

H. 4/16/97 W. & means  
H- 4/22/97 No Pass

SENATE FILE 528  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 188.1)  
(SUCCESSOR TO SF 475)

(AS AMENDED AND PASSED BY THE SENATE APRIL 15, 1997)

- \_\_\_\_\_ - New Language by the Senate
- \* - Language Stricken by the Senate

Passed Senate, Date \_\_\_\_\_ Passed House, Date 4/24/97  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 100 Nays 0  
Approved May 7, 1997

A BILL FOR

- 1 An Act relating to the cleanup and reuse of contaminated
- 2 property, environmental remediation standards and review
- 3 procedures, participation in the remediation of contaminated
- 4 property, liability for the voluntary cleanup of contaminated
- 5 property, liability protections, and establishing a land
- 6 recycling fund.
- 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 528

H-1926

- 1 Amend Senate File 528, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 A 1. Page 25, by striking line 26.
- 4 2. Page 25, by striking line 35 and inserting the
- 5 following:
- 6 B "\_\_\_\_\_. The Iowa groundwater association."
- 7 3. By renumbering, relettering, and redesignating
- 8 as necessary.

By FALLON of Polk

A+B H-1926 FILED APRIL 24, 1997  
LOST  
(P. 1544)

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S.F. 528

REPRINTED

SUBCHAPTER 1

GENERAL PROVISIONS

Section 1. NEW SECTION. 455H.101 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa Land Recycling and Environmental Remediation Standards Act".

Sec. 2. NEW SECTION. 455H.102 SCOPE.

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks in chapter 455B, division IV, part 8; contaminated sites in chapter 455B, division VIII; and groundwater protection in chapter 455E.

Sec. 3. NEW SECTION. 455H.103 DEFINITIONS.

As used in this chapter, unless the context requires otherwise:

1. "Affected area" means any real property affected, suspected of being affected, or modeled to be likely affected by a release occurring at an enrolled site.

2. "Background levels" means concentrations of hazardous substances that are generally present in the environment in the vicinity of an enrolled site or an affected area and not the result of releases at an enrolled site.

3. "Commission" means the environmental protection commission created under section 455A.6.

4. "Department" means the department of natural resources created under section 455A.2.

5. "Director" means the director of the department of natural resources appointed under section 455A.3.

6. "Enrolled site" means any property which has been or is suspected to be the site of or affected by a release and which has been enrolled pursuant to this chapter by a participant.

1 7. "Hazardous substance" has the same meaning as defined  
2 in section 455B.381.

3 8. "Noncancer health risk" means the potential for adverse  
4 systemic or toxic effects caused by exposure to  
5 noncarcinogenic hazardous substances expressed as the hazard  
6 quotient for a hazardous substance. A hazard quotient is the  
7 ratio of the level of exposure of a hazardous substance over a  
8 specified time period to a reference dose for a similar  
9 exposure period.

10 9. "Participant" means any person who enrolls property  
11 pursuant to this chapter.

12 10. "Protected groundwater source" means a saturated bed,  
13 formation, or group of formations which has a hydraulic  
14 conductivity of at least forty-four-hundredths meters per day  
15 and a total dissolved solids concentration of less than two  
16 thousand five hundred milligrams per liter.

17 11. "Protected party" means any of the following:

18 a. A participant, including, but not limited to, a  
19 development authority or fiduciary.

20 b. A person who develops or otherwise occupies an enrolled  
21 site after the issuance of a no further action letter.

22 c. A successor or assignee of a protected party, as to an  
23 enrolled site of a protected party.

24 d. A lender which practices commercial lending including,  
25 but not limited to, providing financial services, holding of  
26 security interests, workout practices, and foreclosure or the  
27 recovery of funds from the sale of an enrolled site.

28 e. A parent corporation or subsidiary of a participant.

29 f. A co-owner or co-operator, either by joint tenancy or a  
30 tenancy in common, or any other party sharing a legal  
31 relationship with the participant.

32 g. A holder of a beneficial interest of a land trust or  
33 inter vivos trust, whether revocable or irrevocable, as to any  
34 interests in an enrolled site.

35 h. A mortgagee or trustee of a deed of trust existing as

1 to an enrolled site as of the date of issuance of a no further  
2 action letter.

3 i. A transferee of the participant whether the transfer is  
4 by assignment, bankruptcy proceeding, partition, dissolution  
5 of marriage, settlement or adjudication of any civil action,  
6 charitable gift, or bequest, in conjunction with the  
7 acquisition of title to the enrolled site.

8 j. An heir or devisee of a participant.

9 12. "Release" means any spilling, leaking, pumping,  
10 pouring, emitting, emptying, discharging, injecting, escaping,  
11 leaching, dumping, or disposing into the environment of a  
12 hazardous substance, including the abandonment or discarding  
13 of barrels, containers, and other closed receptacles  
14 containing any hazardous substance, but excludes all of the  
15 following:

16 a. Any release which results in exposure to persons solely  
17 within a workplace, with respect to a claim which such persons  
18 may assert against the employer of such persons.

19 b. Emissions from the engine exhaust of a motor vehicle,  
20 rolling stock, aircraft, vessel, or pipeline pumping station  
21 engine.

22 c. The release of source, by-product, or special nuclear  
23 material from a nuclear incident, as those terms are defined  
24 in the federal Atomic Energy Act of 1954, if such release is  
25 subject to requirements with respect to financial protection  
26 established by the nuclear regulatory commission under 42  
27 U.S.C. § 2210 or, for the purposes of 42 U.S.C. § 9604 or any  
28 other response action, any release of source, by-product, or  
29 special nuclear material from any processing site designated  
30 under 42 U.S.C. § 7912(a)(1) or 7942(a).

31 d. Any release received by or stored in an anaerobic  
32 lagoon as defined in section 455B.161 or any release received  
33 by or stored in a confinement feeding operation structure as  
34 defined in section 455B.161.

35 13. "Response action" means an action taken to reduce,

1 minimize, eliminate, clean up, control, assess, or monitor a  
2 release to protect the public health and safety or the  
3 environment. "Response action" includes, but is not limited  
4 to, investigation, excavation, removal, disposal, cleansing of  
5 groundwaters or surface waters, natural biodegradation,  
6 institutional controls, technological controls, or site  
7 management practices.

8 14. "Technical advisory committee" means the technical  
9 advisory committee created under section 455H.502.

10 Sec. 4. NEW SECTION. 455H.104 DECLARATION OF POLICY.

11 The general assembly finds and declares all of the  
12 following:

13 1. Some real property in Iowa is not put to its highest  
14 productive use because it is contaminated or it is perceived  
15 to be contaminated as a result of past activity on the  
16 property. The reuse of these sites is an important component  
17 of a sound land-use policy that will prevent the needless  
18 development of prime farmland and open-space and natural  
19 areas, and reduce public expenditures for installing new  
20 infrastructure.

21 2. Incentives should be put in place to encourage capable  
22 persons to voluntarily develop and implement cleanup plans  
23 without the need for adversarial enforcement actions which may  
24 serve to delay cleanups and increase their cost.

25 3. The safe reuse of property should be encouraged and  
26 nurtured with clear, predictable environmental remediation  
27 standards developed through an open process which take into  
28 account the risks associated with any release at the site.  
29 Any remediation standards adopted by this state must provide  
30 for the protection of the public health and safety and the  
31 environment.

32 4. It is necessary for the general assembly to adopt a  
33 statute which establishes environmental remediation standards  
34 to provide a uniform framework for cleanup decisions and to  
35 avoid potentially conflicting and confusing environmental

1 standards.

2 5. Cleanup plans should be based on the actual risk that  
3 contamination on the site may pose to the public health and  
4 safety or the environment, taking into account its current and  
5 probable future use and the degree to which contamination can  
6 spread off-site and expose the public health and safety or the  
7 environment to risk, not on cleanup policies requiring every  
8 site in Iowa to be returned to a pristine condition.

9 Sec. 5. NEW SECTION. 455H.105 DUTIES OF THE COMMISSION.

10 The commission shall do all of the following:

11 1. Adopt rules pertaining to the assessment, evaluation,  
12 and cleanup of the presence of hazardous substances which  
13 allow participants to carry out response actions using  
14 background standards, statewide standards, or site-specific  
15 cleanup standards pursuant to this chapter.

16 2. Adopt rules establishing a program intended to  
17 encourage and enhance assessment, evaluation, and cleanup of  
18 sites which may have been the site of or affected by a  
19 release.

20 3. Adopt rules establishing a program to administer the  
21 land recycling fund established in section 455H.401.

22 4. Adopt rules requiring all participants to submit a site  
23 cleanup assessment to the department prior to the enrollment  
24 of any property. The site cleanup assessment shall be paid  
25 for by the participant and completed by a groundwater  
26 professional certified pursuant to section 455G.18.

27 Sec. 6. NEW SECTION. 455H.106 AUTHORITY OF THE  
28 DEPARTMENT.

29 The department shall do all of the following:

30 1. Enter into agreements or issue orders in connection  
31 with the enrollment of property into a program established  
32 pursuant to this chapter.

33 2. Issue no further action letters upon the demonstration  
34 of compliance with applicable standards for an affected area  
35 by a participant.

1       3. Enter into agreements or issue orders providing for  
2 institutional and technological controls to assure compliance  
3 with applicable standards pursuant to this chapter.

4       Sec. 7. NEW SECTION. 455H.107 LAND RECYCLING PROGRAM.

5       1. A person may enroll property in the land recycling  
6 program pursuant to this chapter to carry out a response  
7 action by providing written notice to the department.

8       2. The department shall enroll all of the following in the  
9 land recycling program:

10      a. A property for which the department has received  
11 written notice of enrollment from a participant.

12      b. A property for which the department has issued an order  
13 to enroll the property agreed to by the participant provided  
14 that the participant has executed a standard agreement with  
15 the department to carry out the response action. This  
16 agreement shall include unlimited access to the enrolled site.

17      3. All participants shall enter into an agreement with the  
18 department to reimburse the department for actual costs  
19 incurred by the department in reviewing documents submitted as  
20 a part of the enrollment of the site. This fee shall not  
21 exceed seven thousand five hundred dollars per enrolled site.

22      4. All of the following shall not be enrolled in the land  
23 recycling program:

24      a. Property for which corrective action has been taken  
25 under chapter 455G.

26      b. Property for which there has been or will be a removal,  
27 remedial action, or response under the federal Comprehensive  
28 Environmental Response, Compensation, and Liability Act, 42  
29 U.S.C. § 9601 et seq.

30      c. Property which has previously been enrolled in the land  
31 recycling program under this chapter.

32      5. If the site cleanup assessment demonstrates that the  
33 release on the enrolled site has affected additional property,  
34 all property, which is shown to be affected by the release on  
35 the enrolled site, shall be enrolled in addition to the

1 enrolled site.

2 6. Following enrollment of the property in the land  
3 recycling program, the participant shall proceed on a timely  
4 basis to carry out response actions in accordance with the  
5 rules implementing this chapter.

6 7. Once the participant has demonstrated the affected area  
7 is in compliance with the standards described in subchapter 2,  
8 the department shall proceed on a timely basis and issue a no  
9 further action letter pursuant to section 455H.302.

10 8. The participant may withdraw the enrolled site from  
11 further participation in the land recycling program at any  
12 time upon written notice to the department. Any participant  
13 who withdraws an enrolled site from further participation in  
14 the program shall not be entitled to any refund or credit for  
15 the enrollment fee paid pursuant to this section.

16 SUBCHAPTER 2

17 RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

18 Sec. 8. NEW SECTION. 455H.201 CLEANUP STANDARDS.

19 1. A participant carrying out a response action shall take  
20 such response actions as necessary to assure that conditions  
21 in the affected area comply with any of the following, as  
22 applicable:

23 a. Background standards established pursuant to section  
24 455H.202.

25 b. Statewide standards established pursuant to section  
26 455H.203.

27 c. Site-specific cleanup standards established pursuant to  
28 section 455H.204.

29 2. A participant may use a combination of these standards  
30 to implement a site remediation plan and may propose to use  
31 the site-specific cleanup standards whether or not efforts  
32 have been made to comply with the background or statewide  
33 standards.

34 3. For the purposes of determining compliance with any one  
35 or a combination of the standards, the concentration of a

1 3. Enter into agreements or issue orders providing for  
2 institutional and technological controls to assure compliance  
3 with applicable standards pursuant to this chapter.

4 Sec. 7. NEW SECTION. 455H.107 LAND RECYCLING PROGRAM.

5 1. A person may enroll property in the land recycling  
6 program pursuant to this chapter to carry out a response  
7 action by providing written notice to the department.

8 2. The department shall enroll all of the following in the  
9 land recycling program:

10 a. A property for which the department has received  
11 written notice of enrollment from a participant.

12 b. A property for which the department has issued an order  
13 to enroll the property agreed to by the participant provided  
14 that the participant has executed a standard agreement with  
15 the department to carry out the response action. This  
16 agreement shall include unlimited access to the enrolled site.

17 3. All participants shall enter into an agreement with the  
18 department to reimburse the department for actual costs  
19 incurred by the department in reviewing documents submitted as  
20 a part of the enrollment of the site. This fee shall not  
21 exceed seven thousand five hundred dollars per enrolled site.

22 4. All of the following shall not be enrolled in the land  
23 recycling program:

24 a. Property for which corrective action has been taken  
25 under chapter 455G.

26 b. Property for which there has been or will be a removal,  
27 remedial action, or response under the federal Comprehensive  
28 Environmental Response, Compensation, and Liability Act, 42  
29 U.S.C. § 9601 et seq.

30 c. Property which has previously been enrolled in the land  
31 recycling program under this chapter.

32 5. If the site cleanup assessment demonstrates that the  
33 release on the enrolled site has affected additional property,  
34 all property, which is shown to be affected by the release on  
35 the enrolled site, shall be enrolled in addition to the

1 enrolled site.

2 6. Following enrollment of the property in the land  
3 recycling program, the participant shall proceed on a timely  
4 basis to carry out response actions in accordance with the  
5 rules implementing this chapter.

6 7. Once the participant has demonstrated the affected area  
7 is in compliance with the standards described in subchapter 2,  
8 the department shall proceed on a timely basis and issue a no  
9 further action letter pursuant to section 455H.302.

10 8. The participant may withdraw the enrolled site from  
11 further participation in the land recycling program at any  
12 time upon written notice to the department. Any participant  
13 who withdraws an enrolled site from further participation in  
14 the program shall not be entitled to any refund or credit for  
15 the enrollment fee paid pursuant to this section.

16 SUBCHAPTER 2

17 RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

18 Sec. 8. NEW SECTION. 455H.201 CLEANUP STANDARDS.

19 1. A participant carrying out a response action shall take  
20 such response actions as necessary to assure that conditions  
21 in the affected area comply with any of the following, as  
22 applicable:

23 a. Background standards established pursuant to section  
24 455H.202.

25 b. Statewide standards established pursuant to section  
26 455H.203.

27 c. Site-specific cleanup standards established pursuant to  
28 section 455H.204.

29 2. A participant may use a combination of these standards  
30 to implement a site remediation plan and may propose to use  
31 the site-specific cleanup standards whether or not efforts  
32 have been made to comply with the background or statewide  
33 standards.

