

3/31/93 Environment (Senate)
4/2/93 Senate - General Base of S. 3471

MAR 1 1993

HOUSE FILE **331**

Place On Calendar

BY COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

(SUCCESSOR TO HSB 119)

Passed House, ^(P. 1946) Date 3/31/93 Passed Senate, Date 4/30/93 (p. 1561)
Vote: Ayes 63 Nays 37 Vote: Ayes 50 Nays 0
Approved May 19, 1993

Repassed 5/1/93 P. 1946
(P. 1946) A BILL FOR

1 An Act authorizing compliance with federal air quality
2 regulations and creating penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 331

1 Section 1. Section 455B.103A, subsection 1, unnumbered
2 paragraph 1, and subsection 5, Code 1993, are amended to read
3 as follows:

4 If a permit is required pursuant to this chapter for
5 stormwater discharge or an air contaminant source and a
6 facility to be permitted is representative of a class of
7 facilities which could be described and conditioned by a
8 single permit, the director may issue, modify, deny, or revoke
9 a general permit for all of the following conditions:

10 5. The enforcement provisions of division II of this
11 chapter apply to general permits for air contaminant sources.

12 The enforcement provisions of division III, part 1 of this
13 chapter, apply to general permits for stormwater discharge.

14 Sec. 2. Section 455B.131, Code 1993, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 9A. "Potential to emit" means the maximum
17 capacity of a stationary source to emit a pollutant under its
18 physical and operational design as defined in rules adopted by
19 the department.

20 Sec. 3. Section 455B.133, subsections 3 and 8, Code 1993,
21 are amended to read as follows:

22 3. Adopt, amend, or repeal ambient air quality standards
23 for the atmosphere of this state on the basis of providing air
24 quality necessary to protect the public health and welfare and
25 to reduce emissions contributing to acid rain pursuant to
26 Title IV of the federal Clean Air Act Amendments of 1990.

27 8. a. Adopt rules consistent with the federal Clean Air
28 Act Amendments of 1990, Pub. L. No. 101-549, which require the
29 owner or operator of an air contaminant source to obtain an
30 operating permit prior to operation of the source. The rules
31 shall specify the information required to be submitted with
32 the application for a permit and the conditions under which a
33 permit may be granted, modified, suspended, terminated,
34 revoked, reissued, or denied. For sources subject to the
35 provisions of Title IV of the federal Clean Air Act Amendments

1 of 1990, permit conditions shall include emission allowances
2 for sulfur dioxide emissions. The commission may impose fees,
3 including fees upon regulated pollutants emitted from an air
4 contaminant source, in an amount sufficient to cover all
5 reasonable costs, direct and indirect, required to develop and
6 administer the permit program in conformance with the federal
7 Clean Air Act Amendments of 1990, Pub. L. No. 101-549. ~~in the~~
8 ~~case-of-affected-sources-and-affected~~ Affected units regulated
9 under Title IV of the federal Clean Air Act Amendments of
10 1990, Pub. L. No. 101-549, ~~such-fees-shall-be-collected-only~~
11 ~~as-provided-in-and-upon-submission-of-an-application-pursuant~~
12 ~~to shall pay~~ operating permit fees in the same manner as other
13 sources subject to operating permit requirements, except as
14 provided in section 408 of the federal Act. The fees
15 collected pursuant to this subsection shall be deposited in
16 the air contaminant source fund created pursuant to section
17 455B.133B, and shall be utilized solely to cover all
18 reasonable costs required to develop and administer the
19 programs required by Title V of the federal Clean Air Act
20 Amendments of 1990, Pub. L. No. 101-549, including the permit
21 program pursuant to section 502 of the federal Act and the
22 small business stationary source technical and environmental
23 assistance program pursuant to section 507 of the federal Act.

24 b. Adopt rules allowing the department to issue a state
25 operating permit to an owner or operator of an air contaminant
26 source. The state operating permit granted under this
27 paragraph may only be issued at the request of an air
28 contaminant source and will be used to limit its potential to
29 emit to less than one hundred tons per year of a criteria
30 pollutant as defined by the United States environmental
31 protection agency or ten tons per year of a hazardous air
32 pollutant or twenty-five tons of any combination of hazardous
33 air pollutants.

34 Sec. 4. Section 455B.134, subsection 3, paragraph e, Code
35 1993, is amended to read as follows:

1 e. A regulated air contaminant source for which a
2 construction permit or conditional permit has been issued
3 shall not be operated unless an operating permit also has been
4 issued for the source. However, if the facility was in
5 compliance with permit conditions prior to the requirement for
6 an operating permit and has made timely application for an
7 operating permit, the facility may continue operation until
8 the operating permit is issued or denied. Operating permits
9 shall contain the requisite conditions and compliance
10 schedules to ensure conformance with state and federal
11 requirements including emission allowances for sulfur dioxide
12 emissions for sources subject to Title IV of the federal Clean
13 Air Act Amendments of 1990. If construction of a new air
14 contaminant source is proposed, the department may issue an
15 operating permit concurrently with the construction permit, if
16 possible and appropriate.

17 Sec. 5. NEW SECTION. 455B.146A CRIMINAL ACTION.

18 1. A person who negligently or knowingly violates any
19 provision of division II of this chapter, any permit, rule,
20 standard, or order issued under division II of this chapter,
21 any condition or limitation included in any permit issued
22 under division II of this chapter, or who negligently or
23 knowingly introduces into the air any pollutant or hazardous
24 substance which the person knew or reasonably should have
25 known could cause personal injury, property damage, or adverse
26 environmental impacts, is guilty of a serious misdemeanor for
27 a negligent violation and is guilty of an aggravated
28 misdemeanor for a knowing violation. A conviction for a
29 negligent violation is punishable by a fine of not more than
30 twenty-five thousand dollars for each day of violation or by
31 imprisonment for not more than one year, or both. If the
32 conviction is for a second or subsequent negligent violation
33 committed by a person under this section, however, the
34 conviction is punishable by a fine of not more than fifty
35 thousand dollars for each day of violation or by imprisonment

1 for not more than two years, or both. A conviction for a
2 knowing violation is punishable by a fine of not more than
3 fifty thousand dollars for each day of violation or by
4 imprisonment for not more than two years, or both. If the
5 conviction is for a second or subsequent knowing violation
6 committed by a person under this section, however, the
7 conviction is punishable by a fine of not more than one
8 hundred thousand dollars for each day of violation or by
9 imprisonment for not more than five years, or both.
10 Notwithstanding sections 137.21, 331.307, and 364.3, and
11 section 903.1, subsection 1, paragraph "a", a city or county
12 which maintains an air pollution control program authorized by
13 a certificate of acceptance under this division may provide
14 criminal penalties consistent with the amount established for
15 such penalties under this section. As used in this section,
16 "hazardous substance" means hazardous substance as defined in
17 section 455B.381 or 455B.411.

18 2. A person who knowingly makes any false statement,
19 representation, or certification in any application, record,
20 report, plan, or other document filed or required to be
21 maintained under division II of this chapter, or by any
22 permit, rule, regulation, or order issued under division II of
23 this chapter or who falsifies, tampers with, or knowingly
24 renders inaccurate any monitoring device or method required to
25 be maintained under division II of this chapter or by any
26 permit, rule, regulation, or order issued under division II of
27 this chapter, is guilty of a misdemeanor punishable by a fine
28 of not more than ten thousand dollars per violation or by
29 imprisonment in the county jail for not more than six months,
30 or by both.

31 Sec. 6. Section 455B.147, subsection 2, Code 1993, is
32 amended by striking the subsection.

33 Sec. 7. NEW SECTION. 455B.150 COMPLIANCE ADVISORY PANEL.

34 A compliance advisory panel shall be created, pursuant to
35 Title V, section 507(e) of the federal Clean Air Act

1 Amendments of 1990, to review and report on the effectiveness
2 of the small business technical assistance program required by
3 the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-
4 549.

5 EXPLANATION

6 This bill provides for the authorization of actions by the
7 department of natural resources necessary to retain delegation
8 of authority to administer the provisions of the federal Clean
9 Air Act as amended to January 1, 1991.

10 The bill provides the department with the authority to
11 issue general permits for air contaminant sources, to adopt,
12 amend, or repeal ambient air quality standards to reduce
13 emissions contributing to acid rain, to adopt rules for permit
14 conditions which include emission allowances for sulfur
15 dioxide emissions, and to create a compliance advisory panel
16 to review and report on the effectiveness of the small
17 business technical assistance program. All of these changes
18 are required by the federal Clean Air Act Amendments of 1990.
19 The bill also allows the department to issue state operating
20 permits to air contaminant source owners and operators.

21 In addition, the bill establishes criminal penalties for
22 negligent or knowing violations related to air pollutants or
23 hazardous substances and authorizes a city or county which
24 maintains an authorized air pollution control program to
25 provide criminal penalties consistent with those established
26 by the department. The bill also eliminates provisions which
27 require departmental action on construction permits within 120
28 days or the granting of the permit takes place by default.

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HOUSE FILE 331
FISCAL NOTE

A fiscal note for House File 331 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 331 authorizes action by the Department of Natural Resources necessary for the State to retain federal delegation of authority to administer the provisions of the federal Clean Air Act.

The bill provides the Department with authority to issue general permits for air contaminant sources, to adopt ambient air quality standards, to adopt rules relating to certain air emissions, and to issue State operating permits to air contaminant source owners and operators.

The bill also creates an advisory panel to review and report on the effectiveness of the Small Business Technical Assistance Program, establishes criminal penalties for negligent or knowing violations related to air pollutants, and eliminates provisions of the Code of Iowa which require Departmental action on construction permits within 120 days.

Fiscal Impact:

The Department estimates that the Compliance Advisory Panel will require State expenditures of \$6,500 in the first year and \$3,250 in future years to cover member per diem and travel. The Department estimates that the remainder of the bill's provision will have no fiscal impact on State revenues or expenditures.

