30 2. The water, air and waste management commission
31 shall include a procedure for the screening of alleged
32 violations to determine which cases may be appropriate
33 for the administrative assessment of penalties.
34 However, the screening procedure shall not limit the
35 discretion of the department to refer any case to
36 the attorney general for legal action.
37 2. Amend the title, by striking lines 1 through
38 3 and inserting in lieu thereof the following: "An
39 Act relating to a proposed schedule of civil penalties
40 for minor violations of chapter 455B."

S-5374 FILED
MARCH 13, 1984

BY EDGAR H. HOLDEN

Lost 3/16 (f. 878)

Natural Resources: Shultz, Chair; Fogarty and Welden.

SENATE FILE 2217

BY COMMITTEE ON NATURAL RESOURCES

(AS AMENDED AND PASSED BY THE SENATE MARCH 16, 1984)

Passed Senate, Date 3-16-84 (p. 878) Passed House, Date 3-29-84 (p. 1485)
Vote: Ayes 30 Nays 6 Vote: Ayes 83 Nays 12
Approved April 30, 1984

A BILL FOR

1 An Act establishing uniform enforcement remedies for the
2 department of water, air and waste management, and
3 imposing civil penalties.

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

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ALL New Language
by the Senate

5791 amends all

1 Section 1. NEW SECTION. 455B.109 SCHEDULE OF FINES--
2 MINOR VIOLATIONS.

3 1. The commission may establish, by rule, a schedule or
4 range of civil penalties which may be administratively
5 assessed. The schedule shall provide procedures and criteria
6 for the administrative assessment of penalties of not more
7 than one thousand dollars for minor violations of this chapter
8 or rules, permits or orders adopted or issued under this
9 chapter. In adopting a schedule or range of penalties and
10 in proposing or assessing a penalty, the commission and
11 executive director shall consider among other relevant factors
12 the following:

- 13 a. The costs saved or likely to be saved by noncompliance
14 by the violator.
15 b. The gravity of the violation.
16 c. The degree of culpability of the violator.
17 d. The maximum penalty authorized for that violation under
18 this chapter.

19 Penalties may be administratively assessed only after an
20 opportunity for a contested case hearing which may be combined
21 with a hearing on the merits of the alleged violation. Major
22 violations, violations not fitting within the schedule, or
23 violations which the commission determines should be referred
24 to the attorney general for legal action shall not be governed
25 by the schedule established under this subsection.

26 2. If the commission establishes a schedule for minor
27 violations, the commission shall provide, by rule, a procedure
28 for the screening of alleged violations to determine which
29 cases may be appropriate for the administrative assessment
30 of penalties. However, the screening procedure shall not
31 limit the discretion of the department to refer any case to
32 the attorney general for legal action.

33 3. A penalty shall be paid within thirty days of the date
34 the order assessing the penalty becomes final. When a person
35 against whom a civil penalty is assessed under this section

1 seeks timely judicial review of an order imposing the penalty
2 as provided under chapter 17A, the order is not final for
3 the purposes of this section until all judicial review
4 processes are completed. Additional judicial review may not
5 be sought after the order becomes final. A person who fails
6 to timely pay a civil penalty assessed by a final order of
7 the department shall pay, in addition, interest at the rate
8 of one and one-half percent of the unpaid balance of the
9 assessed penalty for each month or part of a month that the
10 penalty remains unpaid. The attorney general shall institute,
11 at the request of the department, summary proceedings to
12 recover the penalty and any accrued interest.

13 4. All civil penalties assessed by the department and
14 interest on the penalties shall be deposited in the general
15 fund of the state.

16 5. This section does not require the commission or the
17 executive director to pursue an administrative remedy before
18 seeking a remedy in the courts of this state.

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H-5791

Amend Senate File 2217 as follows:

1. By striking everything after the enacting clause and inserting in lieu thereof the following:

"Section 1. PROPOSED SCHEDULE OF CIVIL PENALTIES--MINOR VIOLATIONS--DEPARTMENT OF WATER, AIR AND WASTE MANAGEMENT.

1. The water, air and waste management commission shall provide a schedule or range of civil penalties which may be administratively assessed. The proposed schedule shall be delivered to the speaker of the house of representatives and the president of the senate who shall forward the proposed schedule to the appropriate standing committees of the two houses for legislative consideration. The proposed schedule or range of civil penalties shall provide procedures and criteria for the administrative assessment of penalties of not more than one thousand dollars for minor violations of chapter 455B or rules, permits or orders adopted or issued under chapter 455B. In drafting the proposed schedule or range of penalties, the commission and the executive director shall consider among other relevant factors the following:

- a. The costs saved or likely to be saved by noncompliance by a violator.
- b. The gravity of the violation.
- c. The degree of culpability of a violator.
- d. The maximum penalty authorized for that violation under chapter 455B.

2. The water, air and waste management commission shall include a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action."

3. Amend the title, by striking lines 1 through 3 and inserting in lieu thereof the following: "An Act relating to a proposed schedule of civil penalties for minor violations of chapter 455B."

H-5791 FILED MARCH 22, 1984 BY SCHNEKLOTH of Scott

Law 3/29 (p. 1484)

SENATE FILE 2217

AN ACT

ESTABLISHING UNIFORM ENFORCEMENT REMEDIES FOR THE DEPARTMENT OF WATER, AIR AND WASTE MANAGEMENT, AND IMPOSING CIVIL PENALTIES.

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

Section 1. NEW SECTION. 455B.109 SCHEDULE OF FINES-- MINOR VIOLATIONS.

1. The commission may establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than one thousand dollars for minor violations of this chapter or rules, permits or orders adopted or issued under this chapter. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and executive director shall consider among other relevant factors the following:

a. The costs saved or likely to be saved by noncompliance by the violator.

- b. The gravity of the violation.
- c. The degree of culpability of the violator.
- d. The maximum penalty authorized for that violation under this chapter.

Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Major violations, violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under this subsection.

2. If the commission establishes a schedule for minor violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

3. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

4. All civil penalties assessed by the department and interest on the penalties shall be deposited in the general fund of the state.

5. This section does not require the commission or the executive director to pursue an administrative remedy before seeking a remedy in the courts of this state.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2217, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved April 30, 1984

TERRY E. BRANSTAD
Governor