34 3. For the purposes of determining compliance with any one  
35 or a combination of the standards, the concentration of a

1 hazardous substance at the affected area shall not be required  
2 to be less than the practical quantitation limit for the  
3 hazardous substance.

4 4. Until rules setting out requirements for background  
5 standards, statewide standards, or site-specific cleanup  
6 standards are finally adopted by the commission and effective,  
7 participants may utilize site-specific cleanup standards for  
8 any hazardous substance utilizing the procedures set out in  
9 the department's rules implementing risk-based corrective  
10 action for underground storage tanks and, where relevant, the  
11 United States environmental protection agency's guidance  
12 regarding risk assessment for superfund sites.

13 5. The standards may be complied with through a  
14 combination of response actions that may include, but are not  
15 limited to, treatment, removal, technological or institutional  
16 controls, and natural attenuation and other natural  
17 mechanisms, and can include the use of innovative or other  
18 demonstrated measures.

19 Sec. 9. NEW SECTION. 455H.202 BACKGROUND STANDARDS.

20 1. Methods to identify background levels shall be jointly  
21 developed by the department and the technical advisory  
22 committee. The background standard for the affected area  
23 shall be the background levels for the affected area.

24 2. The demonstration that the affected area meets the  
25 background standard shall be documented by the participant in  
26 the following manner:

27 a. Compliance with the background standard shall be  
28 demonstrated by collection and analysis of representative  
29 samples from environmental media of concern.

30 b. A final report that documents compliance with the  
31 background standard shall be submitted to the department and  
32 shall include, as appropriate, all of the following:

33 (1) A description of procedures and conclusions of the  
34 site investigation to characterize the nature, extent,  
35 direction, volume, and composition of hazardous substances.

1 (2) The basis for selecting environmental media of  
2 concern, descriptions of removal or decontamination procedures  
3 performed in remediation, and summaries of sampling  
4 methodology and analytical results which demonstrate that the  
5 background standard has been complied with.

6 (3) The basis for determining the background levels.

7 Sec. 10. NEW SECTION. 455H.203 STATEWIDE STANDARDS.

8 1. Statewide standards shall be jointly developed by the  
9 department and the technical advisory committee.

10 2. In establishing these standards, all of the following  
11 shall be considered:

12 a. Separate standards shall be established for hazardous  
13 substances in soil, in groundwater which is a protected  
14 groundwater source, and in groundwater which is not a  
15 protected groundwater source.

16 b. In groundwater which is a protected groundwater source,  
17 the standards shall be no more protective than the least  
18 restrictive of the maximum contaminant levels established  
19 pursuant to the department's drinking water standards, a  
20 standard reflecting an increased cancer risk of one in one  
21 million, or a standard reflecting a noncancer health risk of  
22 one. An affected area shall not be required to be cleaned up  
23 to concentration levels below or more restrictive than  
24 background levels.

25 c. In groundwater which is not a protected groundwater  
26 source, the standards shall be no more protective than the  
27 least restrictive of a standard reflecting an increased cancer  
28 risk of one in ten thousand or a standard reflecting a  
29 noncancer health risk of one. An affected area shall not be  
30 required to be cleaned up to levels below or more restrictive  
31 than background levels.

32 d. In soil, the standards shall be no more protective than  
33 the least restrictive of a standard reflecting an increased  
34 cancer risk of one in one million or a standard reflecting a  
35 noncancer health risk of one. An affected area shall not be

1 required to be cleaned up to concentration levels below or  
2 more restrictive than background levels.

3 3. The demonstration that the affected area meets the  
4 statewide standard shall be documented by the participant, as  
5 appropriate, in the following manner:

6 a. Compliance with cleanup levels shall be demonstrated by  
7 collection and analysis of representative samples from the  
8 environmental medium of concern.

9 b. A final report that documents compliance with the  
10 statewide standard shall be submitted to the department which  
11 includes, as appropriate, the descriptions of procedures and  
12 conclusions of the site investigation to characterize the  
13 nature, extent, direction, rate of movement at the site and  
14 cumulative effects, if any, volume, composition, and  
15 concentration of hazardous substances in environmental media,  
16 the basis for selecting environmental media of concern,  
17 documentation supporting the selection of residential or  
18 nonresidential exposure factors, descriptions of removal or  
19 treatment procedures performed in remediation, and summaries  
20 of sampling methodology and analytical results which  
21 demonstrate that hazardous substances have been removed or  
22 treated to applicable levels.

23 Sec. 11. NEW SECTION. 455H.204 SITE-SPECIFIC CLEANUP  
24 STANDARDS.

25 1. Procedures to establish site-specific cleanup standards  
26 shall be jointly developed by the department and the technical  
27 advisory committee.

28 2. Site-specific cleanup standards and appropriate  
29 response actions shall take into account all of the following  
30 provided, however, that an affected area shall not be required  
31 to be cleaned up to levels below or more restrictive than  
32 background levels, and in groundwater which is not a protected  
33 groundwater source, to a concentration level which presents an  
34 increased cancer risk of less than one in ten thousand:

35 a. The most appropriate exposure scenarios based on

1 current or probable future residential, commercial,  
2 industrial, or other industry accepted scenarios.

3 b. Exposure pathway characterizations including  
4 contaminant sources, transport mechanisms, and exposure  
5 pathways.

6 c. Affected human or environmental receptors and exposure  
7 scenarios based on current or probable projected use  
8 scenarios.

9 d. Risk-based corrective action assessment principles  
10 which identify risks presented to the public health and safety  
11 or the environment by each released hazardous substance in a  
12 manner that will protect the public health and safety or the  
13 environment using a tiered procedure consistent with the  
14 American society for testing of materials' standards applied  
15 to nonpetroleum and petroleum hazardous substances.

16 e. Other relevant site-specific risk-related factors such  
17 as the feasibility of available technologies, existing  
18 background levels, current and planned future uses,  
19 ecological, aesthetic, and other relevant criteria, and the  
20 applicability and availability of technological and  
21 institutional controls.

22 f. Cleanup shall not be required in an affected area that  
23 does not present any of the following:

24 (1) An increased cancer risk at the point of exposure of  
25 one in one million for residential areas or one in ten  
26 thousand for nonresidential areas.

27 (2) An increased noncancer health risk at the point of  
28 exposure of greater than one.

29 3. The concentration of a hazardous substance in an  
30 environmental medium of concern at an affected area where the  
31 site-specific standard has been selected shall not be required  
32 to meet the site-specific standard if the site-specific  
33 standard is numerically less than the background level. In  
34 such cases, the background level shall apply.

35 4. Any participant electing to comply with site-specific

1 standards established by this section shall submit, as  
2 appropriate, all of the following reports and evaluations for  
3 review and approval by the department:

4 a. A site-specific risk assessment report and a cleanup  
5 plan. The site-specific risk assessment report must include,  
6 as appropriate, all of the following:

7 (1) Documentation and descriptions of procedures and  
8 conclusions from the site investigation to characterize the  
9 nature, extent, direction, rate of movement, volume, and  
10 composition of hazardous substances.

11 (2) The concentration of hazardous substances in  
12 environmental media of concern, including summaries of  
13 sampling methodology and analytical results.

14 (3) A fate and transport analysis to demonstrate that no  
15 exposure pathways exist.

16 If no exposure pathways exist, a risk assessment report and  
17 a cleanup plan are not required and no remedy is required to  
18 be proposed or completed.

19 b. A final report demonstrating compliance with site-  
20 specific cleanup standards has been completed in accordance  
21 with the cleanup plan.

22 c. This section does not preclude a participant from  
23 submitting a site-specific risk assessment report and cleanup  
24 plan at one time to the department for review.

25 5. Upon submission of either a site-specific risk  
26 assessment report or a cleanup plan to the department, the  
27 department shall notify the participant of any deficiencies in  
28 the report or plan in a timely manner.

29 6. Owners and operators of underground storage tanks,  
30 aboveground storage tanks, and pipelines which contain or have  
31 contained petroleum or hazardous substances may, at their  
32 election, utilize compliance with the corrective action rules  
33 issued pursuant to chapter 455B, division IV, part 8, to  
34 satisfy the requirements of this section.

35 Sec. 12. NEW SECTION. 455H.205 VARIANCES.

1 1. A participant may apply to the department for a  
2 variance from any applicable provision of this chapter.

3 2. The department shall issue a variance from applicable  
4 standards only if the participant demonstrates all of the  
5 following:

6 a. The participant demonstrates either of the following:

7 (1) It is technically infeasible to comply with the  
8 applicable standards.

9 (2) The cost of complying with the applicable standards  
10 exceeds the benefits.

11 b. The proposed alternative standard or set of standards  
12 in the terms and conditions set forth in the application will  
13 result in an improvement of environmental conditions in the  
14 affected area and ensure that the public health and safety  
15 will be protected.

16 c. The establishment of and compliance with the  
17 alternative standard or set of standards in the terms and  
18 conditions is necessary to promote, protect, preserve, or  
19 enhance employment opportunities or the reuse of the enrolled  
20 site.

21 3. If requested by a participant, the department shall  
22 issue a variance from any other provision of this chapter if  
23 the department determines that the variance would be  
24 consistent with the declaration of policy of this chapter and  
25 is reasonable under the circumstances.

26 Sec. 13. NEW SECTION. 455H.206 INSTITUTIONAL AND  
27 TECHNOLOGICAL CONTROLS.

28 1. In achieving compliance with the cleanup standards  
29 under this chapter, a participant may use an institutional or  
30 technological control.

31 2. An institutional or technological control includes any  
32 of the following:

33 a. A state or federal law or regulation.

34 b. An ordinance of any political subdivision of the state.

35 c. A contractual obligation recorded and executed in a

1 manner satisfying chapter 558.

2 d. A control which the participant can demonstrate reduces  
3 or manages the risk from a release through the period  
4 necessary to comply with the applicable standards.

5 3. Participants shall obtain an environmental protection  
6 easement which must provide all of the following:

7 a. The easement names this state, acting through the  
8 department of natural resources, as a grantee.

9 b. The easement runs with the land, binding the owner of  
10 the land and the owner's successors and assigns, and shall be  
11 enforceable notwithstanding the lack of privity of estate or  
12 contract or benefit to particular land.

13 c. The easement is recorded in the office of the county  
14 recorder and in any central registry which may be created by  
15 the director.

16 d. The easement limits the use of the property to  
17 industrial or commercial use.

18 4. If the use of an institutional or technological control  
19 is confirmed in a no further action letter issued pursuant to  
20 section 455H.302, the institutional or technological control  
21 may be enforced in district court by the department, a  
22 political subdivision of this state, the participant, or any  
23 successor in interest to the participant.

24 5. An institutional or technological control, except for  
25 an environmental protection easement, may be removed,  
26 discontinued, or terminated by the participant or a successor  
27 in interest to the participant upon a demonstration that the  
28 control no longer is required to assure compliance with the  
29 applicable standard. Upon such a demonstration, the  
30 department shall amend its no further action letter to  
31 eliminate the reference to the no-longer used institutional or  
32 technological control.

33 6. The department may approve the removal, discontinuance,  
34 or termination of an environmental protection easement upon  
35 sufficient demonstration by the owner or the owner's

1 successors and assigns that a voluntary response action has  
2 been taken which resulted in the applicable standards being  
3 significantly exceeded. Upon such a demonstration, the  
4 department shall amend its no further action letter to  
5 eliminate the reference to the environmental protection  
6 easement.

7 Sec. 14. NEW SECTION. 455H.207 RESPONSE ACTION  
8 PERMITTING REQUIREMENTS.

9 1. A participant who would be otherwise required to obtain  
10 a permit, license, plan approval, or other approval from the  
11 department under any provision of the Code may obtain a  
12 consolidated standards permit for the activities in connection  
13 with the response action for which the permit, license, plan  
14 approval, or other approval is required. The consolidated  
15 standards permit shall encompass all the substantive  
16 requirements applicable to those activities under any  
17 applicable federal or state statute, rule, or regulation and  
18 any agreements the director had entered into with the United  
19 States environmental protection agency under those statutes,  
20 rules, or regulations.

21 2. In addition to any other notice requirements of  
22 relevant chapters, at least ten days prior to issuing a permit  
23 under this section, the director shall publish a notice of the  
24 proposed permit which contains a general description of the  
25 activities to be conducted in the affected area under the  
26 permit. The notice shall be published in the official  
27 newspaper, as designated by the county board of supervisors  
28 pursuant to section 349.1, of the county in which the site is  
29 located. A person may submit written or oral comments on or  
30 objections to the permit. After considering the comments and  
31 objections, the director shall approve or deny the application  
32 for the consolidated standards permit.

33 3. A participant issued a consolidated standards permit  
34 under this section in connection with a particular activity is  
35 not required to obtain a permit, license, plan approval, or

1 other approval in connection with any activity under the  
2 applicable provisions of the Code or rules. A participant who  
3 obtains a consolidated standards permit for a particular  
4 activity is deemed to be in compliance with the requirement to  
5 obtain a permit, license, plan approval, or other approval in  
6 connection with the activity under the applicable provisions  
7 of the Code or rules.

8 SUBCHAPTER 3

9 EFFECTS OF PARTICIPATION

10 Sec. 15. NEW SECTION. 455H.301 EFFECTS OF PARTICIPATION  
11 -- GENERALLY.

12 A participant who undertakes a response action pursuant to  
13 this chapter and demonstrates that the affected area complies  
14 with applicable standards is entitled to all of the following:

15 1. A no further action letter issued by the department  
16 pursuant to section 455H.302.

17 2. The benefits of a covenant not to sue arising as  
18 provided in section 455H.303.

19 3. The benefits of the cessation of statutory liability as  
20 provided in section 455H.304.

21 4. The other protections and benefits of this chapter.

22 Sec. 16. NEW SECTION. 455H.302 NO FURTHER ACTION  
23 LETTERS.

24 1. Once a participant demonstrates that an affected area  
25 meets applicable standards, the department shall promptly  
26 issue a no further action letter to the participant.

27 2. The no further action letter must provide that the  
28 participant and the protected parties are not required to  
29 perform any further response action under the chapter or  
30 similar action under any other statute on account of the  
31 conditions addressed by the response action. The no further  
32 action letter shall be invalidated if the department  
33 demonstrates by clear, satisfactory, and convincing evidence  
34 that fraud was committed in demonstrating compliance with a  
35 standard at the affected area that resulted in avoiding the

1 need for further cleanup of the affected area.

2 3. The department shall provide, upon request, a no  
3 further action letter as to the affected area to each  
4 protected party.

5 4. The department shall condition the no further action  
6 letter upon compliance with any institutional or technological  
7 controls relied upon by the participant to demonstrate  
8 compliance with the applicable standards.

9 5. A no further action letter shall be in a form  
10 recordable in county real estate records as provided in  
11 chapter 558.

12 Sec. 17. NEW SECTION. 455H.303 COVENANTS NOT TO SUE.

13 Upon issuance of a no further action letter pursuant to  
14 section 455H.302, a covenant not to sue arises by operation of  
15 law. The covenant releases the participant and each protected  
16 party from all civil liability to the state to perform  
17 additional assessment, remedial activity, response action, or  
18 other activities at the affected area.