To the extent that this bill requires additional reporting and rule-making by the Department, some expense of State funds would be involved. This amount is estimated to be less than \$20,000.

If the federal Environmental Protection Agency (EPA) were to determine that the State program does not comply with federal requirements, delegation of the program to the State would be withdrawn. The State would lose an annual \$860,000 federal grant for Program operations, the State would save the required annual match of \$281,000 (General Fund), and 25.0 FTE positions would be eliminated. In addition, the federal EPA would take over the Air Toxics Program, which the DNR is presently preparing to administer. The emissions fees charged to run that Program would then be collected by the EPA instead of the DNR. The temporary Air Toxics Fee imposed by the State raises approximately \$600,000 annually, the permanent fee is projected to raise 2 to 3 times that amount.

Source: Department of Natural Resources

(LSB 2011hv, JWR)

FILED MARCH 9, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 331
FISCAL NOTE

REQ. BY SENATOR KERSTEN

A fiscal note for Amendment S-3471 to House File 331 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment S-3471 to House File 331 establishes an Environmental Trust Fund. Moneys currently deposited in the General Fund, as well as moneys received from new fees contained in the bill, would be deposited in the Fund. The Fund would be used by the Department of Natural Resources (DNR) to provide partial funding for administration and enforcement of the State's environmental programs. The Fund would be separated into air quality, water supply, water quality, and solid waste accounts.

The bill provides that administrative and civil fines collected from violators of environmental laws would be deposited in the present Hazardous Substance Remedial Fund. The bill also eliminates the Emergency Response Fund and alters the uses of the Hazardous Substance Remedial Fund.

Fiscal Effect:

Provisions of the bill which redirect current fee receipts from the General Fund to the new Environmental Trust Fund would have an annual negative impact on the General Fund of \$250,000.

Provisions of the bill which create new fees are estimated to generate \$3.0 million per year. The new fees would be paid by businesses, local governments, and private citizens, and would be deposited in the new Environmental Trust Fund.

Provisions of the bill which redirect receipts for current fines and penalties from the General Fund to the Hazardous Substance Remedial Fund would have an annual negative fiscal impact on the General Fund of \$40,000.

The creation of the Environmental Trust Fund would reduce the DNR's need for General Fund dollars in future fiscal years, however, a determination of the amount of the reduction can not be made. The FY 1992 General Fund budget for these areas is \$1.6 million.

The \$250,000 and \$40,000 changes to receipts to the General Fund would occur in FY 1994. The additional revenue generated by the new fees would begin in late FY 1994, as rule making would not be complete until late in the fiscal year. The reduction in the DNR's General Fund budget would not occur until late in FY 1994 also. All changes would be fully implemented in FY 1995.

Source: Department of Natural Resources

(LSB 2011hv.2, JWR)

F. APRIL 14, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 331

H-3164

1 Amend House File 331 as follows:

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

4 "Sec. 101. NEW SECTION. 455B.506. MORATORIUM --
5 HAZARDOUS, TOXIC, AND INFECTIOUS WASTE INCINERATORS.

6 The department of natural resources shall not grant
7 a permit for the construction of a commercial
8 hazardous, toxic, or infectious waste incinerator
9 until such time as the department adopts rules for
10 safe emission standards for air toxics. For the
11 purposes of this section, "incinerator" means and
12 includes any enclosed device using combustion
13 including a boiler, an industrial furnace, a waste-to-
14 energy facility, a kiln, and a cogeneration unit, and
15 "waste" means infectious waste as defined in section
16 455B.501, and toxic or hazardous waste as identified
17 and included in the consolidated chemical list
18 pursuant to Title III of the federal Superfund
19 Amendments and Reauthorization Act of 1986.

20 Sec. ____ . Section 101 of this Act is retroactively
21 applicable to January 1, 1993."

22 2. Title page, by striking line 2 and inserting
23 the following: "regulations, creating penalties, and
24 providing for retroactive applicability".

By HENDERSON of Scott

H-3164 FILED MARCH 2, 1993

WITHDRAWN

3-31-93 (p. 964)

HOUSE FILE 331

H-3184

1 Amend House File 331 as follows:

2 1. Page 1, line 20, by inserting after the figure
3 "3" the following: ", 4, unnumbered paragraph 1,".

4 2. Page 1, by inserting after line 26 the
5 following:

6 "Adopt, amend, or repeal emission limitations or
7 standards relating to the maximum quantities of air
8 contaminants that may be emitted from any air
9 contaminant source. The standards or limitations
10 adopted under this section shall not exceed the
11 standards or limitations promulgated by the
12 administrator of the United States environmental
13 protection agency or the requirements of the federal
14 Clean Air Act as amended through January 1, 1991.
15 This does not prohibit the commission from adopting a
16 standard for a source or class of sources for which
17 the United States environmental protection agency has
18 not promulgated a standard. Notwithstanding the
19 limitations of this unnumbered paragraph regarding the
20 standards or limitations adopted, the commission shall
21 adopt rules by January 1, 1994, establishing interim
22 air toxic standards for new stationary sources and
23 modifications of existing stationary sources which
24 commence emissions on or after July 1, 1993. The
25 commission shall adopt rules for the one hundred
26 eighty-nine toxics listed in the federal Clean Air
27 Act, as amended to January 1, 1991, which shall be
28 based upon the best available control technology for
29 toxics (T-BACT) and shall adopt rules related to the
30 limitations or standards for toxics in addition to
31 those listed in the federal Act which shall be based
32 upon a residual health risks methodology. Following
33 the United States environmental protection agency's
34 adoption of a technology or standard for the one
35 hundred eighty-nine toxics listed in the federal Act,
36 the department shall replace the interim technology
37 requirements with the federal technology requirements.
38 For the purposes of this subsection, "best available
39 control technology for toxics (T-BACT)" means an
40 emission limitation based on the maximum degree of
41 reduction of each toxic air pollutant which the
42 department determines, on a case-by-case basis, is
43 achievable for a facility through application of
44 production processes and available methods, systems,
45 and techniques, taking into account the potency and
46 toxicity of each toxic air pollutant discharged as
47 well as energy, environmental, and economic impacts
48 and other costs. This unnumbered paragraph also does
49 not prohibit the commission from adopting an emission
50 standard or limitation for infectious medical waste

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1 treatment or disposal facilities which exceeds the
 2 standards or limitations promulgated by the
 3 administrator of the United States environmental
 4 protection agency or the requirements of the federal
 5 Clean Air Act as amended through January 1, 1991. The
 6 commission shall not adopt an emission standard or
 7 limitation for infectious medical waste treatment or
 8 disposal facilities prior to January 1, 1995, which
 9 exceeds the standards or limitations promulgated by
 10 the administrator of the United States environmental
 11 protection agency or the requirements of the federal
 12 Clean Air Act, as amended through January 1, 1991, for
 13 a hospital, or a group of hospitals, licensed under
 14 chapter 135B which has been operating an infectious
 15 medical waste treatment or disposal facility prior to
 16 January 1, 1991."

By OSTERBERG of Linn

H-3184 FILED MARCH 5, 1993

*Not germane - Motion to suspend Rules lost
3-31-93 (P.964)*

HOUSE FILE 331

H-3186

1 Amend House File 331 as follows:
 2 1. Page 1, line 5, by inserting after the word
 3 "source" the following: "if the source is a retail
 4 dealer of motor vehicle fuel, as defined in section
 5 214A.1, a dry cleaning facility, a rock quarry, or a
 6 grain elevator".
 7 2. Page 1, line 11, by inserting after the word
 8 "sources" the following: "if the source is a retail
 9 dealer of motor vehicle fuel, as defined in section
 10 214A.1, a dry cleaning facility, a rock quarry, or a
 11 grain elevator".

WITHDRAWN

By HOLVECK of Polk

H-3186 FILED MARCH 5, 1993

WITHDRAWN
3-31-93

HOUSE FILE 331

H-3187

1 Amend House File 331 as follows:
 2 1. Page 1, by striking lines 1 through 13.
 3 2. By renumbering as necessary.

Lost 3/31/93 (P.960)

By HOLVECK of Polk

H-3187 FILED MARCH 5, 1993

HOUSE FILE 331

H-3188

1 Amend House File 331 as follows:
 2 1. Page 1, line 5, by inserting after the word
 3 "source" the following: "if the source is a retail
 4 dealer of motor vehicle fuel, as defined in section
 5 214A.1, or a dry cleaning facility".
 6 2. Page 1, line 11, by inserting after the word
 7 "sources" the following: "if the source is a retail
 8 dealer of motor vehicle fuel, as defined in section
 9 214A.1, or a dry cleaning facility".

By HOLVECK of Polk

H-3188 FILED MARCH 5, 1993

Lost 3/31/93 (P.961)

HOUSE FILE 331

3471

Amend House File 331, as passed by the House, as follows:

1. Page 1, by inserting before line 1 the following:

"Section 1. Section 9B.1, subsection 8, Code 1993, is amended to read as follows:

8. A person who knowingly and willfully violates a provision of this section is subject to a civil penalty in an amount not to exceed ten thousand dollars. Moneys collected from the penalties imposed shall be deposited in the ~~waste-volume-reduction-and recycling~~ hazardous substance remedial fund established pursuant to section ~~455B.15~~ 455B.423."

2. Page 1, by inserting after line 13, the following:

"Sec. ____ . Section 455B.103A, subsection 4, Code 1993, is amended to read as follows:

4. An applicant to be covered under a general permit shall pay a permit fee, as established by rule of the commission, which is sufficient in the aggregate to defray the costs of the permit program. Moneys collected shall be remitted to the department treasurer of state and deposited in the water quality account of the environmental protection fund created pursuant to section 455B.104.

Sec. ____ . NEW SECTION. 455B.104 ENVIRONMENTAL PROTECTION FUND.

1. An environmental protection fund is created in the state treasury, under the control of the department. All moneys designated in subsection 2 and moneys collected from fees imposed under section 455B.105, and other moneys designated for permit, monitoring, inspection, and enforcement activities related to air quality, water supply, water quality, and solid waste shall be remitted to the treasurer of state, credited to the fund, and used solely for the purposes established in this section. Notwithstanding section 8.33, any unexpended balance in the environmental protection fund at the end of the fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the environmental protection fund shall be credited to the fund or the respective accounts within the fund. All moneys deposited in or credited to the fund shall be used for the purposes established in section 455B.133 and for permit, monitoring, inspection, and enforcement activities related to the management of air quality, the water supply, water quality, and

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1 solid waste.
2 2. The following accounts are created within the
3 environmental protection fund.
4 a. The air quality account.
5 b. The water quality account.
6 c. The water supply account.
7 d. The solid waste account.
8 Moneys shall be credited to and deposited in the
9 air quality account as provided in section 455B.133B.
10 Moneys credited to the fund under section 455B.103A,
11 subsection 4, section 455B.172, subsection 5, section
12 455B.173, subsection 3 relating to disposal systems,
13 and section 455B.278, with the exception of water use
14 and allocation permit fees, shall be deposited in the
15 water quality account. Moneys credited to the fund
16 under section 455B.173, subsection 3, relating to
17 water supplies, and sections 455B.190A, 455B.221, and
18 455B.278 relating to water use and allocation shall be
19 deposited in the water supply account. Moneys shall
20 be credited and deposited in the solid waste account
21 as provided in section 455B.304, and section 455E.11,
22 subsection 2, paragraph "a". Moneys in the air
23 quality account shall be used for the purposes
24 established in section 455B.133, and for permit,
25 monitoring, inspection, and enforcement activities of
26 the air quality program. Moneys in each of the other
27 accounts shall be used for permit, monitoring,
28 inspection, and enforcement activities in each
29 respective program. Notwithstanding section 8.33, any
30 unexpended balances in the accounts within the
31 environmental protection fund at the end of each
32 fiscal year shall be retained in the respective
33 accounts within the fund. Notwithstanding section
34 12C.7, subsection 2, interest or earnings on
35 investments or time deposits of the moneys in any of
36 the accounts within the environmental protection fund
37 shall be credited to the respective accounts within
38 the fund. The purposes for which money in any of the
39 accounts may be used shall include payments of salary
40 and support for additional full-time equivalent
41 positions in the department.
42 3. The commission shall submit an environmental
43 protection fund report, annually, by December 31, to
44 the governor and the general assembly which shall
45 include all of the following:
46 a. A statement of the status of the fund.
47 b. A detailed description of the status and
48 accomplishment of programs funded through the fund.
49 c. Recommendations for the uses of the moneys in
50 the fund in the subsequent fiscal year.

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1 d. A summary of the status of rules regarding
2 permit fees including a summary of rules proposed,
3 rules proposed and not yet adopted, and rules adopted.

4 Sec. _____. Section 455B.105, subsection 11, Code
5 1993, is amended to read as follows:

6 11. a. Adopt, by rule, procedures and forms
7 necessary to implement the provisions of this chapter
8 relating to permits, conditional permits, and general
9 permits. The commission ~~may~~ shall also adopt, by
10 rule, a schedule of fees for permit, and conditional
11 permit, and general permit applications and a schedule
12 of fees which may be periodically assessed for
13 administration of permits, and conditional permits,
14 and general permits. In determining the fee
15 schedules, the commission shall consider:

16 (1) The state's reasonable cost of reviewing
17 applications, issuing permits, and conditional
18 permits, and general permits, and checking compliance
19 with the terms of the permits.

20 (2) The relative benefits to the applicant and to
21 the public of permit, and conditional permit, and
22 general permit review, issuance, and monitoring
23 compliance.

24 ~~It is the intention of the legislature that permit~~
25 ~~fees shall not cover any costs connected with~~
26 ~~correcting violation of the terms of any permit and~~
27 ~~shall not impose unreasonable costs on any~~
28 ~~municipality.~~

29 (3) The typical costs of the particular types of
30 projects or activities for which permits, or
31 conditional permits, or general permits are required,
32 ~~provided that in no circumstances shall fees be in~~
33 ~~excess of the actual costs to the department.~~

34 Permit fee revenues shall not exceed the costs of
35 administering the programs during the period covered
36 by the permit, including permit issuance, compliance
37 monitoring, and enforcement activities.

38 b. The fees collected by the department under this
39 subsection shall be remitted to the treasurer of state
40 and credited to the ~~general fund of the state~~
41 environmental protection fund created pursuant to
42 section 455B.104.

43 Sec. _____. Section 455B.109, subsection 4, Code
44 1993, is amended to read as follows:

45 4. All civil penalties assessed by the department
46 and interest on the penalties shall be deposited in
47 the ~~general fund of the state~~ hazardous substance
48 remedial fund created pursuant to section 455B.423."

49 3. Page 2, line 2, by striking the word "may" and
50 inserting the following: "may shall".

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1 4. Page 2, by striking line 16 and inserting the
2 following: "the air contaminant-source quality
3 account of the environmental protection fund created
4 established pursuant to section".

5 5. Page 2, by inserting after line 33 the
6 following:

7 "Sec. ____ . Section 455B.133A, subsection 2, Code
8 1993, is amended to read as follows:

9 2. Moneys collected shall be deposited in the air
10 contaminant-source quality account of the
11 environmental protection fund created established
12 pursuant to section 455B.133B. Notwithstanding
13 section 8.33, any unexpended balance remaining in the
14 fund, which was generated pursuant to this section,
15 shall remain in the fund for the purposes designated
16 under section 455B.133, subsection 8. Notwithstanding
17 section 12C.7, any interest and earnings on
18 investments from moneys in the fund account shall be
19 used for the purposes of the fund account.

20 Sec. ____ . Section 455B.133B, subsection 1, Code
21 1993, is amended to read as follows:

22 1. An air contaminant-source quality account of
23 the environmental protection fund is created in
24 section 455B.104 is established in the office of the
25 treasurer of state under the control of the
26 department. Moneys received from the fees assessed
27 pursuant to sections 455B.133A and 455B.133,
28 subsection 8, shall be deposited in the fund account.
29 Moneys collected pursuant to section 455B.133,
30 subsection 8, shall be used solely to defray the costs
31 related to the permit, monitoring, and inspection
32 program, including the small business stationary
33 source technical and environmental compliance
34 assistance program required pursuant to the federal
35 Clean Air Act Amendments of 1990, sections 502 and
36 507, Pub. L. No. 101-549. Notwithstanding section
37 8.33, any unexpended balance in the fund account at
38 the end of each fiscal year shall be retained in the
39 fund account. Notwithstanding section ~~453-7~~ 12C.7,
40 any interest and earnings on investments from money in
41 the fund account shall be credited to the fund
42 account."

43 6. Page 3, by inserting after line 16 the
44 following:

45 "Sec. ____ . Section 455B.146, Code 1993, is amended
46 to read as follows:

47 455B.146 CIVIL ACTION FOR COMPLIANCE -- LOCAL
48 PROGRAM ACTIONS.

49 If any order, permit, or rule of the department is
50 being violated, the attorney general shall, at the

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request of the department or the director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed ten thousand dollars per day for each day such violation continues, or both such injunctive relief and civil penalty. Moneys collected under this section shall be deposited in the hazardous substance remedial fund created pursuant to section 455B.423. Notwithstanding sections 331.302 and 331.307, a city or county which maintains air pollution control programs authorized by certificate of acceptance under this division may provide civil penalties consistent with the amount established for such penalties under this division."

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

"Sec. _____. Section 455B.172, subsection 5, unnumbered paragraph 2, Code 1993, is amended to read as follows:

The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic tanks and pits used to collect waste in livestock confinement structures, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department ~~shall be~~ is exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. The license or license renewal fee is twenty-five dollars and shall be remitted to the treasurer of state, and credited to the water quality account within the environmental protection fund created pursuant to section 455B.104. A person violating this section or the rules adopted pursuant to this section, is subject to a civil penalty of not more than twenty-five dollars. Each day that a violation continues constitutes a separate offense. However, the total civil penalty shall not exceed five hundred dollars per year. The penalty shall be assessed for a violation occurring ten days following written notice

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1 of the violation delivered to the person by the
2 department or a county board of health. Moneys
3 collected by the department or a county board of
4 health from the imposition of civil penalties shall be
5 deposited in the ~~general fund of the state~~ hazardous
6 substance remedial fund created in section 455B.423.

7 Sec. ____ . Section 455B.173, subsection 3,
8 unnumbered paragraph 1, Code 1993, is amended to read
9 as follows:

10 Establish, modify, or repeal rules relating to the
11 location, construction, operation, and maintenance of
12 disposal systems and public water supply systems and
13 specifying the conditions, including the viability of
14 a system pursuant to section 455B.174, under which the
15 director shall issue, revoke, suspend, modify, or deny
16 permits for the operation, installation, construction,
17 addition to, or modification of any disposal system or
18 public water supply system, or for the discharge of
19 any pollutant or for the disposal of water wastes
20 resulting from poultry and livestock operations.
21 Rules establishing permit fees shall be adopted by the
22 commission, pursuant to section 455B.105. Moneys
23 collected shall be remitted to the treasurer of the
24 state and credited to the environmental protection
25 fund created pursuant to section 455B.104. Mon.
26 collected relating to public water supplies shall be
27 credited to the water supply account within the fund,
28 and moneys collected relating to disposal facilities
29 shall be credited to the water quality account within
30 the fund. The rules specifying the conditions under
31 which the director shall issue permits for the
32 construction of an electric power generating facility
33 subject to chapter 476A shall provide for issuing a
34 conditional permit upon the submission of engineering
35 descriptions, flow diagrams and schematics that
36 qualitatively and quantitatively identify effluent
37 streams and alternative disposal systems that will
38 provide compliance with effluent standards or
39 limitations.