19 Sec. 18. NEW SECTION. 455H.304 CESSATION OF STATUTORY  
20 LIABILITY.

21 Upon issuance of the no further action letter pursuant to  
22 section 455H.302, the participant and each protected party  
23 shall no longer have liability to the state or any other  
24 person under chapters 455A, 455B, 455D, 455E, and 455G as to  
25 any condition at the affected area associated with the release  
26 of a hazardous substance which has been the subject of the  
27 response action.

28 Sec. 19. NEW SECTION. 455H.305 LIMITATION OF LIABILITY.

29 1. As used in this section, unless the context requires  
30 otherwise:

31 a. "Environmental harm" means injury, death, loss, or  
32 threatened loss to a person or property caused by exposure to  
33 or the release of a hazardous substance.

34 b. "Environmental claim" means a civil action for damages  
35 for environmental harm and includes a civil action under this

1 chapter for recovery of the costs of conducting a response  
2 action, but does not include a civil action for damages for a  
3 breach of contract or another agreement between persons or for  
4 a breach of a warranty that exists pursuant to the Code or  
5 common law of this state.

6     2. Except as may be required in accordance with  
7 obligations incurred pursuant to participation in the land  
8 recycling program established in this chapter, all of the  
9 following, or any officer or employee thereof, are relieved of  
10 any further liability for any environmental claim resulting  
11 from the presence of hazardous substances at, or the release  
12 of hazardous substances from, an enrolled site where a  
13 response action is being or has been conducted under this  
14 chapter, unless an action or omission of the person, state  
15 agency, political subdivision, or public utility, or an  
16 officer or employee thereof, constitutes willful or wanton  
17 misconduct or intentionally tortious conduct:

18     a. A contractor working for another person in conducting  
19 any response action under this chapter.

20     b. A state agency or political subdivision that is  
21 conducting a voluntary response action or a maintenance  
22 activity on lands, easements, or rights-of-way owned, leased,  
23 or otherwise held by the state agency or political  
24 subdivision.

25     c. A state agency when an officer or employee of the state  
26 agency provides technical assistance to a participant  
27 undertaking a response action under this chapter or rules  
28 adopted pursuant to this chapter, or to a contractor, officer,  
29 or employee of the agency, in connection with the response  
30 action.

31     d. A public utility, as defined in section 476.1, which is  
32 performing work in any of the following:

33         (1) An easement or right-of-way of a public utility across  
34 an affected area where a response action is being or has been  
35 conducted and where the public utility is constructing or has

1 main or distribution lines above or below the surface of the  
2 ground for purposes of maintaining the easement or right-of-  
3 way for construction, repair, or replacement of any of the  
4 following:

5 (a) Main or distribution lines above or below the surface  
6 of the ground.

7 (b) Poles, towers, foundations, or other structures  
8 supporting or sustaining any such lines.

9 (c) Appurtenances to poles, towers, foundations, or other  
10 structures supporting or sustaining any such lines.

11 (2) An affected area where a response action is being  
12 conducted that is necessary to establish or maintain utility  
13 service to the property, including, without limitation, the  
14 construction, repair, or replacement of any of the following:

15 (a) Main or distribution lines above or below the surface  
16 of the ground.

17 (b) Poles, towers, foundations, or other structures  
18 supporting or sustaining any such lines.

19 (c) Appurtenances to poles, towers, foundations, or other  
20 structures supporting or sustaining any such lines.

21 3. This section does not create, and shall not be  
22 construed to create, a new cause of action against or  
23 substantive legal right against a person, state agency,  
24 political subdivision, or public utility, or an officer or  
25 employee thereof.

26 4. This section does not affect, and shall not be  
27 construed as affecting, any immunities from civil liability or  
28 defenses established by another section of the Code or  
29 available at common law, to which a person, state agency,  
30 political subdivision, or public utility, or officer or  
31 employee thereof, may be entitled under circumstances not  
32 covered by this section.

33 Sec. 20. NEW SECTION. 455H.306 PARTICIPATION NOT DEEMED  
34 AN ADMISSION OF LIABILITY.

35 1. Enrolling a site pursuant to this chapter or

1 participating in a response action does not constitute an  
2 admission of liability under the statutes of this state, the  
3 rules adopted pursuant to the statutes, or the ordinances and  
4 resolutions of a political subdivision, or an admission of  
5 civil liability under the Code or common law of this state.

6 2. The fact that a person has become a participant in a  
7 response action under this chapter is not admissible in any  
8 civil, criminal, or administrative proceeding initiated or  
9 brought under any law of this state other than to enforce this  
10 chapter.

11 3. All information, documents, reports, data produced, and  
12 any sample collected as a result of enrolling any property  
13 under this chapter are not admissible against the person  
14 undertaking the response action, and are not discoverable in  
15 any civil or administrative proceeding against the participant  
16 undertaking the response action except in a judicial or  
17 administrative proceeding initiated to enforce this chapter in  
18 connection with an alleged violation thereof. This  
19 prohibition against admissibility does not apply to any person  
20 whose covenant not to sue has been revoked under this chapter.

21 4. Enrolling a site pursuant to this chapter or  
22 participating in a response action shall not be construed to  
23 be an acknowledgment that the conditions at the affected area  
24 identified and addressed by the response action constitute a  
25 threat or danger to public health or safety or the  
26 environment.

27 Sec. 21. NEW SECTION. 455H.307 LIABILITY PROTECTIONS.

28 The protections from liability afforded under this chapter  
29 shall be in addition to the exclusions to any liability  
30 protections afforded participants under any other provision of  
31 the Code.

32 Sec. 22. NEW SECTION. 455H.308 LIABILITY FOR NEW  
33 RELEASE.

34 Protections afforded in this chapter shall not relieve a  
35 person from liability for a release of a hazardous substance

1 occurring at the enrolled site after the issuance of a no  
2 further action letter.

3 SUBCHAPTER 4

4 LAND RECYCLING FUND

5 Sec. 23. NEW SECTION. 455H.401 LAND RECYCLING FUND.

6 1. A land recycling fund is created within the state  
7 treasury under the control of the commission. Moneys received  
8 from fees, general revenue, federal funds, gifts, bequests,  
9 donations, or other moneys so designated shall be deposited in  
10 the fund. Any unexpended balance in the land recycling fund  
11 at the end of each fiscal year shall be retained in the fund,  
12 notwithstanding section 8.33.

13 2. The commission may use the land recycling fund to  
14 provide for all of the following:

15 a. Financial assistance to political subdivisions of the  
16 state for activities related to an enrolled site.

17 b. Financial assistance and incentives for qualifying  
18 enrolled sites.

19 c. Funding for any other purpose consistent with this  
20 chapter and deemed appropriate by the commission.

21 SUBCHAPTER 5

22 MISCELLANEOUS PROVISIONS

23 Sec. 24. NEW SECTION. 455H.501 RULEMAKING.

24 In developing rules to implement this chapter, the  
25 commission shall do all of the following:

26 1. Direct the department to work jointly with the  
27 technical advisory committee.

28 2. Require that by July 1, 1998, the department and the  
29 technical advisory committee submit rules to implement this  
30 chapter and a report describing those rules to the commission.

31 3. Adopt rules to implement and administer this chapter by  
32 October 1, 1998.

33 Sec. 25. NEW SECTION. 455H.502 TECHNICAL ADVISORY  
34 COMMITTEE.

35 1. The technical advisory committee shall consist of a

- 1 representative of each of the following organizations:
- 2 a. The Iowa environmental council.
  - 3 b. The consulting engineers council.
  - 4 c. The Iowa association of business and industry.
  - 5 d. The agribusiness association of Iowa.
  - 6 e. The Iowa league of cities.
  - 7 f. The department of economic development.
  - 8 g. The center for health effects of environmental
  - 9 contamination.
  - 10 h. The Iowa state university of science and technology
  - 11 college of engineering.
  - 12 i. The groundwater professional association.
- 13 2. The technical advisory committee shall do all of the
- 14 following:
- 15 a. Work jointly with the department to develop rules to
  - 16 implement this chapter. The rules shall include, but not be
  - 17 limited to, rules relating to the prioritization of enrolled
  - 18 sites.
  - 19 b. Prepare with the department a joint report by January
  - 20 1, 1998, for the general assembly regarding the status of the
  - 21 rule drafting.
  - 22 c. Prepare a joint report with the department regarding
  - 23 the proposed rules to be submitted to the commission.
  - 24 d. Select a chairperson and vice chairperson from among
  - 25 its members to preside at its meetings.
  - 26 e. Cease functioning once rules fully implementing this
  - 27 chapter are in effect.
- 28 3. The members of the technical advisory committee shall
- 29 be reimbursed for their actual expenses in accordance with
- 30 section 7E.6, subsection 2, for performing the official duties
- 31 of the advisory committee.
- 32 Sec. 26. NEW SECTION. 455H.503 RECORDKEEPING
- 33 REQUIREMENTS.
- 34 The director shall maintain a record of the affected areas
- 35 or portion of affected areas for which no further action

1 letters were issued under section 455H.303 and which involve  
2 institutional or technological controls that restrict the use  
3 of any of the enrolled sites to comply with applicable  
4 standards. The records pertaining to those sites shall  
5 indicate the applicable use restrictions.

6 Sec. 27. NEW SECTION. 455H.504 TRANSFERABILITY OF  
7 PARTICIPATION BENEFITS.

8 A no further action letter, a covenant not to sue, and any  
9 agreement authorized to be entered into and entered into under  
10 this chapter and the rules adopted pursuant to this chapter  
11 may be transferred by the participant or a later recipient to  
12 any other person by assignment or in conjunction with the  
13 acquisition of title to the enrolled site to which the  
14 document applies.

15 Sec. 28. NEW SECTION. 455H.505 EMERGENCY RESPONSE.

16 The provisions of this chapter shall not prevent or impede  
17 the immediate response of the department or a participant to  
18 an emergency which involves an imminent or actual release of a  
19 hazardous substance which threatens public health and safety  
20 or the environment. The emergency response action taken by  
21 the participant shall comply with the provisions of this  
22 chapter and the participant shall not be prejudiced by the  
23 mitigation measures undertaken to that point.

24 Sec. 29. NEW SECTION. 455H.506 INTERIM RESPONSE.

25 The provisions of this chapter shall not prevent or impede  
26 a participant from undertaking mitigation measures to prevent  
27 significant impacts on human health or the environment. A  
28 response action for the site shall not be prejudiced by the  
29 mitigation measures undertaken prior to enrolling a property  
30 in the land recycling program. The effects of any interim  
31 mitigation measure shall be taken into account in the  
32 department's evaluation of the participant's compliance with  
33 applicable standards.

34 Sec. 30. NEW SECTION. 455H.507 TRANSITION FROM EXISTING  
35 PROGRAMS.

1 Except for any enrolled site which is the subject of an  
2 enforcement action by an agency of the state or the federal  
3 government prior to the effective date of this Act, for any  
4 property where actions similar to a response action have  
5 commenced pursuant to any provision of chapter 455B prior to  
6 the effective date of this Act, the person carrying out the  
7 action shall elect within ninety days following the final  
8 adoption of rules implementing this chapter to either continue  
9 to proceed in accordance with the laws and rules in effect  
10 prior to the effective date of this Act or to proceed pursuant  
11 to this chapter.

12 Sec. 31. NEW SECTION. 455H.508 PARTICIPANT SHIELD.

13 A participant shall not be subject to either a civil  
14 enforcement action by an agency of this state or a political  
15 subdivision of this state, or an action filed pursuant to  
16 section 455B.112 regarding any release, response action, or  
17 condition which is the subject of the response action. This  
18 protection is contingent on the participant proceeding on a  
19 due and timely basis to carry out the response action.

20 Sec. 32. NEW SECTION. 455H.509 REMOVAL OF A SITE FROM  
21 THE REGISTRY LISTING.

22 An enrolled site listed on the registry of confirmed  
23 hazardous waste or hazardous substance disposal sites,  
24 established pursuant to section 455B.426, which has completed  
25 a response action as to the conditions which led to its  
26 original listing on the registry, shall be removed from the  
27 registry listing, once a letter of no further action has been  
28 issued pursuant to section 455H.302.

29 Sec. 33. NEW SECTION. 455H.510 RELATIONSHIP TO FEDERAL  
30 PROGRAMS.

31 The provisions of this chapter shall not prevent the  
32 department from enforcing both specific numerical cleanup  
33 standards and monitoring of compliance requirements  
34 specifically required to be enforced by the federal government  
35 as a condition of the receipt of program authorization,

1 delegation, primacy, or federal funds.

2 Sec. 34. NEW SECTION. 455H.511 FEDERAL STRINGENCY.

3 Any rules or standards established pursuant to this chapter  
4 shall be no more stringent than those required under any  
5 comparable federal law or regulation.

6 EXPLANATION

7 This bill creates a new chapter 455H in the Code to be  
8 known as the "Iowa Land Recycling and Environmental  
9 Remediation Standards Act". The chapter is divided into five  
10 subchapters.

11 In subchapter one, the bill states, as a declaration of  
12 policy, all of the following:

13 1. There is real property in Iowa which is contaminated  
14 and which could be cleaned up and reused.

15 2. There should be incentives to encourage the voluntary  
16 cleanup of such property.

17 3. After the remediation of such property, safe reuse of  
18 the property should be encouraged.

19 4. The general assembly needs to address these goals  
20 through legislation.

21 5. Cleanup plans should be based on the actual risk that  
22 contamination on the site may pose to the public health and  
23 safety or the environment, not on cleanup policies which  
24 require every site in Iowa to be returned to a pristine  
25 condition.

26 Under the bill, the environmental protection commission is  
27 required to adopt rules to administer the chapter. The  
28 department of natural resources is required to do all of the  
29 following:

30 1. Enter into agreements or issue orders in connection  
31 with the enrollment of property into a program.

32 2. Issue no further action letters upon the demonstration  
33 of compliance with applicable standards.

34 3. Enter into agreements or issue orders providing  
35 institutional and technological controls to assure compliance

1 with applicable standards.

2 The bill also establishes the land recycling program. Any  
3 person may enroll property in the program to carry out a  
4 response action. The department shall enroll property for  
5 which it has received notification of enrollment. The  
6 department shall also enroll property for which there has been  
7 an agreed-upon order issued, provided that the participant has  
8 executed a standard agreement with the department to carry out  
9 the response action. All participants shall enter into an  
10 agreement with the department to reimburse the department for  
11 actual costs incurred by the department in reviewing documents  
12 submitted as a part of the enrollment of the site, not to  
13 exceed \$7,500 per site. The bill also enumerates certain  
14 properties that shall not be enrolled in the program, and  
15 stipulates when other affected property must be enrolled. The  
16 department shall issue a no further action letter when  
17 compliance is completed. Upon notification by the  
18 participant, an enrolled site may be withdrawn from the  
19 program at any time.

20 In subchapter 2, the bill provides that a participant must  
21 carry out response actions which assure that conditions in the  
22 affected area comply with any of the following standards:  
23 background standards, statewide standards, or site-specific  
24 cleanup standards. All standards are to be jointly developed  
25 by the department and the technical advisory committee. A  
26 participant may use any combination of the standards and may  
27 propose to use the site-specific cleanup standards only.  
28 Until the standards are adopted by the commission, the bill  
29 provides that a participant may use the procedures set out in  
30 the department's rules implementing risk-based corrective  
31 action for underground storage tanks and, where relevant, the  
32 United States environmental protection agency's guidance  
33 regarding risk assessment for superfund sites. The bill  
34 provides for how compliance with these standards will be  
35 documented.

1 The bill provides for factors to be considered in the  
2 development of site-specific cleanup standards, including  
3 exposure scenarios, exposure pathway characterizations, risk-  
4 based corrective action assessment principles, and other  
5 relevant site-specific factors. A variance from an applicable  
6 standard may be granted by the department if the participant  
7 meets certain specified requirements. Institutional and  
8 technological controls may be used by a participant to comply  
9 with cleanup standards. The bill provides that all  
10 participants shall obtain an environmental protection easement  
11 which shall run with the land, be recorded, and limit use of  
12 the property to industrial or commercial use. The bill also  
13 provides that a participant who is otherwise required to  
14 obtain a permit, license, plan approval, or other approval  
15 under the Code may obtain a consolidated standards permit for  
16 which those permits, licenses, plan approvals, or other  
17 approvals are required.

18 In subchapter 3, the bill provides that when a participant  
19 demonstrates that the affected area meets applicable  
20 standards, the department is required to issue a no further  
21 action letter. This letter shall include a statement that no  
22 further response action is necessary. The letter shall be  
23 invalidated if the department demonstrates by clear,  
24 satisfactory, and convincing evidence that fraud was committed  
25 in demonstrating compliance with a standard. Institutional or  
26 technological controls relied upon by the participant shall be  
27 identified in the letter. The letter shall be recorded in the  
28 county real estate records. The participant is entitled to a  
29 covenant not to sue by operation of law upon the issuance of a  
30 no further action letter. A no further action letter also  
31 entitles the participant to a cessation of statutory liability  
32 as to any condition at the affected area associated with the  
33 release of a hazardous substance which has been the subject of  
34 the response action.

35 The bill defines certain liability protections and defines

1 the circumstances under which those protections are not  
2 available. The bill also limits both the admissibility of  
3 participation in a response action and the ability to discover  
4 any information produced during participation in any civil,  
5 criminal, or administrative proceeding.

6 In subchapter 4, the bill establishes a land recycling fund  
7 within the state treasury. The fund shall consist of moneys  
8 received from fees, general revenue, federal funds, gifts,  
9 bequests, donations, or other moneys so designated.  
10 Unexpended balances in the fund at the end of a fiscal year  
11 are retained in the fund. The bill provides that the fund may  
12 be used to provide for all of the following:

13 1. Financial assistance to political subdivisions of the  
14 state for activities related to an enrolled site.

15 2. Financial assistance and incentives for qualifying  
16 enrolled sites.

17 3. Funding for any other purpose consistent with the  
18 chapter.

19 In subchapter 5, the bill establishes the technical  
20 advisory committee and provides that it is to work jointly  
21 with the department to prepare rules to implement the chapter.  
22 Submission to the commission of the rules and a joint report  
23 describing the rules is required by July 1, 1998.

24 The bill includes provisions regarding recordkeeping and  
25 the ability of a recipient to transfer a no further action  
26 letter, a covenant not to sue, and any other agreement entered  
27 into under this chapter. The bill also provides miscellaneous  
28 provisions relating to emergency response, interim response,  
29 transition from existing programs, protection of a participant  
30 from enforcement actions by the state, removal of a site from  
31 the registry of confirmed hazardous waste or hazardous  
32 substance disposal sites listing, the relationship of the  
33 chapter to federal programs and funding, and federal  
34 stringency.

35

## SENATE FILE 528

S-3509

1 Amend Senate File 528 as follows:

2 1. Page 1, line 14, by inserting after the word  
3 "tanks" the following: ", other than petroleum  
4 underground storage tanks,".

5 2. Page 1, by inserting after line 22 the  
6 following:

7 "1A. "Affiliate" means a corporate parent,  
8 subsidiary, or predecessor of a participant, a co-  
9 owner or co-operator of a participant, a spouse,  
10 parent, or child of a participant, an affiliated  
11 corporation or enterprise of a participant, or any  
12 other person substantially involved in the legal  
13 affairs or management of a participant, as defined by  
14 the department."

15 3. Page 1, line 24, by striking the words "that  
16 are" and inserting the following: "naturally  
17 occurring and".

18 4. Page 1, line 26, by striking the words "at an  
19 enrolled site".

20 5. Page 2, line 11, by inserting after the word  
21 "chapter." the following: "A participant is a  
22 participant only to the extent the participant  
23 complies with the requirements of this chapter."

24 6. Page 3, line 4, by inserting after the word  
25 "by" the following: "purchase, eminent domain,".

26 7. Page 3, by inserting after line 8 the  
27 following:

28 "k. A government agency or political subdivision  
29 which acquires an enrolled site through voluntary or  
30 involuntary means, including, but not limited to,  
31 abandonment, tax foreclosure, eminent domain, or  
32 escheat."

33 8. Page 3, by striking lines 31 through 34 and  
34 inserting the following:

35 "d. The use of pesticides in accordance with the  
36 product label."

37 9. Page 4, by striking lines 22 through 24 and  
38 inserting the following: "persons to voluntarily  
39 develop and implement cleanup plans."

40 10. Page 4, lines 25 and 26, by striking the  
41 words "and nurtured with clear, predictable" and  
42 inserting the following: "through the adoption of".

43 11. By striking page 4, line 32, through page 5,  
44 line 8.

45 12. Page 5, by inserting after line 15 the  
46 following:

47 "1A. Adopt rules establishing statewide standards  
48 and criteria for determination of background standards  
49 and site specific cleanup standards."

50 13. Page 5, by striking lines 22 through 26 and

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Page 2

1 inserting the following:  
2 "4. Adopt rules establishing requirements for the  
3 submission, performance, and verification of site  
4 assessments, cleanup plans, and certifications of  
5 completion. The rules shall provide that all site  
6 assessments, cleanup plans, and certifications of  
7 completion submitted by a participant shall be  
8 prepared by or under the supervision of an  
9 appropriately trained professional, including a  
10 groundwater professional certified pursuant to section  
11 455G.18.

12 5. Adopt rules for public notice of the proposed  
13 verification of a certificate of completion by the  
14 department where the certificate of completion is  
15 conditioned on the use of an institutional or  
16 technological control."

17 14. Page 6, by inserting after line 3 the  
18 following:

19 "4. Take actions necessary, including the  
20 revocation, suspension, or modification of permits or  
21 agreements, the issuance of orders, and the initiation  
22 of administrative or judicial proceedings, to enforce  
23 the provisions of this chapter and any agreements,  
24 covenants, easements, or orders issued pursuant to  
25 this chapter."

26 15. Page 6, by striking lines 5 through 16 and  
27 inserting the following:

28 "1. A person may enroll property in the land  
29 recycling program pursuant to this chapter to carry  
30 out a response action in accordance with rules adopted  
31 by the commission which outline the eligibility for  
32 enrollment. The eligibility rules shall reasonably  
33 encourage the enrollment of all sites potentially  
34 eligible to participate under this chapter and shall  
35 not take into account any amounts the department may  
36 be reimbursed under this chapter."

37 16. Page 6, line 21, by inserting after the word  
38 "site." the following: "An agreement entered into  
39 under this subsection must allow the department access  
40 to the enrolled site and must require a demonstration  
41 of the participant's ability to carry out a response  
42 action reasonably associated with the enrolled site."

43 17. Page 6, by striking lines 24 through 29 and  
44 inserting the following:

45 "a. Property for which corrective action is needed  
46 or has been taken for petroleum underground storage  
47 tanks under chapter 455B, division IV, part 8.  
48 However, such property may be enrolled to address  
49 hazardous substances other than petroleum from  
50 underground storage tanks.

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1 b. Property which has been placed or is proposed  
2 to be included on the national priorities list  
3 established pursuant to the federal Comprehensive  
4 Environmental Response, Compensation, and Liability  
5 Act, 42 U.S.C. § 9601 et seq."

6 18. Page 6, by striking lines 30 and 31 and  
7 inserting the following:

8 "c. An animal feeding operation structure as  
9 defined in section 455B.161."

10 19. Page 7, line 15, by inserting after the word  
11 "section" the following: "and shall, subject to the  
12 limitation on fees in subsection 3, be liable for any  
13 costs actually incurred by the department. The  
14 department or court may determine that a participant  
15 who withdraws prior to completion of all response  
16 actions identified for the enrolled site forfeits all  
17 benefits and immunities provided by this chapter as to  
18 the enrolled site. If it is deemed necessary and  
19 appropriate by the department, a participant who  
20 withdraws shall stabilize the enrolled site in  
21 accordance with a plan approved by the department."

22 20. Page 7, by inserting after line 28 the  
23 following:

24 "Any remediation standard which is applied must  
25 provide for the protection of the public health and  
26 safety and the environment."

27 21. By striking page 7, line 34, through page 8,  
28 line 3.

29 22. Page 8, by striking lines 20 through 23 and  
30 inserting the following:

31 "1. Methods to identify background standards shall  
32 be adopted by the commission after consideration of  
33 the joint recommendations of the department and the  
34 technical advisory committee."

35 23. Page 9, by striking lines 8 and 9 and  
36 inserting the following:

37 "1. Statewide standards shall be adopted by the  
38 commission after consideration of the joint  
39 recommendations of the department and the technical  
40 advisory committee. The standards must provide for  
41 the protection of the public health and safety and the  
42 environment."

43 24. Page 10, by striking lines 25 through 27 and  
44 inserting the following:

45 "1. Procedures to establish site-specific cleanup  
46 standards shall be adopted by the commission after  
47 consideration of the joint recommendations of the  
48 department and the technical advisory committee.  
49 Site-specific cleanup standards must provide for the  
50 protection of the public health and safety and the

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1 environment."

2 25. Page 12, line 29, by inserting after the word  
3 "tanks" the following: "other than petroleum  
4 underground storage tanks".

5 26. Page 12, lines 31 and 32, by striking the  
6 words "or hazardous substances may, at their election,  
7 utilize compliance" and inserting the following:

8 "shall comply".

9 27. Page 13, line 3, by striking the word "shall"  
10 and inserting the following: "may".

11 28. Page 13, line 21, by striking the word  
12 "shall" and inserting the following: "may".

13 29. Page 13, line 30, by inserting after the word  
14 "control." the following: "The director may require  
15 reasonable proof of financial assurance where  
16 necessary to assure a technological control remains  
17 effective."

18 30. Page 14, by inserting after line 4 the  
19 following:

20 "e. An environmental protection easement."

21 31. Page 14, by striking lines 5 through 17 and  
22 inserting the following:

23 "3. If the department's determination of  
24 compliance with applicable standards pursuant to  
25 subchapter 3 is conditioned on a restriction in the  
26 use of any real estate in the affected area, the  
27 participant must utilize an institutional control. If  
28 the restriction in use is to limit the use to  
29 nonresidential use, the participant must use an  
30 environmental protection easement as the institutional  
31 control. Environmental protection easements may also  
32 be used to implement other institutional or  
33 technological controls. An environmental protection  
34 easement must be granted by the fee title owners of  
35 the relevant real estate. The participant shall  
36 furnish to the department abstracts of title and other  
37 documents sufficient to enable the department to  
38 determine that the easements will be enforceable. An  
39 environmental protection easement shall be in a form  
40 provided by rule of the department. An environmental  
41 protection easement must provide all of the following:

42 a. The easement names the state, acting through  
43 the department, as grantee.

44 b. The easement identifies the activity either  
45 being restricted or required through the institutional  
46 or technological control.

47 c. The easement runs with the land, binding the  
48 owner of the land and the owner's successors and  
49 assigns.

50 d. The easement shall include an acknowledgment by

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1 the director of acceptance of the easement by the  
2 department.

3 e. The easement is filed in the office of the  
4 recorder of the county in which the real estate is  
5 located and in any central registry which may be  
6 created by the director."

7 32. Page 14, line 23, by inserting after the word  
8 "participant." the following: "An environmental  
9 protection easement granted pursuant to subsection 3  
10 shall be enforceable in perpetuity notwithstanding  
11 sections 614.24 through 614.38. After the recording  
12 of the easement, each instrument transferring an  
13 interest in the area affected by the easement shall  
14 include a specific reference to the recorded easement.  
15 If a transfer instrument fails to include a specific  
16 reference to the recorded easement, the transferor is  
17 not entitled to any of the benefits provided by this  
18 chapter."

19 33. Page 14, line 26, by inserting after the word  
20 "discontinued," the following: "modified,".

21 34. Page 14, by striking lines 29 through 32 and  
22 inserting the following: "applicable standard. Upon  
23 review and approval by the department, the department  
24 shall issue an amendment to its no further action  
25 letter approving the removal, discontinuance,  
26 modification, or termination of an institutional or  
27 technological control which is no longer needed."

28 35. By striking page 14, line 33, through page  
29 15, line 6, and inserting the following:

30 "6. An environmental protection easement granted  
31 pursuant to subsection 3 may be released or amended  
32 only by a release or amendment of the easement  
33 executed by the director and filed with the county  
34 recorder. The department may determine that any  
35 person who intentionally violates an environmental  
36 protection easement or other technological or  
37 institutional control contained in a no further action  
38 letter loses any of the benefits provided by this  
39 chapter as to the affected area. In the event the  
40 technological or institutional controls fail to  
41 achieve compliance with the applicable standards, the  
42 participant shall undertake an additional response  
43 action sufficient to demonstrate to the department  
44 compliance with applicable standards. Failure to  
45 proceed in a timely manner in performing the  
46 additional response action may result in termination  
47 of the participant's enrollment in the land recycling  
48 program."

49 36. Page 15, line 21, by inserting after the word  
50 "notice" the following: "or hearing".

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1 37. Page 16, line 1, by inserting after the word  
2 "approval" the following: "from the department".  
3 38. Page 16, line 5, by inserting after the word  
4 "obtain" the following: "from the department".  
5 39. Page 16, line 7, by inserting after the word  
6 "rules." the following: "A violation of the  
7 conditions of the consolidated standards permit shall  
8 be deemed to be a violation of the applicable statute,  
9 rule, or regulation under which approval of activities  
10 in connection with a response action would have been  
11 required and is subject to enforcement in the same  
12 manner and to the same extent as a violation of the  
13 applicable statute, rule, or regulation would have  
14 been."  
15 40. Page 16, by striking lines 10 through 21.  
16 41. Page 16, line 25, by inserting after the word  
17 "standards" the following: "and the department has  
18 certified that the participant has met all  
19 requirements for completion".  
20 42. By striking page 16, line 27, through page  
21 17, line 1, and inserting the following:  
22 "2. A no further action letter shall state that  
23 the participant and any protected party are not  
24 required to take any further action at the site  
25 related to any hazardous substance for which  
26 compliance with applicable standards is demonstrated  
27 by the participant in accordance with applicable  
28 standards, except for continuing requirements  
29 specified in the no further action letter. If the  
30 participant was a person having control over a  
31 hazardous substance, as that phrase is defined in  
32 section 455B.381, at the time of the release, a no  
33 further action letter may provide that a further  
34 response action may be required, where appropriate, to  
35 protect against an imminent and substantial threat to  
36 public health, safety, and welfare. A protected party  
37 who was a person having control over a hazardous  
38 substance, as that phrase is defined in section  
39 455B.381, at the time of the release, may be required  
40 by the department to conduct a further response  
41 action, where appropriate, to protect against an  
42 imminent and substantial threat to public health,  
43 safety, and welfare.  
44 If a person transfers property to an affiliate in  
45 order for that person or the affiliate to obtain a  
46 benefit to which the transferor would not otherwise be  
47 eligible under this chapter or to avoid an obligation  
48 under this chapter, the affiliate shall be subject to  
49 the same obligations and obtain the same level of  
50 benefits as those available to the transferor under

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1 this chapter.