40 Sec. ____ . Section 455B.191, Code 1993, is amended
41 by adding the following new subsection:

42 NEW SUBSECTION. 7. All moneys collected under
43 this section shall be deposited in the hazardous
44 substance remedial fund created pursuant to section
45 455B.423.

46 Sec. ____ . Section 455B.221, Code 1993, is amended
47 to read as follows:

48 455B.221 CERTIFICATION AND EXAMINATION FEES.

49 The director commission may charge a fee for
50 certificates issued under this part. The fee for the

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1 certificates and for renewal shall be based on the
2 costs of administering and enforcing this part and
3 paying the expenses of the department relating to
4 certification. The department shall be reimbursed for
5 all costs incurred. The director commission shall set
6 a fee for the examination which shall be based upon
7 the annual cost of administering the examinations.
8 All fees collected shall be remitted to the treasurer
9 of state, ~~who shall deposit the funds in the general~~
10 ~~fund of the state. Funds shall be appropriated from~~
11 ~~the general fund to the department~~ and credited to the
12 water supply account of the environmental protection
13 fund created pursuant to section 455B.104.

14 Sec. _____. Section 455B.224, Code 1993, is amended
15 by adding the following new unnumbered paragraph:
16 NEW UNNUMBERED PARAGRAPH. All moneys collected
17 under this section shall be deposited in the hazardous
18 substance remedial fund created pursuant to section
19 455B.423.

20 Sec. _____. Section 455B.278, subsection 1, Code
21 1993, is amended to read as follows:

22 1. The commission shall adopt, modify, or repeal
23 rules establishing procedures by which permits
24 required under this part shall be issued, suspended,
25 revoked, modified, or denied. The rules shall include
26 provisions for application, establishment of permit
27 fees, public notice and opportunity for public
28 hearing, and contested cases. Public notice of a
29 decision by the director to issue a permit shall be
30 given in a manner designed to inform persons who may
31 be adversely affected by the permitted project or
32 activity. All permit fees shall be remitted to the
33 treasurer of state and credited to the environmental
34 protection fund created pursuant to section 455B.104.
35 Moneys collected relating to water use and allocations
36 shall be deposited in the water supply account, and
37 all other moneys collected shall be deposited in the
38 water quality account.

39 Sec. _____. Section 455B.279, subsection 2, Code
40 1993, is amended to read as follows:

41 2. A person who violates a provision of this part
42 or a rule or order adopted or promulgated or the
43 conditions of a permit issued pursuant to this part is
44 subject to a civil penalty not to exceed five hundred
45 dollars for each day that a violation occurs. Moneys
46 collected under this section shall be deposited in the
47 hazardous substance remedial fund created pursuant to
48 section 455B.423.

49 Sec. _____. Section 455B.304, subsections 11 and 12,
50 Code 1993, are amended to read as follows:

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1 11. By July 1, 1990, a sanitary landfill disposal
2 project operating with a permit shall have a trained,
3 tested, and certified operator. A certification
4 program including establishment of fees shall be
5 devised or approved by rule of the department. All
6 moneys received under this subsection relating to the
7 certification program shall be remitted to the
8 treasurer of state and credited to the solid waste
9 account within the environmental protection fund
10 created pursuant to section 455B.104.

11 12. The commission shall adopt rules for the
12 certification of operators of solid waste incinerators
13 including establishment of fees. All moneys received
14 under this subsection shall be remitted to the
15 treasurer of state and credited to the solid waste
16 account within the environmental protection fund
17 created pursuant to section 455B.104. The criteria
18 for certification shall include, but is not limited
19 to, an operator's technical competency and operation
20 and maintenance of solid waste incinerators.

21 Sec. ____ . Section 455B.304, Code 1993, is amended
22 by adding the following new subsection:

23 NEW SUBSECTION. 18. The commission shall adopt
24 rules establishing permit fees for the construction
25 and operation of sanitary disposal projects. Moneys
26 collected shall be remitted to the treasurer of state
27 and credited to the solid waste account within the
28 environmental protection fund created pursuant to
29 section 455B.104.

30 Sec. ____ . Section 455B.307, subsection 3, Code
31 1993, is amended to read as follows:

32 3. Any person who violates any provision of part 1
33 of this division or any rule or any order adopted or
34 the conditions of any permit or order issued pursuant
35 to part 1 of this division shall be subject to a civil
36 penalty, not to exceed five thousand dollars for each
37 day of such violation. Moneys collected under this
38 section shall be deposited in the hazardous substance
39 remedial fund created pursuant to section 455B.423.

40 Sec. ____ . Section 455B.307A, subsection 3, Code
41 1993, is amended to read as follows:

42 3. A person who violates this section is subject
43 to a civil penalty not to exceed five hundred dollars
44 for each violation. Moneys collected under this
45 section shall be deposited in the hazardous substance
46 remedial fund created pursuant to section 455B.423.

47 Sec. ____ . Section 455B.316, Code 1993, is amended
48 to read as follows:

49 455B.316 PENALTY.

50 A person who knowingly makes a false statement or

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1 representation in a plan filed pursuant to section
2 455B.306 is guilty of a serious misdemeanor. Moneys
3 collected under this section shall be deposited in the
4 hazardous substance remedial fund created pursuant to
5 section 455B.423.

6 Sec. ____ . Section 455B.340, Code 1993, is amended
7 to read as follows:

8 455B.340 PENALTY.

9 Any A person who violates any provisions of this
10 part 2 of division IV or rules adopted under ~~said~~ this
11 part 2, or any order of the department or director
12 issued pursuant to ~~said~~ this part 2, ~~shall-be~~ is
13 guilty of a serious misdemeanor and, in addition, the
14 person may be enjoined from continuing such violation.
15 Each day of continued violation after notice that a
16 violation is being committed shall constitute a
17 separate violation. Moneys collected under this
18 section shall be deposited in the hazardous substance
19 remedial fund created pursuant to section 455B.423.

20 Sec. ____ . Section 455B.364, Code 1993, is amended
21 to read as follows:

22 455B.364 PENALTY.

23 Any A person violating the provisions of section
24 455B.363, upon conviction, ~~shall-be~~ is guilty of a
25 simple misdemeanor. Moneys collected under this
26 section shall be deposited in the hazardous substance
remedial fund created pursuant to section 455B.423.

The court, in lieu of or in addition to any other
29 sentence imposed, may direct and supervise a labor of
30 litter gathering.

31 Sec. ____ . Section 455B.386, Code 1993, is amended
32 to read as follows:

33 455B.386 NOTIFICATION OF SPILLS -- PENALTY.

34 A person manufacturing, storing, handling,
35 transporting, or disposing of a hazardous substance
36 shall notify the department and the local police
37 department or the office of the sheriff of the
38 affected county of the occurrence of a hazardous
39 condition as soon as possible but not later than six
40 hours after the onset of the hazardous condition or
41 discovery of the hazardous condition. A sheriff or
42 police chief who has been notified of a hazardous
43 condition shall immediately notify the department.
44 The department, upon receiving notice of a hazardous
45 condition, shall immediately notify the operator of
46 any public water supply system or private water supply
47 system which may be affected by the hazardous
48 condition. If requested, a person shall submit within
49 thirty days of the department's request a written
50 report of particulars of the incident. A person

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1 violating this section is subject to a civil penalty
2 of not more than one thousand dollars. All moneys
3 collected under this section shall be deposited in the
4 hazardous substance remedial fund created pursuant to
5 section 455B.423.

6 Sec. _____. Section 455B.417, subsection 3, Code
7 1993, is amended to read as follows:

8 3. A person who violates a provision of this part
9 or a rule, permit, or order adopted or issued under
10 this part is subject to a civil penalty not to exceed
11 ten thousand dollars for each violation. Each day of
12 violation constitutes a separate violation. All
13 moneys collected under this section shall be deposited
14 in the hazardous substance remedial fund created
15 pursuant to section 455B.423.

16 Sec. _____. Section 455B.423, subsection 2, Code
17 1993, is amended to read as follows:

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

20 a. Administrative services for the identification,
21 assessment and cleanup of hazardous waste or hazardous
22 substance disposal sites.

23 b. Payments to other state agencies for services
24 consistent with the management of hazardous waste or
25 hazardous substance disposal sites.

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

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

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

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

46 g. For the administration of the waste tire
47 collection or processing site permit program.

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

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1 h. Administration of the waste reduction
2 assistance program or other activities related to
3 assisting Iowa businesses and industry to reduce,
4 recycle, or otherwise reclaim waste materials
5 generated or processed.

6 At least fifty percent of the fund shall be used
7 for the purposes stated in paragraphs "d" and "e".
8 Twenty percent, up to a maximum of seventy-five
9 thousand dollars, shall be used for the purposes
10 stated in paragraph "h". The remainder shall be used
11 for the purposes stated in paragraphs "a", "b", "c",
12 "f", and "g".

13 Sec. ____ . Section 455B.454, Code 1993, is amended
14 to read as follows:

15 455B.454 PENALTIES.

16 A person required to obtain a site license under
17 this part 6 of division IV who constructs a facility
18 without having first obtained the license is subject
19 to a civil penalty of not more than ten thousand
20 dollars for each violation or for each day of
21 continuing violation. Civil penalties collected
22 pursuant to this subsection shall be forwarded by the
23 clerk of court to the treasurer of state for deposit
24 in the general-fund-of-the-state hazardous substance
25 remedial fund created pursuant to section 455B.423.

26 Sec. ____ . Section 455B.466, Code 1993, is amended
to read as follows:

27 455B.466 CIVIL PENALTIES.

28 A person who violates a provision of this part is
29 subject to a civil penalty of not more than ten
30 thousand dollars for each violation and for each day
31 of continuing violation. Civil penalties collected
32 pursuant to this section shall be forwarded by the
33 clerk of the district court to the treasurer of state
34 for deposit in the general-fund-of-the-state hazardous
35 substance remedial fund created pursuant to section
36 455B.423.