2 A no further action letter shall be void if the  
3 department demonstrates by clear, satisfactory, and  
4 convincing evidence that any approval under this  
5 chapter was obtained by fraud or material  
6 misrepresentation, knowing failure to disclose  
7 material information, or false certification to the  
8 department."

9 43. Page 17, by striking lines 16 through 18 and  
10 inserting the following: "party from liability to the  
11 state, in the state's capacity as a regulator  
12 administering environmental programs, to perform  
13 additional environmental assessment, remedial  
14 activity, or response action with regard to the  
15 release of a hazardous substance for which the  
16 participant and each protected party has complied with  
17 the requirements of this chapter."

18 44. Page 17, by striking lines 21 through 27 and  
19 inserting the following:

20 "Upon issuance of a no further action letter  
21 pursuant to section 455H.302, except as provided in  
22 that section, the participant and each protected party  
23 shall no longer have liability under chapter 455A,  
24 under chapter 455B other than liability for petroleum  
25 underground storage tanks, or under chapters 455D and  
26 455E to the state or to any other person as to any  
27 condition at the affected area with regard to  
28 hazardous substances for which compliance with  
29 applicable standards was demonstrated by the  
30 participant in accordance with this chapter and for  
31 which the department has provided a certificate of  
32 completion."

33 45. Page 20, line 33, by inserting after the word  
34 "RELEASE" the following: "OR BEYOND AFFECTED AREA".

35 46. Page 21, line 2, by inserting after the word  
36 "letter" the following: "or from liability for any  
37 condition outside the affected area addressed in the  
38 cleanup plan and no further action letter".

39 47. Page 21, by inserting after line 2 the  
40 following:

41 "Sec. \_\_\_\_ . NEW SECTION. 455H.309 RELATIONSHIP TO  
42 FEDERAL LAW.

43 The liability protection and immunities afforded  
44 under this chapter extend only to liability or  
45 potential liability arising under state law. It is  
46 not intended to provide any relief as to liability or  
47 potential liability arising under federal law. This  
48 section shall not be construed as precluding any  
49 agreement with a federal agency by which it agrees to  
50 provide liability protection based on participation

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1 and completion of a cleanup plan under this chapter.  
2 Sec. . NEW SECTION. 455H.310 INCREMENTAL  
3 PROPERTY TAXES.  
4 1. To encourage economic development and the  
5 recycling of contaminated land to promote the purposes  
6 of this chapter, cities and counties may provide by  
7 ordinance that the costs of carrying out response  
8 actions under this chapter are to be reimbursed, in  
9 whole or in part, by incremental property taxes over a  
10 six-year period. A city or county which implements  
11 the option provided for under this section shall  
12 provide that taxes levied on property enrolled in the  
13 land recycling program under this chapter each year by  
14 or for the benefit of the state, city, county, school  
15 district, or other taxing district shall be divided as  
16 provided in section 403.19, subsections 1 and 2, in  
17 the same manner as if the enrolled property was  
18 taxable property in an urban renewal project.  
19 Incremental property taxes collected under this  
20 section shall be placed in a special fund of the city  
21 or county. A participant shall be reimbursed with  
22 moneys from the special fund for costs associated with  
23 carrying out a response action in accordance with  
24 rules adopted by the commission. Beginning in the  
25 fourth of the six years of collecting incremental  
26 property taxes, the city or county shall begin  
27 decreasing by twenty-five percent each year the amount  
28 of incremental property taxes computed under this  
29 section."

30 48. Page 22, by striking line 6 and inserting the  
31 following:

32 "e. An engineer employed by a city or county which  
33 is appointed jointly by the Iowa league of cities and  
34 Iowa state association of counties."

35 49. By renumbering and correcting internal  
36 numbering and references as necessary.

By ALLEN BORLAUG

BILL FINK

PATTY JUDGE

LARRY MCKIBBEN

MERLIN E. BARTZ

DENNIS H. BLACK

S-3509 FILED APRIL 14, 1997

*Adopted 4-15-97 (R1176)*

SENATE FILE 528

S-3513

1 Amend the amendment, S-3509, to Senate File 528 as  
2 follows:

3 1. Page 5, lines 16 and 17, by striking the words  
4 "is not entitled to" and inserting the following:  
5 "may lose".

By ALLEN BORLAUG

BILL FINK

S-3513 FILED APRIL 15, 1997

ADOPTED

*(R1175)*

**SENATE FILE 528  
FISCAL NOTE**

A fiscal note for Senate File 528 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.

Senate File 528 provides for the creation of an Iowa Land Recycling and Environmental Remediation Standards Act, including a Land Recycling Program. The Bill requires rules to be adopted by the Environmental Protection Commission to administer the Bill.

**ASSUMPTIONS**

1. The Land Recycling Program will require 5.0 FTE positions. The five positions will consist of an administrative assistant, an environmental engineer, and three environmental specialists.
2. The maximum cost recovery per site is \$7,500.
3. There will be an average of 10 sites remediated per year.
4. There are no federal funds available for the Land Recycling Program.
5. Expenses for an Advisory Committee to develop the rules to administer this Bill will be a first year expense.

**FISCAL IMPACT**

The estimated fiscal impact of Senate File 528 is a decrease of \$264,000 in FY 1998 and a decrease of \$258,000 in FY 1999. Following is a table to show the breakdown.

(dollars in thousands)						
	Fiscal Year 1998			Fiscal Year 1999		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
<b>REVENUE</b>						
Fees	\$ 0	\$ 75	\$ 75	\$ 0	\$ 75	\$ 75
<b>EXPENDITURES</b>						
Salaries	\$ 0	\$ 253	\$ 253	\$ 0	\$ 263	\$ 263
(FTE's)	(0.0)	(5.0)	(5.0)	(0.0)	(5.0)	(5.0)
Support	0	70	70	0	70	70
Advisory Com	0	16	16	0	0	0
Total	\$ 0	\$ 339	\$ 339	\$ 0	\$ 333	\$ 333
<b>NET EFFECT</b>	\$ 0	\$ (264)	\$ (264)	\$ 0	\$ (258)	\$ (258)

**SOURCE**

Department of Natural Resources

(LSB 2305SZ, AMF)

PAGE 2 , FISCAL NOTE, SENATE FILE 528

H 4/16/97 W. & means  
H-4/22/97 No Pass

SENATE FILE 528  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 188.1)  
(SUCCESSOR TO SF 475)

(AS AMENDED AND PASSED BY THE SENATE APRIL 15, 1997)

\_\_\_\_\_ - New Language by the Senate

\* - Language Stricken by the Senate

Passed Senate, Date \_\_\_\_\_

Passed House, Date 4/24/97 (P. 1544)

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes 100 Nays 0

Approved May 7, 1997

A BILL FOR

- 1 An Act relating to the cleanup and reuse of contaminated  
2 property, environmental remediation standards and review  
3 procedures, participation in the remediation of contaminated  
4 property, liability for the voluntary cleanup of contaminated  
5 property, liability protections, and establishing a land  
6 recycling fund.  
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

H-1926

SENATE FILE 528

1 Amend Senate File 528, as amended, passed, and  
2 reprinted by the Senate, as follows:

- A 3 1. Page 25, by striking line 26.  
4 2. Page 25, by striking line 35 and inserting the  
5 following:  
B 6 "\_\_\_\_\_. The Iowa groundwater association."  
7 3. By renumbering, relettering, and redesignating  
8 as necessary.

A+B H-1926 FILED APRIL 24, 1997  
LOST

By FALLON of Polk

(P. 1544)

S.F. 528

SUBCHAPTER 1

GENERAL PROVISIONS

Section 1. NEW SECTION. 455H.101 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa Land Recycling and Environmental Remediation Standards Act".

Sec. 2. NEW SECTION. 455H.102 SCOPE.

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks, other than petroleum underground storage tanks, in chapter 455B, division IV, part 8; contaminated sites in chapter 455B, division VIII; and groundwater protection in chapter 455E.

Sec. 3. NEW SECTION. 455H.103 DEFINITIONS.

As used in this chapter, unless the context requires otherwise:

1. "Affected area" means any real property affected, suspected of being affected, or modeled to be likely affected by a release occurring at an enrolled site.

2. "Affiliate" means a corporate parent, subsidiary, or predecessor of a participant, a co-owner or co-operator of a participant, a spouse, parent, or child of a participant, an affiliated corporation or enterprise of a participant, or any other person substantially involved in the legal affairs or management of a participant, as defined by the department.

3. "Background levels" means concentrations of hazardous substances naturally occurring and generally present in the environment in the vicinity of an enrolled site or an affected area and not the result of releases.

4. "Commission" means the environmental protection commission created under section 455A.6.

1 5. "Department" means the department of natural resources  
2 created under section 455A.2.

3 6. "Director" means the director of the department of  
4 natural resources appointed under section 455A.3.

5 7. "Enrolled site" means any property which has been or is  
6 suspected to be the site of or affected by a release and which  
7 has been enrolled pursuant to this chapter by a participant.

8 8. "Hazardous substance" has the same meaning as defined  
9 in section 455B.381.

10 9. "Noncancer health risk" means the potential for adverse  
11 systemic or toxic effects caused by exposure to  
12 noncarcinogenic hazardous substances expressed as the hazard  
13 quotient for a hazardous substance. A hazard quotient is the  
14 ratio of the level of exposure of a hazardous substance over a  
15 specified time period to a reference dose for a similar  
16 exposure period.

17 10. "Participant" means any person who enrolls property  
18 pursuant to this chapter. A participant is a participant only  
19 to the extent the participant complies with the requirements  
20 of this chapter.

21 11. "Protected groundwater source" means a saturated bed,  
22 formation, or group of formations which has a hydraulic  
23 conductivity of at least forty-four-hundredths meters per day  
24 and a total dissolved solids concentration of less than two  
25 thousand five hundred milligrams per liter.

26 12. "Protected party" means any of the following:

27 a. A participant, including, but not limited to, a  
28 development authority or fiduciary.

29 b. A person who develops or otherwise occupies an enrolled  
30 site after the issuance of a no further action letter.

31 c. A successor or assignee of a protected party, as to an  
32 enrolled site of a protected party.

33 d. A lender which practices commercial lending including,  
34 but not limited to, providing financial services, holding of  
35 security interests, workout practices, and foreclosure or the

- 1 recovery of funds from the sale of an enrolled site.
- 2 e. A parent corporation or subsidiary of a participant.
- 3 f. A co-owner or co-operator, either by joint tenancy or a  
4 tenancy in common, or any other party sharing a legal  
5 relationship with the participant.
- 6 g. A holder of a beneficial interest of a land trust or  
7 inter vivos trust, whether revocable or irrevocable, as to any  
8 interests in an enrolled site.
- 9 h. A mortgagee or trustee of a deed of trust existing as  
10 to an enrolled site as of the date of issuance of a no further  
11 action letter.
- 12 i. A transferee of the participant whether the transfer is  
13 by purchase, eminent domain, assignment, bankruptcy  
14 proceeding, partition, dissolution of marriage, settlement or  
15 adjudication of any civil action, charitable gift, or bequest,  
16 in conjunction with the acquisition of title to the enrolled  
17 site.
- 18 j. An heir or devisee of a participant.
- 19 k. A government agency or political subdivision which  
20 acquires an enrolled site through voluntary or involuntary  
21 means, including, but not limited to, abandonment, tax  
22 foreclosure, eminent domain, or escheat.
- 23 13. "Release" means any spilling, leaking, pumping,  
24 pouring, emitting, emptying, discharging, injecting, escaping,  
25 leaching, dumping, or disposing into the environment of a  
26 hazardous substance, including the abandonment or discarding  
27 of barrels, containers, and other closed receptacles  
28 containing any hazardous substance, but excludes all of the  
29 following:
- 30 a. Any release which results in exposure to persons solely  
31 within a workplace, with respect to a claim which such persons  
32 may assert against the employer of such persons.
- 33 b. Emissions from the engine exhaust of a motor vehicle,  
34 rolling stock, aircraft, vessel, or pipeline pumping station  
35 engine.

1 c. The release of source, by-product, or special nuclear  
2 material from a nuclear incident, as those terms are defined  
3 in the federal Atomic Energy Act of 1954, if such release is  
4 subject to requirements with respect to financial protection  
5 established by the nuclear regulatory commission under 42  
6 U.S.C. § 2210 or, for the purposes of 42 U.S.C. § 9604 or any  
7 other response action, any release of source, by-product, or  
8 special nuclear material from any processing site designated  
9 under 42 U.S.C. § 7912(a)(1) or 7942(a).

10 d. The use of pesticides in accordance with the product  
11 label.

12 14. "Response action" means an action taken to reduce,  
13 minimize, eliminate, clean up, control, assess, or monitor a  
14 release to protect the public health and safety or the  
15 environment. "Response action" includes, but is not limited  
16 to, investigation, excavation, removal, disposal, cleansing of  
17 groundwaters or surface waters, natural biodegradation,  
18 institutional controls, technological controls, or site  
19 management practices.

20 15. "Technical advisory committee" means the technical  
21 advisory committee created under section 455H.502.

22 Sec. 4. NEW SECTION. 455H.104 DECLARATION OF POLICY.

23 The general assembly finds and declares all of the  
24 following:

25 1. Some real property in Iowa is not put to its highest  
26 productive use because it is contaminated or it is perceived  
27 to be contaminated as a result of past activity on the  
28 property. The reuse of these sites is an important component  
29 of a sound land-use policy that will prevent the needless  
30 development of prime farmland and open-space and natural  
31 areas, and reduce public expenditures for installing new  
32 infrastructure.

33 2. Incentives should be put in place to encourage capable  
34 persons to voluntarily develop and implement cleanup plans.

35 3. The safe reuse of property should be encouraged through

1 the adoption of environmental remediation standards developed  
2 through an open process which take into account the risks  
3 associated with any release at the site. Any remediation  
4 standards adopted by this state must provide for the  
5 protection of the public health and safety and the  
6 environment.

\*7 Sec. 5. NEW SECTION. 455H.105 DUTIES OF THE COMMISSION.

8 The commission shall do all of the following:

9 1. Adopt rules pertaining to the assessment, evaluation,  
10 and cleanup of the presence of hazardous substances which  
11 allow participants to carry out response actions using  
12 background standards, statewide standards, or site-specific  
13 cleanup standards pursuant to this chapter.

14 2. Adopt rules establishing statewide standards and  
15 criteria for determination of background standards and site  
16 specific cleanup standards.

17 3. Adopt rules establishing a program intended to  
18 encourage and enhance assessment, evaluation, and cleanup of  
19 sites which may have been the site of or affected by a  
20 release.

21 4. Adopt rules establishing a program to administer the  
22 land recycling fund established in section 455H.401.

23 5. Adopt rules establishing requirements for the  
24 submission, performance, and verification of site assessments,  
25 cleanup plans, and certifications of completion. The rules  
26 shall provide that all site assessments, cleanup plans, and  
27 certifications of completion submitted by a participant shall  
28 be prepared by or under the supervision of an appropriately  
29 trained professional, including a groundwater professional  
30 certified pursuant to section 455G.18.

31 6. Adopt rules for public notice of the proposed  
32 verification of a certificate of completion by the department  
33 where the certificate of completion is conditioned on the use  
34 of an institutional or technological control.

35 Sec. 6. NEW SECTION. 455H.106 AUTHORITY OF THE

## 1 DEPARTMENT.

2 The department shall do all of the following:

3 1. Enter into agreements or issue orders in connection  
4 with the enrollment of property into a program established  
5 pursuant to this chapter.

6 2. Issue no further action letters upon the demonstration  
7 of compliance with applicable standards for an affected area  
8 by a participant.

9 3. Enter into agreements or issue orders providing for  
10 institutional and technological controls to assure compliance  
11 with applicable standards pursuant to this chapter.

12 4. Take actions necessary, including the revocation,  
13 suspension, or modification of permits or agreements, the  
14 issuance of orders, and the initiation of administrative or  
15 judicial proceedings, to enforce the provisions of this  
16 chapter and any agreements, covenants, easements, or orders  
17 issued pursuant to this chapter.

18 Sec. 7. NEW SECTION. 455H.107 LAND RECYCLING PROGRAM.

19 1. A person may enroll property in the land recycling  
20 program pursuant to this chapter to carry out a response  
21 action in accordance with rules adopted by the commission  
22 which outline the eligibility for enrollment. The eligibility  
23 rules shall reasonably encourage the enrollment of all sites  
24 potentially eligible to participate under this chapter and  
25 shall not take into account any amounts the department may be  
26 reimbursed under this chapter.

27 2. All participants shall enter into an agreement with the  
28 department to reimburse the department for actual costs  
29 incurred by the department in reviewing documents submitted as  
30 a part of the enrollment of the site. This fee shall not  
31 exceed seven thousand five hundred dollars per enrolled site.  
32 An agreement entered into under this subsection must allow the  
33 department access to the enrolled site and must require a  
34 demonstration of the participant's ability to carry out a  
35 response action reasonably associated with the enrolled site.

1 3. All of the following shall not be enrolled in the land  
2 recycling program:

3 a. Property for which corrective action is needed or has  
4 been taken for petroleum underground storage tanks under  
5 chapter 455B, division IV, part 8. However, such property may  
6 be enrolled to address hazardous substances other than  
7 petroleum from underground storage tanks.

8 b. Property which has been placed or is proposed to be  
9 included on the national priorities list established pursuant  
10 to the federal Comprehensive Environmental Response,  
11 Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

12 c. An animal feeding operation structure as defined in  
13 section 455B.161.

14 4. If the site cleanup assessment demonstrates that the  
15 release on the enrolled site has affected additional property,  
16 all property, which is shown to be affected by the release on  
17 the enrolled site, shall be enrolled in addition to the  
18 enrolled site.

19 5. Following enrollment of the property in the land  
20 recycling program, the participant shall proceed on a timely  
21 basis to carry out response actions in accordance with the  
22 rules implementing this chapter.

23 6. Once the participant has demonstrated the affected area  
24 is in compliance with the standards described in subchapter 2,  
25 the department shall proceed on a timely basis and issue a no  
26 further action letter pursuant to section 455H.301.

27 7. The participant may withdraw the enrolled site from  
28 further participation in the land recycling program at any  
29 time upon written notice to the department. Any participant  
30 who withdraws an enrolled site from further participation in  
31 the program shall not be entitled to any refund or credit for  
32 the enrollment fee paid pursuant to this section and shall,  
33 subject to the limitation on fees in subsection 2, be liable  
34 for any costs actually incurred by the department. The  
35 department or court may determine that a participant who

1 withdraws prior to completion of all response actions  
2 identified for the enrolled site forfeits all benefits and  
3 immunities provided by this chapter as to the enrolled site.  
4 If it is deemed necessary and appropriate by the department, a  
5 participant who withdraws shall stabilize the enrolled site in  
6 accordance with a plan approved by the department.

7

## SUBCHAPTER 2

8

## RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

9

Sec. 8. NEW SECTION. 455H.201 CLEANUP STANDARDS.

10 1. A participant carrying out a response action shall take  
11 such response actions as necessary to assure that conditions  
12 in the affected area comply with any of the following, as  
13 applicable:

14 a. Background standards established pursuant to section  
15 455H.202.

16 b. Statewide standards established pursuant to section  
17 455H.203.

18 c. Site-specific cleanup standards established pursuant to  
19 section 455H.204.

20 Any remediation standard which is applied must provide for  
21 the protection of the public health and safety and the  
22 environment.

23 2. A participant may use a combination of these standards  
24 to implement a site remediation plan and may propose to use  
25 the site-specific cleanup standards whether or not efforts  
26 have been made to comply with the background or statewide  
27 standards.

\* 28 3. Until rules setting out requirements for background  
29 standards, statewide standards, or site-specific cleanup  
30 standards are finally adopted by the commission and effective,  
31 participants may utilize site-specific cleanup standards for  
32 any hazardous substance utilizing the procedures set out in  
33 the department's rules implementing risk-based corrective  
34 action for underground storage tanks and, where relevant, the  
35 United States environmental protection agency's guidance

1 regarding risk assessment for superfund sites.

2 4. The standards may be complied with through a  
3 combination of response actions that may include, but are not  
4 limited to, treatment, removal, technological or institutional  
5 controls, and natural attenuation and other natural  
6 mechanisms, and can include the use of innovative or other  
7 demonstrated measures.

8 Sec. 9. NEW SECTION. 455H.202 BACKGROUND STANDARDS.

9 1. Methods to identify background standards shall be  
10 adopted by the commission after consideration of the joint  
11 recommendations of the department and the technical advisory  
12 committee.

13 2. The demonstration that the affected area meets the  
14 background standard shall be documented by the participant in  
15 the following manner:

16 a. Compliance with the background standard shall be  
17 demonstrated by collection and analysis of representative  
18 samples from environmental media of concern.

19 b. A final report that documents compliance with the  
20 background standard shall be submitted to the department and  
21 shall include, as appropriate, all of the following:

22 (1) A description of procedures and conclusions of the  
23 site investigation to characterize the nature, extent,  
24 direction, volume, and composition of hazardous substances.

25 (2) The basis for selecting environmental media of  
26 concern, descriptions of removal or decontamination procedures  
27 performed in remediation, and summaries of sampling  
28 methodology and analytical results which demonstrate that the  
29 background standard has been complied with.

30 (3) The basis for determining the background levels.

31 Sec. 10. NEW SECTION. 455H.203 STATEWIDE STANDARDS.

32 1. Statewide standards shall be adopted by the commission  
33 after consideration of the joint recommendations of the  
34 department and the technical advisory committee. The  
35 standards must provide for the protection of the public health

1 and safety and the environment.

2 2. In establishing these standards, all of the following  
3 shall be considered:

4 a. Separate standards shall be established for hazardous  
5 substances in soil, in groundwater which is a protected  
6 groundwater source, and in groundwater which is not a  
7 protected groundwater source.

8 b. In groundwater which is a protected groundwater source,  
9 the standards shall be no more protective than the least  
10 restrictive of the maximum contaminant levels established  
11 pursuant to the department's drinking water standards, a  
12 standard reflecting an increased cancer risk of one in one  
13 million, or a standard reflecting a noncancer health risk of  
14 one. An affected area shall not be required to be cleaned up  
15 to concentration levels below or more restrictive than  
16 background levels.

17 c. In groundwater which is not a protected groundwater  
18 source, the standards shall be no more protective than the  
19 least restrictive of a standard reflecting an increased cancer  
20 risk of one in ten thousand or a standard reflecting a  
21 noncancer health risk of one. An affected area shall not be  
22 required to be cleaned up to levels below or more restrictive  
23 than background levels.

24 d. In soil, the standards shall be no more protective than  
25 the least restrictive of a standard reflecting an increased  
26 cancer risk of one in one million or a standard reflecting a  
27 noncancer health risk of one. An affected area shall not be  
28 required to be cleaned up to concentration levels below or  
29 more restrictive than background levels.

30 3. The demonstration that the affected area meets the  
31 statewide standard shall be documented by the participant, as  
32 appropriate, in the following manner:

33 a. Compliance with cleanup levels shall be demonstrated by  
34 collection and analysis of representative samples from the  
35 environmental medium of concern.

1 b. A final report that documents compliance with the  
2 statewide standard shall be submitted to the department which  
3 includes, as appropriate, the descriptions of procedures and  
4 conclusions of the site investigation to characterize the  
5 nature, extent, direction, rate of movement at the site and  
6 cumulative effects, if any, volume, composition, and  
7 concentration of hazardous substances in environmental media,  
8 the basis for selecting environmental media of concern,  
9 documentation supporting the selection of residential or  
10 nonresidential exposure factors, descriptions of removal or  
11 treatment procedures performed in remediation, and summaries  
12 of sampling methodology and analytical results which  
13 demonstrate that hazardous substances have been removed or  
14 treated to applicable levels.

15 Sec. 11. NEW SECTION. 455H.204 SITE-SPECIFIC CLEANUP  
16 STANDARDS.

17 1. Procedures to establish site-specific cleanup standards  
18 shall be adopted by the commission after consideration of the  
19 joint recommendations of the department and the technical  
20 advisory committee. Site-specific cleanup standards must  
21 provide for the protection of the public health and safety and  
22 the environment.

23 2. Site-specific cleanup standards and appropriate  
24 response actions shall take into account all of the following  
25 provided, however, that an affected area shall not be required  
26 to be cleaned up to levels below or more restrictive than  
27 background levels, and in groundwater which is not a protected  
28 groundwater source, to a concentration level which presents an  
29 increased cancer risk of less than one in ten thousand:

30 a. The most appropriate exposure scenarios based on  
31 current or probable future residential, commercial,  
32 industrial, or other industry accepted scenarios.

33 b. Exposure pathway characterizations including  
34 contaminant sources, transport mechanisms, and exposure  
35 pathways.

1 c. Affected human or environmental receptors and exposure  
2 scenarios based on current or probable projected use  
3 scenarios.

4 d. Risk-based corrective action assessment principles  
5 which identify risks presented to the public health and safety  
6 or the environment by each released hazardous substance in a  
7 manner that will protect the public health and safety or the  
8 environment using a tiered procedure consistent with the  
9 American society for testing of materials' standards applied  
10 to nonpetroleum and petroleum hazardous substances.

11 e. Other relevant site-specific risk-related factors such  
12 as the feasibility of available technologies, existing  
13 background levels, current and planned future uses,  
14 ecological, aesthetic, and other relevant criteria, and the  
15 applicability and availability of technological and  
16 institutional controls.

17 f. Cleanup shall not be required in an affected area that  
18 does not present any of the following:

19 (1) An increased cancer risk at the point of exposure of  
20 one in one million for residential areas or one in ten  
21 thousand for nonresidential areas.

22 (2) An increased noncancer health risk at the point of  
23 exposure of greater than one.

24 3. The concentration of a hazardous substance in an  
25 environmental medium of concern at an affected area where the  
26 site-specific standard has been selected shall not be required  
27 to meet the site-specific standard if the site-specific  
28 standard is numerically less than the background level. In  
29 such cases, the background level shall apply.

30 4. Any participant electing to comply with site-specific  
31 standards established by this section shall submit, as  
32 appropriate, all of the following reports and evaluations for  
33 review and approval by the department:

34 a. A site-specific risk assessment report and a cleanup  
35 plan. The site-specific risk assessment report must include,

1 as appropriate, all of the following:

2 (1) Documentation and descriptions of procedures and  
3 conclusions from the site investigation to characterize the  
4 nature, extent, direction, rate of movement, volume, and  
5 composition of hazardous substances.

6 (2) The concentration of hazardous substances in  
7 environmental media of concern, including summaries of  
8 sampling methodology and analytical results.

9 (3) A fate and transport analysis to demonstrate that no  
10 exposure pathways exist.

11 If no exposure pathways exist, a risk assessment report and  
12 a cleanup plan are not required and no remedy is required to  
13 be proposed or completed.

14 b. A final report demonstrating compliance with site-  
15 specific cleanup standards has been completed in accordance  
16 with the cleanup plan.

17 c. This section does not preclude a participant from  
18 submitting a site-specific risk assessment report and cleanup  
19 plan at one time to the department for review.

20 5. Upon submission of either a site-specific risk  
21 assessment report or a cleanup plan to the department, the  
22 department shall notify the participant of any deficiencies in  
23 the report or plan in a timely manner.

24 6. Owners and operators of underground storage tanks other  
25 than petroleum underground storage tanks, aboveground storage  
26 tanks, and pipelines which contain or have contained petroleum  
27 shall comply with the corrective action rules issued pursuant  
28 to chapter 455B, division IV, part 8, to satisfy the  
29 requirements of this section.

30 Sec. 12. NEW SECTION. 455H.205 VARIANCES.

31 1. A participant may apply to the department for a  
32 variance from any applicable provision of this chapter.

33 2. The department may issue a variance from applicable  
34 standards only if the participant demonstrates all of the  
35 following:

1 a. The participant demonstrates either of the following:

2 (1) It is technically infeasible to comply with the  
3 applicable standards.

4 (2) The cost of complying with the applicable standards  
5 exceeds the benefits.

6 b. The proposed alternative standard or set of standards  
7 in the terms and conditions set forth in the application will  
8 result in an improvement of environmental conditions in the  
9 affected area and ensure that the public health and safety  
10 will be protected.

11 c. The establishment of and compliance with the  
12 alternative standard or set of standards in the terms and  
13 conditions is necessary to promote, protect, preserve, or  
14 enhance employment opportunities or the reuse of the enrolled  
15 site.

16 3. If requested by a participant, the department may issue  
17 a variance from any other provision of this chapter if the  
18 department determines that the variance would be consistent  
19 with the declaration of policy of this chapter and is  
20 reasonable under the circumstances.

21 Sec. 13. NEW SECTION. 455H.206 INSTITUTIONAL AND  
22 TECHNOLOGICAL CONTROLS.

23 1. In achieving compliance with the cleanup standards  
24 under this chapter, a participant may use an institutional or  
25 technological control. The director may require reasonable  
26 proof of financial assurance where necessary to assure a  
27 technological control remains effective.

28 2. An institutional or technological control includes any  
29 of the following:

30 a. A state or federal law or regulation.

31 b. An ordinance of any political subdivision of the state.

32 c. A contractual obligation recorded and executed in a  
33 manner satisfying chapter 558.