37 Sec. ____ . Section 455B.477, subsection 7, Code
38 1993, is amended to read as follows:

39 7. The civil-penalties-or-other damages or-moneys
40 recovered by the state or the petroleum underground
41 storage tank fund in connection with a petroleum
42 underground storage tank under this part of this
43 division or chapter 455G shall be credited to the fund
44 created in section 455G.3 and allocated between fund
45 accounts according to the fund budget. Any federal
46 moneys, including but not limited to federal
47 underground storage tank trust fund moneys, received
48 by the state or the department of natural resources in
49 connection with a release occurring on or after May 5,
50

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1 1989, or received generally for underground storage
2 tank programs on or after May 5, 1989, shall be
3 credited to the fund created in section 455G.3 and
4 allocated between fund accounts according to the fund
5 budget, unless such use would be contrary to federal
6 law. The department shall cooperate with the board of
7 the Iowa comprehensive petroleum underground storage
8 tank fund to maximize the state's eligibility for and
9 receipt of federal funds for underground storage tank
10 related purposes.

11 Sec. _____. Section 455B.477, Code 1993, is amended
12 by adding the following new subsection:

13 NEW SUBSECTION. 8. Penalties collected under this
14 section shall be deposited in the hazardous substance
15 remedial fund created pursuant to section 455B.423.

16 Sec. _____. Section 455E.11, subsection 2, paragraph
17 a, unnumbered paragraph 1, Code 1993, is amended to
18 read as follows:

19 A solid waste account. Moneys received from the
20 tonnage fee imposed under section 455B.310 and from
21 other sources designated for environmental protection
22 purposes in relation to sanitary disposal projects,
23 except for moneys allocated to the department under
24 subsection 2, paragraph "a", subparagraph (8),
25 subparagraph subdivision (b), subparagraph subdivision
26 parts (ii) and (iii) and subsection 2, paragraph "a",
27 subparagraph (11), subparagraph subdivision (a),
28 subparagraph subdivision part (ii) shall be deposited
29 in the solid waste account. Moneys allocated to the
30 department under subsection 2, paragraph "a",
31 subparagraph (8), subparagraph subdivision (b),
32 subparagraph subdivision parts (ii) and (iii) and
33 subsection 2, paragraph "a", subparagraph (11),
34 subparagraph subdivision (a), subparagraph subdivision
35 part (ii) shall be deposited in the solid waste
36 account of the environmental protection fund created
37 pursuant to section 455B.104.

38 Sec. _____. Section 455E.11, subsection 2, paragraph
39 c, unnumbered paragraph 1, Code 1993, is amended to
40 read as follows:

41 A household hazardous waste account. The moneys
42 collected pursuant to section 455F.7 ~~and moneys~~
43 ~~collected pursuant to section 29E-8A~~ which are
44 designated for deposit, shall be deposited in the
45 household hazardous waste account. Two thousand
46 dollars is appropriated annually to the Iowa
47 department of public health to carry out departmental
48 duties under section 135.11, subsections 20 and 21,
49 and section 139.35. The remainder of the account
50 shall be used to fund Toxic Cleanup Days and the

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1 efforts of the department to support a collection
 2 system for household hazardous materials, including
 3 public education programs, training, and consultation
 4 of local governments in the establishment and
 5 operation of permanent collection systems, and the
 6 management of collection sites, education programs,
 7 and other activities pursuant to chapter 455F,
 8 including the administration of the household
 9 hazardous materials permit program by the department
 10 of revenue and finance.

11 Sec. ____ . NEW SECTION. 716B.6 DEPOSIT OF MONEYS
 12 COLLECTED.

13 Moneys collected under sections 716B.2, 716B.3, and
 14 716B.4 shall be forwarded to the treasurer of state
 15 for deposit in the hazardous substance remedial fund
 16 created pursuant to section 455B.423.

17 Sec. ____ . Section 29C.8A, Code 1993, is repealed."

18 8. Title page, line 1, by inserting after the
 19 word "Act" the following: "relating to environmental
 20 protection by establishing an environmental protection
 21 fund and".

22 9. By renumbering as necessary.

By COMMITTEE ON ENVIRONMENT AND
 ENERGY UTILITIES
 RALPH ROSENBERG, Chairperson

S-3471 FILED APRIL 8, 1993

WITHDRAWN

HOUSE FILE 331

S-3691

1 Amend House File 331, as passed by the House, as
 2 follows:

3 1. Page 5, by inserting after line 4 the follow-
 4 ing:

5 "Sec. ____ . NEW SECTION. 455B.192 LOCAL GOVERN-
 6 MENT -- PENALTIES.

7 Notwithstanding sections 331.302, 331.307, 364.3,
 8 and 364.22, a city or county may assess a civil
 9 penalty for a violation of this division which is
 10 equal to the amount the department has assessed for a
 11 violation under this division."

12 2. Title page, line 1, by inserting after the
 13 word "Act" the following: "relating to environmental
 14 protection by".

15 3. Title page, line 2, by inserting after the
 16 word "regulations" the following: ", addressing civil
 17 penalties for local governmental water quality
 18 violations,".

19 4. By renumbering as necessary.

By JEAN LLOYD-JONES

S-3691 FILED APRIL 29, 1993

Adopted 4/30 (p.1501)

HOUSE FILE 331

S-3717

1 Amend House File 331, as passed by the House, as
2 follows:

3 1. Page 1, by inserting after line 13 the
4 following:

5 "Sec. ____ . NEW SECTION. 455B.105A TECHNICAL
6 EVALUATION COUNCIL.

7 1. A technical evaluation council is established,
8 which shall have all of the following goals:

9 a. To augment the limited resources of the
10 department by providing technical expertise from
11 affected communities.

12 b. To increase the acceptability and improve the
13 substance of rules to ensure compliance and to reduce
14 the number of challenges to adopted rules.

15 c. To develop a collaborative process to maintain
16 environmental quality in the areas of water quality,
17 water supply, and solid waste.

18 d. To implement the requirement established
19 pursuant to section 455B.105, subsection 1.

20 2. The council shall offer technical assistance
21 and advice to the department and the environmental
22 protection commission in establishing and implementing
23 programs regarding water quality, water supply, and
24 solid waste. The department shall consult with the
25 technical evaluation council in establishing rules to
26 implement the provisions of this chapter relating to
27 water quality, water supply, and solid waste.

28 3. The council shall consist of the following
29 members:

30 a. One representative of each of the following
31 organizations appointed by each of the organization's
32 governing body:

33 (1) The American public works association, Iowa
34 chapter.

35 (2) The American water works association, Iowa
36 section.

37 (3) The Iowa association of municipal utilities.

38 (4) The Iowa rural water association.

39 (5) The Iowa society of solid waste operators.

40 (6) The Iowa state association of counties.

41 (7) The Iowa water pollution control association.

42 (8) The league of Iowa municipalities.

43 b. Five members appointed by the chairperson of
44 the environmental protection commission, qualified to
45 represent interests which are significantly affected
46 by statutes or rules relating to water quality, water
47 supply, and solid waste, including representatives of
48 environmental organizations.

49 4. Members of the technical evaluation council
50 shall serve without compensation. The terms of the

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1 members shall begin and end as provided in section
2 69.19 and any vacancy shall be filled by the original
3 appointing authority. The terms shall be for four
4 years and shall be staggered as determined by the
5 chairperson of the environmental protection
6 commission. The initial organizational meeting of the
7 technical evaluation council shall be convened by the
8 chairperson of the environmental protection commission
9 and shall be held no later than October 1, 1993.
10 Members of the technical evaluation council shall
11 elect a chairperson, who shall be responsible for
12 convening additional meetings of the council, as
13 necessary."

14 2. By renumbering as necessary.

By JAMES B. KERSTEN

S-3717 FILED APRIL 30, 1993
WITHDRAWN

HOUSE FILE 331

S-3746

1 Amend House File 331, as passed by the House, as
2 follows:

3 1. By striking page 3, line 18 through page 4,
4 line 30 and inserting the following:

5 "1. A person who knowingly violates any provision
6 of division II of this chapter, any permit, rule,
7 standard, or order issued under division II of this
8 chapter, or any condition or limitation included in
9 any permit issued under division II of this chapter,
10 is guilty of an aggravated misdemeanor. A conviction
11 for a violation is punishable by a fine of not more
12 than ten thousand dollars for each day of violation or
13 by imprisonment for not more than two years, or both.
14 If the conviction is for a second or subsequent
15 violation committed by a person under this section,
16 however, the conviction is punishable by a fine of not
17 more than twenty thousand dollars for each day of
18 violation or by imprisonment for not more than four
19 years, or by both.

20 2. a. A person who knowingly makes any false
21 statement, representation, or certification of any
22 application, record, report, plan, or other document
23 filed or required to be maintained under division II
24 of this chapter, or by any permit, rule, standard, or
25 order issued under division II of this chapter or who
26 falsifies, tampers with, or knowingly renders
27 inaccurate any monitoring device or method required to
28 be maintained under division II of this chapter, or by
29 any permit, rule, standard, or order issued under
30 division II of this chapter, or who knowingly fails to
31 notify or report as required by division II of this
32 chapter or by any permit, rule, standard, or order
33 issued under division II of this chapter, or by any
34 condition or limitation included in any permit issued
35 under division II of this chapter, is guilty of an
36 aggravated misdemeanor punishable by a fine of not
37 more than ten thousand dollars per day per violation
38 or by imprisonment for not more than one year, or by
39 both. If the conviction is for a second or subsequent
40 violation committed by a person under this paragraph,
41 however, the conviction is punishable by a fine of not
42 more than twenty thousand dollars for each day of
43 violation or by imprisonment for not more than two
44 years, or by both.

45 b. A person who knowingly fails to pay any fee
46 owed the state under any provision of division II of
47 this chapter, or any permit, rule, standard, or order
48 issued under division II of this chapter, is guilty of
49 an aggravated misdemeanor punishable by a fine of not
50 more than ten thousand dollars per day per violation

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1 or by imprisonment for not more than six months, or by
2 both. If the conviction is for a second or subsequent
3 violation under this paragraph, however, the
4 conviction is punishable by a fine of not more than
5 twenty thousand dollars for each day of violation or
6 by imprisonment for not more than one year, or by
7 both.