34 d. A control which the participant can demonstrate reduces  
35 or manages the risk from a release through the period

1 necessary to comply with the applicable standards.  
2 e. An environmental protection easement.  
3 3. If the department's determination of compliance with  
4 applicable standards pursuant to subchapter 3 is conditioned  
5 on a restriction in the use of any real estate in the affected  
6 area, the participant must utilize an institutional control.  
7 If the restriction in use is to limit the use to  
8 nonresidential use, the participant must use an environmental  
9 protection easement as the institutional control.  
10 Environmental protection easements may also be used to  
11 implement other institutional or technological controls. An  
12 environmental protection easement must be granted by the fee  
13 title owners of the relevant real estate. The participant  
14 shall furnish to the department abstracts of title and other  
15 documents sufficient to enable the department to determine  
16 that the easements will be enforceable. An environmental  
17 protection easement shall be in a form provided by rule of the  
18 department. An environmental protection easement must provide  
19 all of the following:  
20 a. The easement names the state, acting through the  
21 department, as grantee.  
22 b. The easement identifies the activity either being  
23 restricted or required through the institutional or  
24 technological control.  
25 c. The easement runs with the land, binding the owner of  
26 the land and the owner's successors and assigns.  
27 d. The easement shall include an acknowledgment by the  
28 director of acceptance of the easement by the department.  
29 e. The easement is filed in the office of the recorder of  
30 the county in which the real estate is located and in any  
31 central registry which may be created by the director.  
32 4. If the use of an institutional or technological control  
33 is confirmed in a no further action letter issued pursuant to  
34 section 455H.301, the institutional or technological control  
35 may be enforced in district court by the department, a

1 political subdivision of this state, the participant, or any  
2 successor in interest to the participant. An environmental  
3 protection easement granted pursuant to subsection 3 shall be  
4 enforceable in perpetuity notwithstanding sections 614.24  
5 through 614.38. After the recording of the easement, each  
6 instrument transferring an interest in the area affected by  
7 the easement shall include a specific reference to the  
8 recorded easement. If a transfer instrument fails to include  
9 a specific reference to the recorded easement, the transferor  
10 may lose any of the benefits provided by this chapter.

11 5. An institutional or technological control, except for  
12 an environmental protection easement, may be removed,  
13 discontinued, modified, or terminated by the participant or a  
14 successor in interest to the participant upon a demonstration  
15 that the control no longer is required to assure compliance  
16 with the applicable standard. Upon review and approval by the  
17 department, the department shall issue an amendment to its no  
18 further action letter approving the removal, discontinuance,  
19 modification, or termination of an institutional or  
20 technological control which is no longer needed.

21 6. An environmental protection easement granted pursuant  
22 to subsection 3 may be released or amended only by a release  
23 or amendment of the easement executed by the director and  
24 filed with the county recorder. The department may determine  
25 that any person who intentionally violates an environmental  
26 protection easement or other technological or institutional  
27 control contained in a no further action letter loses any of  
28 the benefits provided by this chapter as to the affected area.  
29 In the event the technological or institutional controls fail  
30 to achieve compliance with the applicable standards, the  
31 participant shall undertake an additional response action  
32 sufficient to demonstrate to the department compliance with  
33 applicable standards. Failure to proceed in a timely manner  
34 in performing the additional response action may result in  
35 termination of the participant's enrollment in the land

1 recycling program.

2 Sec. 14. NEW SECTION. 455H.207 RESPONSE ACTION

3 PERMITTING REQUIREMENTS.

4 1. A participant who would be otherwise required to obtain  
5 a permit, license, plan approval, or other approval from the  
6 department under any provision of the Code may obtain a  
7 consolidated standards permit for the activities in connection  
8 with the response action for which the permit, license, plan  
9 approval, or other approval is required. The consolidated  
10 standards permit shall encompass all the substantive  
11 requirements applicable to those activities under any  
12 applicable federal or state statute, rule, or regulation and  
13 any agreements the director had entered into with the United  
14 States environmental protection agency under those statutes,  
15 rules, or regulations.

16 2. In addition to any other notice or hearing requirements  
17 of relevant chapters, at least ten days prior to issuing a  
18 permit under this section, the director shall publish a notice  
19 of the proposed permit which contains a general description of  
20 the activities to be conducted in the affected area under the  
21 permit. The notice shall be published in the official  
22 newspaper, as designated by the county board of supervisors  
23 pursuant to section 349.1, of the county in which the site is  
24 located. A person may submit written or oral comments on or  
25 objections to the permit. After considering the comments and  
26 objections, the director shall approve or deny the application  
27 for the consolidated standards permit.

28 3. A participant issued a consolidated standards permit  
29 under this section in connection with a particular activity is  
30 not required to obtain a permit, license, plan approval, or  
31 other approval from the department in connection with any  
32 activity under the applicable provisions of the Code or rules.  
33 A participant who obtains a consolidated standards permit for  
34 a particular activity is deemed to be in compliance with the  
35 requirement to obtain from the department a permit, license,

1 plan approval, or other approval in connection with the  
2 activity under the applicable provisions of the Code or rules.  
3 A violation of the conditions of the consolidated standards  
4 permit shall be deemed to be a violation of the applicable  
5 statute, rule, or regulation under which approval of  
6 activities in connection with a response action would have  
7 been required and is subject to enforcement in the same manner  
8 and to the same extent as a violation of the applicable  
9 statute, rule, or regulation would have been.

10 SUBCHAPTER 3

11 EFFECTS OF PARTICIPATION

\*12 Sec. 15. NEW SECTION. 455H.301 NO FURTHER ACTION  
13 LETTERS.

14 1. Once a participant demonstrates that an affected area  
15 meets applicable standards and the department has certified  
16 that the participant has met all requirements for completion,  
17 the department shall promptly issue a no further action letter  
18 to the participant.

19 2. A no further action letter shall state that the  
20 participant and any protected party are not required to take  
21 any further action at the site related to any hazardous  
22 substance for which compliance with applicable standards is  
23 demonstrated by the participant in accordance with applicable  
24 standards, except for continuing requirements specified in the  
25 no further action letter. If the participant was a person  
26 having control over a hazardous substance, as that phrase is  
27 defined in section 455B.381, at the time of the release, a no  
28 further action letter may provide that a further response  
29 action may be required, where appropriate, to protect against  
30 an imminent and substantial threat to public health, safety,  
31 and welfare. A protected party who was a person having  
32 control over a hazardous substance, as that phrase is defined  
33 in section 455B.381, at the time of the release, may be  
34 required by the department to conduct a further response  
35 action, where appropriate, to protect against an imminent and

1 substantial threat to public health, safety, and welfare.

2 If a person transfers property to an affiliate in order for  
3 that person or the affiliate to obtain a benefit to which the  
4 transferor would not otherwise be eligible under this chapter  
5 or to avoid an obligation under this chapter, the affiliate  
6 shall be subject to the same obligations and obtain the same  
7 level of benefits as those available to the transferor under  
8 this chapter.

9 A no further action letter shall be void if the department  
10 demonstrates by clear, satisfactory, and convincing evidence  
11 that any approval under this chapter was obtained by fraud or  
12 material misrepresentation, knowing failure to disclose  
13 material information, or false certification to the  
14 department.

15 3. The department shall provide, upon request, a no  
16 further action letter as to the affected area to each  
17 protected party.

18 4. The department shall condition the no further action  
19 letter upon compliance with any institutional or technological  
20 controls relied upon by the participant to demonstrate  
21 compliance with the applicable standards.

22 5. A no further action letter shall be in a form  
23 recordable in county real estate records as provided in  
24 chapter 558.

25 Sec. 16. NEW SECTION. 455H.302 COVENANTS NOT TO SUE.

26 Upon issuance of a no further action letter pursuant to  
27 section 455H.301, a covenant not to sue arises by operation of  
28 law. The covenant releases the participant and each protected  
29 party from liability to the state, in the state's capacity as  
30 a regulator administering environmental programs, to perform  
31 additional environmental assessment, remedial activity, or  
32 response action with regard to the release of a hazardous  
33 substance for which the participant and each protected party  
34 has complied with the requirements of this chapter.

35 Sec. 17. NEW SECTION. 455H.303 CESSATION OF STATUTORY

## 1 LIABILITY.

2 Upon issuance of a no further action letter pursuant to  
3 section 455H.301, except as provided in that section, the  
4 participant and each protected party shall no longer have  
5 liability under chapter 455A, under chapter 455B other than  
6 liability for petroleum underground storage tanks, or under  
7 chapters 455D and 455E to the state or to any other person as  
8 to any condition at the affected area with regard to hazardous  
9 substances for which compliance with applicable standards was  
10 demonstrated by the participant in accordance with this  
11 chapter and for which the department has provided a  
12 certificate of completion.

13 Sec. 18. NEW SECTION. 455H.304 LIMITATION OF LIABILITY.

14 1. As used in this section, unless the context requires  
15 otherwise:

16 a. "Environmental harm" means injury, death, loss, or  
17 threatened loss to a person or property caused by exposure to  
18 or the release of a hazardous substance.

19 b. "Environmental claim" means a civil action for damages  
20 for environmental harm and includes a civil action under this  
21 chapter for recovery of the costs of conducting a response  
22 action, but does not include a civil action for damages for a  
23 breach of contract or another agreement between persons or for  
24 a breach of a warranty that exists pursuant to the Code or  
25 common law of this state.

26 2. Except as may be required in accordance with  
27 obligations incurred pursuant to participation in the land  
28 recycling program established in this chapter, all of the  
29 following, or any officer or employee thereof, are relieved of  
30 any further liability for any environmental claim resulting  
31 from the presence of hazardous substances at, or the release  
32 of hazardous substances from, an enrolled site where a  
33 response action is being or has been conducted under this  
34 chapter, unless an action or omission of the person, state  
35 agency, political subdivision, or public utility, or an

1 officer or employee thereof, constitutes willful or wanton  
2 misconduct or intentionally tortious conduct:

3 a. A contractor working for another person in conducting  
4 any response action under this chapter.

5 b. A state agency or political subdivision that is  
6 conducting a voluntary response action or a maintenance  
7 activity on lands, easements, or rights-of-way owned, leased,  
8 or otherwise held by the state agency or political  
9 subdivision.

10 c. A state agency when an officer or employee of the state  
11 agency provides technical assistance to a participant  
12 undertaking a response action under this chapter or rules  
13 adopted pursuant to this chapter, or to a contractor, officer,  
14 or employee of the agency, in connection with the response  
15 action.

16 d. A public utility, as defined in section 476.1, which is  
17 performing work in any of the following:

18 (1) An easement or right-of-way of a public utility across  
19 an affected area where a response action is being or has been  
20 conducted and where the public utility is constructing or has  
21 main or distribution lines above or below the surface of the  
22 ground for purposes of maintaining the easement or right-of-  
23 way for construction, repair, or replacement of any of the  
24 following:

25 (a) Main or distribution lines above or below the surface  
26 of the ground.

27 (b) Poles, towers, foundations, or other structures  
28 supporting or sustaining any such lines.

29 (c) Appurtenances to poles, towers, foundations, or other  
30 structures supporting or sustaining any such lines.

31 (2) An affected area where a response action is being  
32 conducted that is necessary to establish or maintain utility  
33 service to the property, including, without limitation, the  
34 construction, repair, or replacement of any of the following:

35 (a) Main or distribution lines above or below the surface

1 of the ground.

2 (b) Poles, towers, foundations, or other structures  
3 supporting or sustaining any such lines.

4 (c) Appurtenances to poles, towers, foundations, or other  
5 structures supporting or sustaining any such lines.

6 3. This section does not create, and shall not be  
7 construed to create, a new cause of action against or  
8 substantive legal right against a person, state agency,  
9 political subdivision, or public utility, or an officer or  
10 employee thereof.

11 4. This section does not affect, and shall not be  
12 construed as affecting, any immunities from civil liability or  
13 defenses established by another section of the Code or  
14 available at common law, to which a person, state agency,  
15 political subdivision, or public utility, or officer or  
16 employee thereof, may be entitled under circumstances not  
17 covered by this section.

18 Sec. 19. NEW SECTION. 455H.305 PARTICIPATION NOT DEEMED  
19 AN ADMISSION OF LIABILITY.

20 1. Enrolling a site pursuant to this chapter or  
21 participating in a response action does not constitute an  
22 admission of liability under the statutes of this state, the  
23 rules adopted pursuant to the statutes, or the ordinances and  
24 resolutions of a political subdivision, or an admission of  
25 civil liability under the Code or common law of this state.

26 2. The fact that a person has become a participant in a  
27 response action under this chapter is not admissible in any  
28 civil, criminal, or administrative proceeding initiated or  
29 brought under any law of this state other than to enforce this  
30 chapter.

31 3. All information, documents, reports, data produced, and  
32 any sample collected as a result of enrolling any property  
33 under this chapter are not admissible against the person  
34 undertaking the response action, and are not discoverable in  
35 any civil or administrative proceeding against the participant

1 undertaking the response action except in a judicial or  
2 administrative proceeding initiated to enforce this chapter in  
3 connection with an alleged violation thereof. This  
4 prohibition against admissibility does not apply to any person  
5 whose covenant not to sue has been revoked under this chapter.

6 4. Enrolling a site pursuant to this chapter or  
7 participating in a response action shall not be construed to  
8 be an acknowledgment that the conditions at the affected area  
9 identified and addressed by the response action constitute a  
10 threat or danger to public health or safety or the  
11 environment.

12 Sec. 20. NEW SECTION. 455H.306 LIABILITY PROTECTIONS.

13 The protections from liability afforded under this chapter  
14 shall be in addition to the exclusions to any liability  
15 protections afforded participants under any other provision of  
16 the Code.

17 Sec. 21. NEW SECTION. 455H.307 LIABILITY FOR NEW RELEASE  
18 OR BEYOND AFFECTED AREA.

19 Protections afforded in this chapter shall not relieve a  
20 person from liability for a release of a hazardous substance  
21 occurring at the enrolled site after the issuance of a no  
22 further action letter or from liability for any condition  
23 outside the affected area addressed in the cleanup plan and no  
24 further action letter.

25 Sec. 22. NEW SECTION. 455H.308 RELATIONSHIP TO FEDERAL  
26 LAW.

27 The liability protection and immunities afforded under this  
28 chapter extend only to liability or potential liability  
29 arising under state law. It is not intended to provide any  
30 relief as to liability or potential liability arising under  
31 federal law. This section shall not be construed as  
32 precluding any agreement with a federal agency by which it  
33 agrees to provide liability protection based on participation  
34 and completion of a cleanup plan under this chapter.

35 Sec. 23. NEW SECTION. 455H.309 INCREMENTAL PROPERTY

1 TAXES.

2     1. To encourage economic development and the recycling of  
3 contaminated land to promote the purposes of this chapter,  
4 cities and counties may provide by ordinance that the costs of  
5 carrying out response actions under this chapter are to be  
6 reimbursed, in whole or in part, by incremental property taxes  
7 over a six-year period. A city or county which implements the  
8 option provided for under this section shall provide that  
9 taxes levied on property enrolled in the land recycling  
10 program under this chapter each year by or for the benefit of  
11 the state, city, county, school district, or other taxing  
12 district shall be divided as provided in section 403.19,  
13 subsections 1 and 2, in the same manner as if the enrolled  
14 property was taxable property in an urban renewal project.  
15 Incremental property taxes collected under this section shall  
16 be placed in a special fund of the city or county. A  
17 participant shall be reimbursed with moneys from the special  
18 fund for costs associated with carrying out a response action  
19 in accordance with rules adopted by the commission. Beginning  
20 in the fourth of the six years of collecting incremental  
21 property taxes, the city or county shall begin decreasing by  
22 twenty-five percent each year the amount of incremental  
23 property taxes computed under this section.