8 3. A person who negligently releases into the
9 ambient air any hazardous air pollutant or extremely
10 hazardous substance, and who at the time negligently
11 places another person in imminent danger of death or
12 serious bodily injury shall, upon conviction, be
13 punished by a fine of not more than twenty-five
14 thousand dollars for each day of violation or by
15 imprisonment for not more than one year, or by both.
16 If the conviction is for a second or subsequent
17 negligent violation committed by a person under this
18 section, however, the conviction is punishable by a
19 fine of not more than fifty thousand dollars for each
20 day of violation or by imprisonment for not more than
21 two years, or by both.

22 4. a. A person who knowingly releases into the
23 ambient air any hazardous air pollutant or extremely
24 hazardous substance, and who knows at the time that
25 the conduct places another person in imminent danger
26 of death or serious bodily injury shall, upon
27 conviction, if the person committing the violation is
28 an individual or a government entity, be punished by a
29 fine of not more than fifty thousand dollars per
30 violation or by imprisonment for not more than two
31 years, or by both. However, if the person committing
32 the violation is other than an individual or a
33 government entity, upon conviction the person shall be
34 punished by a fine of not more than one million
35 dollars per violation. If the conviction is for a
36 second or subsequent violation under this paragraph,
37 the conviction is punishable by a fine or
38 imprisonment, or both, as consistent with federal law.

39 b. In determining whether a defendant who is an
40 individual knew that the violation placed another
41 person in imminent danger of death or serious bodily
42 injury the following shall apply:

43 (1) The defendant is deemed to have knowledge only
44 if the defendant possessed actual awareness or held an
45 actual belief.

46 (2) Knowledge possessed by a person other than the
47 defendant, and not by the defendant personally, is not
48 attributable to the defendant. In establishing a
49 defendant's possession of actual knowledge,
50 circumstantial evidence may be used, including

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1 evidence that the defendant took affirmative action to
2 be shielded from relevant information.

3 c. It is an affirmative defense that the conduct
4 was freely consented to by the person endangered and
5 that the danger and conduct were reasonably
6 foreseeable hazards of either of the following:

7 (1) An occupation, a business, or a profession.

8 (2) Medical treatment or medical or scientific
9 experimentation conducted by professionally approved
10 methods if the person was made aware of the risks
11 involved prior to providing consent. An affirmative
12 defense under this subparagraph shall be established
13 by a preponderance of the evidence.

14 d. All general defenses, affirmative defenses, and
15 bars to prosecution that are applicable with respect
16 to other criminal offenses apply under paragraph "a".
17 All defenses and bars to prosecution shall be
18 determined by the courts in accordance with the
19 principles of common law as interpreted, taking into
20 consideration the elements of reason and experience.
21 The concepts of justification and legal excuse, as
22 applicable, may be developed, taking into
23 consideration the elements of reason and experience.

24 e. As used in this subsection, "serious bodily
25 injury" means bodily injury which involves a
26 substantial risk of death, unconsciousness, extreme
27 physical pain, protracted and obvious disfigurement,
28 or protracted loss or impairment of the function of a
29 bodily member, organ, or mental faculty.

30 5. a. Notwithstanding this section, a source
31 required to obtain a permit for construction or
32 modification of a source prior to the date on which
33 the state received delegation of the federal operating
34 permit program which failed to timely file for the
35 permit is subject to the civil penalty for
36 noncompliance in effect at the time.

37 b. This subsection does not provide an exception
38 from application of the penalties established under
39 this section for failure of a person to file a timely
40 and complete application for a federal construction
41 permit.

42 c. This subsection does not provide an exception
43 from application of the penalties established in this
44 section for a person who does not file a timely and
45 complete application for a required permit once
46 notified, in writing, by the department of the
47 noncompliance. A person who does not comply following
48 notification of noncompliance is subject to the
49 criminal penalties established under this section."

By JOE WELSH
HARRY SLIFE

TONY BISIGNANO
JOHN P. KIBBIE

S-3746 FILED APRIL 30, 1993

ADOPTED (p. 1501)

SENATE AMENDMENT TO HOUSE FILE 331

H-4360

1 Amend House File 331, as passed by the House, as
2 follows:

3 1. By striking page 3, line 18 through page 4,
4 line 30 and inserting the following:

5 "1. A person who knowingly violates any provision
6 of division II of this chapter, any permit, rule,
7 standard, or order issued under division II of this
8 chapter, or any condition or limitation included in
9 any permit issued under division II of this chapter,
10 is guilty of an aggravated misdemeanor. A conviction
11 for a violation is punishable by a fine of not more
12 than ten thousand dollars for each day of violation or
13 by imprisonment for not more than two years, or both.
14 If the conviction is for a second or subsequent
15 violation committed by a person under this section,
16 however, the conviction is punishable by a fine of not
17 more than twenty thousand dollars for each day of
18 violation or by imprisonment for not more than four
19 years, or by both.

20 2. a. A person who knowingly makes any false
21 statement, representation, or certification of any
22 application, record, report, plan, or other document
23 filed or required to be maintained under division II
24 of this chapter, or by any permit, rule, standard, or
25 order issued under division II of this chapter or who
26 falsifies, tampers with, or knowingly renders
27 inaccurate any monitoring device or method required to
28 be maintained under division II of this chapter, or by
29 any permit, rule, standard, or order issued under
30 division II of this chapter, or who knowingly fails to
31 notify or report as required by division II of this
32 chapter or by any permit, rule, standard, or order
33 issued under division II of this chapter, or by any
34 condition or limitation included in any permit issued
35 under division II of this chapter, is guilty of an
36 aggravated misdemeanor punishable by a fine of not
37 more than ten thousand dollars per day per violation
38 or by imprisonment for not more than one year, or by
39 both. If the conviction is for a second or subsequent
40 violation committed by a person under this paragraph,
41 however, the conviction is punishable by a fine of not
42 more than twenty thousand dollars for each day of
43 violation or by imprisonment for not more than two
44 years, or by both.

45 b. A person who knowingly fails to pay any fee
46 owed the state under any provision of division II of
47 this chapter, or any permit, rule, standard, or order
48 issued under division II of this chapter, is guilty of
49 an aggravated misdemeanor punishable by a fine of not
50 more than ten thousand dollars per day per violation

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1 or by imprisonment for not more than six months, or by
2 both. If the conviction is for a second or subsequent
3 violation under this paragraph, however, the
4 conviction is punishable by a fine of not more than
5 twenty thousand dollars for each day of violation or
6 by imprisonment for not more than one year, or by
7 both.

8 3. A person who negligently releases into the
9 ambient air any hazardous air pollutant or extremely
10 hazardous substance, and who at the time negligently
11 places another person in imminent danger of death or
12 serious bodily injury shall, upon conviction, be
13 punished by a fine of not more than twenty-five
14 thousand dollars for each day of violation or by
15 imprisonment for not more than one year, or by both.
16 If the conviction is for a second or subsequent
17 negligent violation committed by a person under this
18 section, however, the conviction is punishable by a
19 fine of not more than fifty thousand dollars for each
20 day of violation or by imprisonment for not more than
21 two years, or by both.

22 4. a. A person who knowingly releases into the
23 ambient air any hazardous air pollutant or extremely
24 hazardous substance, and who knows at the time that
25 the conduct places another person in imminent danger
26 of death or serious bodily injury shall, upon
27 conviction, if the person committing the violation is
28 an individual or a government entity, be punished by a
29 fine of not more than fifty thousand dollars per
30 violation or by imprisonment for not more than two
31 years, or by both. However, if the person committing
32 the violation is other than an individual or a
33 government entity, upon conviction the person shall be
34 punished by a fine of not more than one million
35 dollars per violation. If the conviction is for a
36 second or subsequent violation under this paragraph,
37 the conviction is punishable by a fine or
38 imprisonment, or both, as consistent with federal law.

39 b. In determining whether a defendant who is an
40 individual knew that the violation placed another
41 person in imminent danger of death or serious bodily
42 injury the following shall apply:

43 (1) The defendant is deemed to have knowledge only
44 if the defendant possessed actual awareness or held an
45 actual belief.

46 (2) Knowledge possessed by a person other than the
47 defendant, and not by the defendant personally, is not
48 attributable to the defendant. In establishing a
49 defendant's possession of actual knowledge,
50 circumstantial evidence may be used, including

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Page 3

1 evidence that the defendant took affirmative action to
2 be shielded from relevant information.

3 c. It is an affirmative defense that the conduct
4 was freely consented to by the person endangered and
5 that the danger and conduct were reasonably
6 foreseeable hazards of either of the following:

7 (1) An occupation, a business, or a profession.

8 (2) Medical treatment or medical or scientific
9 experimentation conducted by professionally approved
10 methods if the person was made aware of the risks
11 involved prior to providing consent. An affirmative
12 defense under this subparagraph shall be established
13 by a preponderance of the evidence.

14 d. All general defenses, affirmative defenses, and
15 bars to prosecution that are applicable with respect
16 to other criminal offenses apply under paragraph "a".
17 All defenses and bars to prosecution shall be
18 determined by the courts in accordance with the
19 principles of common law as interpreted, taking into
20 consideration the elements of reason and experience.
21 The concepts of justification and legal excuse, as
22 applicable, may be developed, taking into
23 consideration the elements of reason and experience.

24 e. As used in this subsection, "serious bodily
25 injury" means bodily injury which involves a
26 substantial risk of death, unconsciousness, extreme
27 physical pain, protracted and obvious disfigurement,
28 or protracted loss or impairment of the function of a
29 bodily member, organ, or mental faculty.

30 5. a. Notwithstanding this section, a source
31 required to obtain a permit for construction or
32 modification of a source prior to the date on which
33 the state received delegation of the federal operating
34 permit program which failed to timely file for the
35 permit is subject to the civil penalty for
36 noncompliance in effect at the time.

37 b. This subsection does not provide an exception
38 from application of the penalties established under
39 this section for failure of a person to file a timely
40 and complete application for a federal construction
41 permit.

42 c. This subsection does not provide an exception
43 from application of the penalties established in this
44 section for a person who does not file a timely and
45 complete application for a required permit once
46 notified, in writing, by the department of the
47 noncompliance. A person who does not comply following
48 notification of noncompliance is subject to the
49 criminal penalties established under this section."

50 2. Page 5, by inserting after line 4 the follow-

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-3-

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Page 4

1 ing:

2 "Sec. ____ . NEW SECTION. 455B.192 LOCAL GOVERN-
3 MENT -- PENALTIES.4 Notwithstanding sections 331.302, 331.307, 364.3,
5 and 364.22, a city or county may assess a civil
6 penalty for a violation of this division which is
7 equal to the amount the department has assessed for a
8 violation under this division."9 3. Title page, line 1, by inserting after the
10 word "Act" the following: "relating to environmental
11 protection by".12 4. Title page, line 2, by inserting after the
13 word "regulations" the following: ", addressing civil
14 penalties for local governmental water quality
15 violations,".16 5. By renumbering, relettering, or redesignating
17 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-4360 FILED MAY 1, 1993
CONCURRED

(p. 1946)

HOUSE FILE 331

E-4373

1 Amend the Senate amendment, H-4360, to House File
2 331, as passed by the House, as follows:

3 1. Page 1, by inserting after line 2 the
4 following:

5 "_____. Page 1, line 20, by inserting after the
6 figure "3" the following: ", 4, unnumbered paragraph
7 1,".

8 _____. Page 1, by inserting after line 26 the
9 following:

10 "Adopt, amend, or repeal emission limitations or
11 standards relating to the maximum quantities of air
12 contaminants that may be emitted from any air
13 contaminant source. The standards or limitations
14 adopted under this section shall not exceed the
15 standards or limitations promulgated by the
16 administrator of the United States environmental
17 protection agency or the requirements of the federal
18 Clean Air Act as amended through January 1, 1991.
19 This does not prohibit the commission from adopting a
20 standard for a source or class of sources for which
21 the United States environmental protection agency has
22 not promulgated a standard. Notwithstanding the
23 limitations of this unnumbered paragraph regarding the
24 standards or limitations adopted, the commission shall
25 adopt rules by January 1, 1994, establishing interim
26 air toxic standards for new stationary sources and
27 modifications of existing stationary sources which
28 commence emissions on or after July 1, 1993. The
29 commission shall adopt rules for the one hundred
30 eighty-nine toxics listed in the federal Clean Air
31 Act, as amended to January 1, 1991, which shall be
32 based upon the best available control technology for
33 toxics (T-BACT) and shall adopt rules related to the
34 limitations or standards for toxics in addition to
35 those listed in the federal Act which shall be based
36 upon a residual health risks methodology. Following
37 the United States environmental protection agency's
38 adoption of a technology or standard for the one
39 hundred eighty-nine toxics listed in the federal Act,
40 the department shall replace the interim technology
41 requirements with the federal technology requirements.
42 For the purposes of this subsection, "best available
43 control technology for toxics (T-BACT)" means an
44 emission limitation based on the maximum degree of
45 reduction of each toxic air pollutant which the
46 department determines, on a case-by-case basis, is
47 achievable for a facility through application of
48 production processes and available methods, systems,
49 and techniques, taking into account the potency and
50 toxicity of each toxic air pollutant discharged as

E-4373

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Page 2

1 well as energy, environmental, and economic impacts
2 and other costs. This unnumbered paragraph also does
3 not prohibit the commission from adopting an emission
4 standard or limitation for infectious medical waste
5 treatment or disposal facilities which exceeds the
6 standards or limitations promulgated by the
7 administrator of the United States environmental
8 protection agency or the requirements of the federal
9 Clean Air Act as amended through January 1, 1991. The
10 commission shall not adopt an emission standard or
11 limitation for infectious medical waste treatment or
12 disposal facilities prior to January 1, 1995, which
13 exceeds the standards or limitations promulgated by
14 the administrator of the United States environmental
15 protection agency or the requirements of the federal
16 Clean Air Act, as amended through January 1, 1991, for
17 a hospital, or a group of hospitals, licensed under
18 chapter 135B which has been operating an infectious
19 medical waste treatment or disposal facility prior to
20 January 1, 1991."

21 2. By renumbering as necessary.

By CSTERBERG of Linn

H-4373 FILED MAY 1, 1993

WITHDRAWN

5.1-93

(p. 1946)

NSB 119

ENERGY AND ENVIRONMENTAL PROTECTION

HOUSE FILE 331

BY (PROPOSED COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION BILL BY CHAIRPERSON RAFFERTY)

Rafferty, chair
Rants
Henderson

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act authorizing compliance with federal air quality
2 regulations and creating penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 455B.103A, subsection 1, unnumbered
2 paragraph 1, and subsection 5, Code 1993, are amended to read
3 as follows:

4 If a permit is required pursuant to this chapter for
5 stormwater discharge or an air contaminant source and a
6 facility to be permitted is representative of a class of
7 facilities which could be described and conditioned by a
8 single permit, the director may issue, modify, deny, or revoke
9 a general permit for all of the following conditions:

10 5. The enforcement provisions of division II of this
11 chapter apply to general permits for air contaminant sources.

12 The enforcement provisions of division III, part 1 of this
13 chapter, apply to general permits for stormwater discharge.

14 Sec. 2. Section 455B.131, Code 1993, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 9A. "Potential to emit" means the maximum
17 capacity of a stationary source to emit a pollutant under its
18 physical and operational design as defined in rules adopted by
19 the department.

20 Sec. 3. Section 455B.133, subsections 3 and 8, Code 1993,
21 are amended to read as follows:

22 3. Adopt, amend, or repeal ambient air quality standards
23 for the atmosphere of this state on the basis of providing air
24 quality necessary to protect the public health and welfare and
25 to reduce emissions contributing to acid rain pursuant to
26 Title IV of the federal Clean Air Act Amendments of 1990.

27 8. a. Adopt rules consistent with the federal Clean Air
28 Act Amendments of 1990, Pub. L. No. 101-549, which require the
29 owner or operator of an air contaminant source to obtain an
30 operating permit prior to operation of the source. The rules
31 shall specify the information required to be submitted with
32 the application for a permit and the conditions under which a
33 permit may be granted, modified, suspended, terminated,
34 revoked, reissued, or denied. For sources subject to the
35 provisions of Title IV of the federal Clean Air Act Amendments

1 of 1990, permit conditions shall include emission allowances
2 for sulfur dioxide emissions. The commission may impose fees,
3 including fees upon regulated pollutants emitted from an air
4 contaminant source, in an amount sufficient to cover all
5 reasonable costs, direct and indirect, required to develop and
6 administer the permit program in conformance with the federal
7 Clean Air Act Amendments of 1990, Pub. L. No. 101-549. ~~In the~~
8 ~~case of affected sources and affected~~ Affected units regulated
9 under Title IV of the federal Clean Air Act Amendments of
10 1990, Pub. L. No. 101-549, ~~such fees shall be collected only~~
11 ~~as provided in and upon submission of an application pursuant~~
12 to shall pay operating permit fees in the same manner as other
13 sources subject to operating permit requirements, except as
14 provided in section 408 of the federal Act. The fees
15 collected pursuant to this subsection shall be deposited in
16 the air contaminant source fund created pursuant to section
17 455B.133B, and shall be utilized solely to cover all
18 reasonable costs required to develop and administer the
19 programs required by Title V of the federal Clean Air Act
20 Amendments of 1990, Pub. L. No. 101-549, including the permit
21 program pursuant to section 502 of the federal Act and the
22 small business stationary source technical and environmental
23 assistance program pursuant to section 507 of the federal Act.

24 b. Adopt rules allowing the department to issue a state
25 operating permit to an owner or operator of an air contaminant
26 source. The state operating permit granted under this
27 paragraph may only be issued at the request of an air
28 contaminant source and will be used to limit its potential to
29 emit to less than one hundred tons per year of a criteria
30 pollutant as defined by the United States environmental
31 protection agency or ten tons per year of a toxic contaminant
32 or twenty-five tons of any combination of toxic contaminants.

33 Sec. 4. Section 455B.134, subsection 3, paragraph e, Code
34 1993, is amended to read as follows:

35 e. A regulated air contaminant source for which a

1 construction permit or conditional permit has been issued
2 shall not be operated unless an operating permit also has been
3 issued for the source. However, if the facility was in
4 compliance with permit conditions prior to the requirement for
5 an operating permit and has made timely application for an
6 operating permit, the facility may continue operation until
7 the operating permit is issued or denied. Operating permits
8 shall contain the requisite conditions and compliance
9 schedules to ensure conformance with state and federal
10 requirements including emission allowances for sulfur dioxide
11 emissions for sources subject to Title IV of the federal Clean
12 Air Act Amendments of 1990. If construction of a new air
13 contaminant source is proposed, the department may issue an
14 operating permit concurrently with the construction permit, if
15 possible and appropriate.

16 Sec. 5. NEW SECTION. 455B.146A CRIMINAL ACTION.

17 1. A person who negligently or knowingly violates any
18 provision of division II of this chapter, any permit, rule,
19 standard, or order issued under division II of this chapter,
20 any condition or limitation included in any permit issued
21 under division II of this chapter, or who negligently or
22 knowingly introduces into the air any pollutant or hazardous
23 substance which the person knew or reasonably should have
24 known could cause personal injury, property damage, or adverse
25 environmental impacts, is guilty of a serious misdemeanor for
26 a negligent violation and is guilty of an aggravated
27 misdemeanor for a knowing violation. A conviction for a
28 negligent violation is punishable by a fine of not more than
29 twenty-five thousand dollars for each day of violation or by
30 imprisonment for not more than one year, or both. If the
31 conviction is for a second or subsequent negligent violation
32 committed by a person under this section, however, the
33 conviction is punishable by a fine of not more than fifty
34 thousand dollars for each day of violation or by imprisonment
35 for not more than two years, or both. A conviction for a

1 knowing violation is punishable by a fine of not more than
2 fifty thousand dollars for each day of violation or by
3 imprisonment for not more than two years, or both. If the
4 conviction is for a second or subsequent knowing violation
5 committed by a person under this section, however, the
6 conviction is punishable by a fine of not more than one
7 hundred thousand dollars for each day of violation or by
8 imprisonment for not more than five years, or both.
9 Notwithstanding sections 137.21, 331.307, and 364.3, and
10 section 903.1, subsection 1, paragraph "a", a city or county
11 which maintains an air pollution control program authorized by
12 a certificate of acceptance under this division may provide
13 criminal penalties consistent with the amount established for
14 such penalties under this section. As used in this section,
15 "hazardous substance" means hazardous substance as defined in
16 section 455B.381 or 455B.411.

17 2. A person who knowingly makes any false statement,
18 representation, or certification in any application, record,
19 report, plan, or other document filed or required to be
20 maintained under division II of this chapter, or by any
21 permit, rule, regulation, or order issued under division II of
22 this chapter or who falsifies, tampers with, or knowingly
23 renders inaccurate any monitoring device or method required to
24 be maintained under division II of this chapter or by any
25 permit, rule, regulation, or order issued under division II of
26 this chapter, is guilty of a misdemeanor punishable by a fine
27 of not more than ten thousand dollars per violation or by
28 imprisonment in the county jail for not more than six months,
29 or by both.

30 Sec. 6. Section 455B.147, subsection 2, Code 1993, is
31 amended by striking the subsection.

32 Sec. 7. NEW SECTION. 455B.150 COMPLIANCE ADVISORY PANEL.

33 A compliance advisory panel shall be created, pursuant to
34 Title V, section 507(e) of the federal Clean Air Act
35 Amendments of 1990, to review and report on the effectiveness

1 of the small business technical assistance program required by
2 the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-
3 549.

4 EXPLANATION

5 This bill provides for the authorization of actions by the
6 department of natural resources necessary to retain delegation
7 of authority to administer the provisions of the federal Clean
8 Air Act as amended to January 1, 1991.

9 The bill provides the department with the authority to
10 issue general permits for air contaminant sources, to adopt,
11 amend, or repeal ambient air quality standards to reduce
12 emissions contributing to acid rain, to adopt rules for permit
13 conditions which include emission allowances for sulfur
14 dioxide emissions, and to create a compliance advisory panel
15 to review and report on the effectiveness of the small
16 business technical assistance program. All of these changes
17 are required by the federal Clean Air Act Amendments of 1990.
18 The bill also allows the department to issue state operating
19 permits to air contaminant source owners and operators.

20 In addition, the bill establishes criminal penalties for
21 negligent or knowing violations related to air pollutants or
22 hazardous substances and authorizes a city or county which
23 maintains an authorized air pollution control program to
24 provide criminal penalties consistent with those established
25 by the department. The bill also eliminates provisions which
26 require departmental action on construction permits within 120
27 days or the granting of the permit takes place by default.

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HOUSE FILE 331

AN ACT

RELATING TO ENVIRONMENTAL PROTECTION BY AUTHORIZING COMPLIANCE WITH FEDERAL AIR QUALITY REGULATIONS, ADDRESSING CIVIL PENALTIES FOR LOCAL GOVERNMENTAL WATER QUALITY VIOLATIONS, AND CREATING PENALTIES.

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

Section 1. Section 455B.103A, subsection 1, unnumbered paragraph 1, and subsection 5, Code 1993, are amended to read as follows:

If a permit is required pursuant to this chapter for stormwater discharge or an air contaminant source and a facility to be permitted is representative of a class of facilities which could be described and conditioned by a single permit, the director may issue, modify, deny, or revoke a general permit for all of the following conditions:

5. The enforcement provisions of division II of this chapter apply to general permits for air contaminant sources. The enforcement provisions of division III, part 1 of this chapter, apply to general permits for stormwater discharge.

Sec. 2. Section 455B.131, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 9A. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its

physical and operational design as defined in rules adopted by the department.

Sec. 3. Section 455B.133, subsections 3 and 8, Code 1993, are amended to read as follows:

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare and to reduce emissions contributing to acid rain pursuant to Title IV of the federal Clean Air Act Amendments of 1990.

8. a. Adopt rules consistent with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, which require the owner or operator of an air contaminant source to obtain an operating permit prior to operation of the source. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be granted, modified, suspended, terminated, revoked, reissued, or denied. For sources subject to the provisions of Title IV of the federal Clean Air Act Amendments of 1990, permit conditions shall include emission allowances for sulfur dioxide emissions. The commission may impose fees, including fees upon regulated pollutants emitted from an air contaminant source, in an amount sufficient to cover all reasonable costs, direct and indirect, required to develop and administer the permit program in conformance with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. in-the case-of-affected-sources-and-affected Affected units regulated under Title IV of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, such-fees-shall-be-collected-only as-provided-in-and-upon-submission-of-an-application-pursuant to shall pay operating permit fees in the same manner as other sources subject to operating permit requirements, except as provided in section 408 of the federal Act. The fees collected pursuant to this subsection shall be deposited in the air contaminant source fund created pursuant to section 455B.133B, and shall be utilized solely to cover all

reasonable costs required to develop and administer the programs required by Title V of the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, including the permit program pursuant to section 502 of the federal Act and the small business stationary source technical and environmental assistance program pursuant to section 507 of the federal Act.

b. Adopt rules allowing the department to issue a state operating permit to an owner or operator of an air contaminant source. The state operating permit granted under this paragraph may only be issued at the request of an air contaminant source and will be used to limit its potential to emit to less than one hundred tons per year of a criteria pollutant as defined by the United States environmental protection agency or ten tons per year of a hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants.

Sec. 4. Section 455B.134, subsection 3, paragraph e, Code 1993, is amended to read as follows:

e. A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Title IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

Sec. 5. NEW SECTION. 455B.146A CRIMINAL ACTION.

1. A person who knowingly violates any provision of division II of this chapter, any permit, rule, standard, or order issued under division II of this chapter, or any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor. A conviction for a violation is punishable by a fine of not more than ten thousand dollars for each day of violation or by imprisonment for not more than two years, or both. If the conviction is for a second or subsequent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than four years, or by both.

2. a. A person who knowingly makes any false statement, representation, or certification of any application, record, report, plan, or other document filed or required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter, or who knowingly fails to notify or report as required by division II of this chapter or by any permit, rule, standard, or order issued under division II of this chapter, or by any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent violation committed by a person under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

b. A person who knowingly fails to pay any fee owed the state under any provision of division II of this chapter, or any permit, rule, standard, or order issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than six months, or by both. If the conviction is for a second or subsequent violation under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than one year, or by both.

3. A person who negligently releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent negligent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

4. a. A person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who knows at the time that the conduct places another person in imminent danger of death or serious bodily injury shall, upon conviction, if the person committing the violation is an individual or a government entity, be punished by a fine of not more than fifty thousand dollars per violation or by imprisonment for not more than two years, or by both. However, if the person committing the violation is other than an individual or a government entity, upon conviction the person shall be punished by a fine of not more than one million dollars per violation. If the conviction is

for a second or subsequent violation under this paragraph, the conviction is punishable by a fine or imprisonment, or both, as consistent with federal law.

b. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury the following shall apply:

(1) The defendant is deemed to have knowledge only if the defendant possessed actual awareness or held an actual belief.

(2) Knowledge possessed by a person other than the defendant, and not by the defendant personally, is not attributable to the defendant. In establishing a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative action to be shielded from relevant information.

c. It is an affirmative defense that the conduct was freely consented to by the person endangered and that the danger and conduct were reasonably foreseeable hazards of either of the following:

(1) An occupation, a business, or a profession.

(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person was made aware of the risks involved prior to providing consent. An affirmative defense under this subparagraph shall be established by a preponderance of the evidence.

d. All general defenses, affirmative defenses, and bars to prosecution that are applicable with respect to other criminal offenses apply under paragraph "a". All defenses and bars to prosecution shall be determined by the courts in accordance with the principles of common law as interpreted, taking into consideration the elements of reason and experience. The concepts of justification and legal excuse, as applicable, may be developed, taking into consideration the elements of reason and experience.

e. As used in this subsection, "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

5. a. Notwithstanding this section, a source required to obtain a permit for construction or modification of a source prior to the date on which the state received delegation of the federal operating permit program which failed to timely file for the permit is subject to the civil penalty for noncompliance in effect at the time.

b. This subsection does not provide an exception from application of the penalties established under this section for failure of a person to file a timely and complete application for a federal construction permit.

c. This subsection does not provide an exception from application of the penalties established in this section for a person who does not file a timely and complete application for a required permit once notified, in writing, by the department of the noncompliance. A person who does not comply following notification of noncompliance is subject to the criminal penalties established under this section.

Sec. 6. Section 455B.147, subsection 2, Code 1993, is amended by striking the subsection.

Sec. 7. NEW SECTION. 455B.150 COMPLIANCE ADVISORY PANEL.

A compliance advisory panel shall be created, pursuant to Title V, section 507(e) of the federal Clean Air Act Amendments of 1990, to review and report on the effectiveness of the small business technical assistance program required by the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549.

Sec. 8. NEW SECTION. 455B.192 LOCAL GOVERNMENT -- PENALTIES.

Notwithstanding sections 331.302, 331.307, 364.3, and 364.22, a city or county may assess a civil penalty for a

violation of this division which is equal to the amount the department has assessed for a violation under this division.

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 331, Seventy-fifth General Assembly.

Approved May 19, 1993

ELIZABETH ISAACSON
Chief Clerk of the House

TERRY E. BRANSTAD
Governor