## 24                               SUBCHAPTER 4

## 25                               LAND RECYCLING FUND

26     Sec. 24. NEW SECTION. 455H.401 LAND RECYCLING FUND.

27     1. A land recycling fund is created within the state  
28 treasury under the control of the commission. Moneys received  
29 from fees, general revenue, federal funds, gifts, bequests,  
30 donations, or other moneys so designated shall be deposited in  
31 the fund. Any unexpended balance in the land recycling fund  
32 at the end of each fiscal year shall be retained in the fund,  
33 notwithstanding section 8.33.

34     2. The commission may use the land recycling fund to  
35 provide for all of the following:

1 a. Financial assistance to political subdivisions of the  
2 state for activities related to an enrolled site.

3 b. Financial assistance and incentives for qualifying  
4 enrolled sites.

5 c. Funding for any other purpose consistent with this  
6 chapter and deemed appropriate by the commission.

7 SUBCHAPTER 5

8 MISCELLANEOUS PROVISIONS

9 Sec. 25. NEW SECTION. 455H.501 RULEMAKING.

10 In developing rules to implement this chapter, the  
11 commission shall do all of the following:

12 1. Direct the department to work jointly with the  
13 technical advisory committee.

14 2. Require that by July 1, 1998, the department and the  
15 technical advisory committee submit rules to implement this  
16 chapter and a report describing those rules to the commission.

17 3. Adopt rules to implement and administer this chapter by  
18 October 1, 1998.

19 Sec. 26. NEW SECTION. 455H.502 TECHNICAL ADVISORY  
20 COMMITTEE.

21 1. The technical advisory committee shall consist of a  
22 representative of each of the following organizations:

23 a. The Iowa environmental council.

24 b. The consulting engineers council.

25 c. The Iowa association of business and industry.

26 d. The agribusiness association of Iowa.

27 e. An engineer employed by a city or county which is  
28 appointed jointly by the Iowa league of cities and Iowa state  
29 association of counties.

30 f. The department of economic development.

31 g. The center for health effects of environmental  
32 contamination.

33 h. The Iowa state university of science and technology  
34 college of engineering.

35 i. The groundwater professional association.

1     2. The technical advisory committee shall do all of the  
2 following:

3     a. Work jointly with the department to develop rules to  
4 implement this chapter. The rules shall include, but not be  
5 limited to, rules relating to the prioritization of enrolled  
6 sites.

7     b. Prepare with the department a joint report by January  
8 1, 1998, for the general assembly regarding the status of the  
9 rule drafting.

10    c. Prepare a joint report with the department regarding  
11 the proposed rules to be submitted to the commission.

12    d. Select a chairperson and vice chairperson from among  
13 its members to preside at its meetings.

14    e. Cease functioning once rules fully implementing this  
15 chapter are in effect.

16    3. The members of the technical advisory committee shall  
17 be reimbursed for their actual expenses in accordance with  
18 section 7E.6, subsection 2, for performing the official duties  
19 of the advisory committee.

20    Sec. 27. NEW SECTION. 455H.503 RECORDKEEPING  
21 REQUIREMENTS.

22    The director shall maintain a record of the affected areas  
23 or portion of affected areas for which no further action  
24 letters were issued under section 455H.301 and which involve  
25 institutional or technological controls that restrict the use  
26 of any of the enrolled sites to comply with applicable  
27 standards. The records pertaining to those sites shall  
28 indicate the applicable use restrictions.

29    Sec. 28. NEW SECTION. 455H.504 TRANSFERABILITY OF  
30 PARTICIPATION BENEFITS.

31    A no further action letter, a covenant not to sue, and any  
32 agreement authorized to be entered into and entered into under  
33 this chapter and the rules adopted pursuant to this chapter  
34 may be transferred by the participant or a later recipient to  
35 any other person by assignment or in conjunction with the

1 acquisition of title to the enrolled site to which the  
2 document applies.

3 Sec. 29. NEW SECTION. 455H.505 EMERGENCY RESPONSE.

4 The provisions of this chapter shall not prevent or impede  
5 the immediate response of the department or a participant to  
6 an emergency which involves an imminent or actual release of a  
7 hazardous substance which threatens public health and safety  
8 or the environment. The emergency response action taken by  
9 the participant shall comply with the provisions of this  
10 chapter and the participant shall not be prejudiced by the  
11 mitigation measures undertaken to that point.

12 Sec. 30. NEW SECTION. 455H.506 INTERIM RESPONSE.

13 The provisions of this chapter shall not prevent or impede  
14 a participant from undertaking mitigation measures to prevent  
15 significant impacts on human health or the environment. A  
16 response action for the site shall not be prejudiced by the  
17 mitigation measures undertaken prior to enrolling a property  
18 in the land recycling program. The effects of any interim  
19 mitigation measure shall be taken into account in the  
20 department's evaluation of the participant's compliance with  
21 applicable standards.

22 Sec. 31. NEW SECTION. 455H.507 TRANSITION FROM EXISTING  
23 PROGRAMS.

24 Except for any enrolled site which is the subject of an  
25 enforcement action by an agency of the state or the federal  
26 government prior to the effective date of this Act, for any  
27 property where actions similar to a response action have  
28 commenced pursuant to any provision of chapter 455B prior to  
29 the effective date of this Act, the person carrying out the  
30 action shall elect within ninety days following the final  
31 adoption of rules implementing this chapter to either continue  
32 to proceed in accordance with the laws and rules in effect  
33 prior to the effective date of this Act or to proceed pursuant  
34 to this chapter.

35 Sec. 32. NEW SECTION. 455H.508 PARTICIPANT SHIELD.

1 A participant shall not be subject to either a civil  
2 enforcement action by an agency of this state or a political  
3 subdivision of this state, or an action filed pursuant to  
4 section 455B.112 regarding any release, response action, or  
5 condition which is the subject of the response action. This  
6 protection is contingent on the participant proceeding on a  
7 due and timely basis to carry out the response action.

8 Sec. 33. NEW SECTION. 455H.509 REMOVAL OF A SITE FROM  
9 THE REGISTRY LISTING.

10 An enrolled site listed on the registry of confirmed  
11 hazardous waste or hazardous substance disposal sites,  
12 established pursuant to section 455B.426, which has completed  
13 a response action as to the conditions which led to its  
14 original listing on the registry, shall be removed from the  
15 registry listing, once a letter of no further action has been  
16 issued pursuant to section 455H.301.

17 Sec. 34. NEW SECTION. 455H.510 RELATIONSHIP TO FEDERAL  
18 PROGRAMS.

19 The provisions of this chapter shall not prevent the  
20 department from enforcing both specific numerical cleanup  
21 standards and monitoring of compliance requirements  
22 specifically required to be enforced by the federal government  
23 as a condition of the receipt of program authorization,  
24 delegation, primacy, or federal funds.

25 Sec. 35. NEW SECTION. 455H.511 FEDERAL STRINGENCY.

26 Any rules or standards established pursuant to this chapter  
27 shall be no more stringent than those required under any  
28 comparable federal law or regulation.

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Borlang, Chair  
Bartz  
McKibben  
J. Black  
Rudge

Succeeded By also 475  
SF/HF 528-188.1

Natural Resources  
& Environment

SENATE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
NATURAL RESOURCES AND  
ENVIRONMENT BILL BY  
CHAIRPERSON BARTZ)

Passed Senate, Date \_\_\_\_\_

Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

### A BILL FOR

1 An Act relating to the cleanup and reuse of contaminated  
2 property, environmental remediation standards and review  
3 procedures, participation in the remediation of contaminated  
4 property, liability for the voluntary cleanup of contaminated  
5 property, liability protections, and establishing a land  
6 recycling fund.

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

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SUBCHAPTER 1

GENERAL PROVISIONS

Section 1. NEW SECTION. 455H.101 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa Land Recycling and Environmental Remediation Standards Act".

Sec. 2. NEW SECTION. 455H.102 SCOPE.

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks in chapter 455B, division IV, part 8; contaminated sites in chapter 455B, division VIII; and groundwater protection in chapter 455E.

Sec. 3. NEW SECTION. 455H.103 DEFINITIONS.

As used in this chapter, unless the context requires otherwise:

1. "Affected area" means any real property affected, suspected of being affected, or modeled to be likely affected by a release occurring at an enrolled site.

2. "Background levels" means concentrations of hazardous substances that are generally present in the environment in the vicinity of an enrolled site or an affected area and not the result of releases at an enrolled site.

3. "Commission" means the environmental protection commission created under section 455A.6.

4. "Department" means the department of natural resources created under section 455A.2.

5. "Director" means the director of the department of natural resources appointed under section 455A.3.

6. "Enrolled site" means any property which has been or is suspected to be the site of or affected by a release and which has been enrolled pursuant to this chapter by a participant.

1 7. "Hazardous substance" has the same meaning as defined  
2 in section 455B.381.

3 8. "Noncancer health risk" means the potential for adverse  
4 systemic or toxic effects caused by exposure to  
5 noncarcinogenic hazardous substances expressed as the hazard  
6 quotient for a hazardous substance. A hazard quotient is the  
7 ratio of the level of exposure of a hazardous substance over a  
8 specified time period to a reference dose for a similar  
9 exposure period.

10 9. "Participant" means any person who enrolls property  
11 pursuant to this chapter.

12 10. "Protected groundwater source" means a saturated bed,  
13 formation, or group of formations which has a hydraulic  
14 conductivity of at least forty-four-hundredths meters per day  
15 and a total dissolved solids concentration of less than two  
16 thousand five hundred milligrams per liter.

17 11. "Protected party" means any of the following:

18 a. A participant, including, but not limited to, a  
19 development authority or fiduciary.

20 b. A person who develops or otherwise occupies an enrolled  
21 site after the issuance of a no further action letter.

22 c. A successor or assignee of a protected party, as to an  
23 enrolled site of a protected party.

24 d. A lender which practices commercial lending including,  
25 but not limited to, providing financial services, holding of  
26 security interests, workout practices, and foreclosure or the  
27 recovery of funds from the sale of an enrolled site.

28 e. A parent corporation or subsidiary of a participant.

29 f. A co-owner or co-operator, either by joint tenancy or a  
30 tenancy in common, or any other party sharing a legal  
31 relationship with the participant.

32 g. A holder of a beneficial interest of a land trust or  
33 inter vivos trust, whether revocable or irrevocable, as to any  
34 interests in an enrolled site.

35 h. A mortgagee or trustee of a deed of trust existing as

1 to an enrolled site as of the date of issuance of a no further  
2 action letter.

3 i. A transferee of the participant whether the transfer is  
4 by assignment, bankruptcy proceeding, partition, dissolution  
5 of marriage, settlement or adjudication of any civil action,  
6 charitable gift, or bequest, in conjunction with the  
7 acquisition of title to the enrolled site.

8 j. An heir or devisee of a participant.

9 12. "Release" means any spilling, leaking, pumping,  
10 pouring, emitting, emptying, discharging, injecting, escaping,  
11 leaching, dumping, or disposing into the environment of a  
12 hazardous substance, including the abandonment or discarding  
13 of barrels, containers, and other closed receptacles  
14 containing any hazardous substance, but excludes all of the  
15 following:

16 a. Any release which results in exposure to persons solely  
17 within a workplace, with respect to a claim which such persons  
18 may assert against the employer of such persons.

19 b. Emissions from the engine exhaust of a motor vehicle,  
20 rolling stock, aircraft, vessel, or pipeline pumping station  
21 engine.

22 c. The release of source, by-product, or special nuclear  
23 material from a nuclear incident, as those terms are defined  
24 in the federal Atomic Energy Act of 1954, if such release is  
25 subject to requirements with respect to financial protection  
26 established by the nuclear regulatory commission under 42  
27 U.S.C. § 2210 or, for the purposes of 42 U.S.C. § 9604 or any  
28 other response action, any release of source, by-product, or  
29 special nuclear material from any processing site designated  
30 under 42 U.S.C. § 7912(a)(1) or 7942(a).

31 d. Any release received by or stored in an anaerobic  
32 lagoon as defined in section 455B.161 or any release received  
33 by or stored in a confinement feeding operation structure as  
34 defined in section 455B.161.

35 13. "Response action" means an action taken to reduce,

1 minimize, eliminate, clean up, control, assess, or monitor a  
2 release to protect the public health and safety or the  
3 environment. "Response action" includes, but is not limited  
4 to, investigation, excavation, removal, disposal, cleansing of,  
5 groundwaters or surface waters, natural biodegradation,  
6 institutional controls, technological controls, or site  
7 management practices.

8 14. "Technical advisory committee" means the technical  
9 advisory committee created under section 455H.502.

10 Sec. 4. NEW SECTION. 455H.104 DECLARATION OF POLICY.

11 The general assembly finds and declares all of the  
12 following:

13 1. Some real property in Iowa is not put to its highest  
14 productive use because it is contaminated or it is perceived  
15 to be contaminated as a result of past activity on the  
16 property. The reuse of these sites is an important component  
17 of a sound land-use policy that will prevent the needless  
18 development of prime farmland and open-space and natural  
19 areas, and reduce public expenditures for installing new  
20 infrastructure.

21 2. Incentives should be put in place to encourage capable  
22 persons to voluntarily develop and implement cleanup plans  
23 without the need for adversarial enforcement actions which may  
24 serve to delay cleanups and increase their cost.

25 3. The safe reuse of property should be encouraged and  
26 nurtured with clear, predictable environmental remediation  
27 standards developed through an open process which take into  
28 account the risks associated with any release at the site.  
29 Any remediation standards adopted by this state must provide  
30 for the protection of the public health and safety and the  
31 environment.

32 4. It is necessary for the general assembly to adopt a  
33 statute which establishes environmental remediation standards  
34 to provide a uniform framework for cleanup decisions and to  
35 avoid potentially conflicting and confusing environmental

1 standards.

2 5. Cleanup plans should be based on the actual risk that  
3 contamination on the site may pose to the public health and  
4 safety or the environment, taking into account its current and  
5 probable future use and the degree to which contamination can  
6 spread off-site and expose the public health and safety or the  
7 environment to risk, not on cleanup policies requiring every  
8 site in Iowa to be returned to a pristine condition.

9 Sec. 5. NEW SECTION. 455H.105 DUTIES OF THE COMMISSION.

10 The commission shall do all of the following:

11 1. Adopt rules pertaining to the assessment, evaluation,  
12 and cleanup of the presence of hazardous substances which  
13 allow participants to carry out response actions using  
14 background standards, statewide standards, or site-specific  
15 cleanup standards pursuant to this chapter.

16 2. Adopt rules establishing a program intended to  
17 encourage and enhance assessment, evaluation, and cleanup of  
18 sites which may have been the site of or affected by a  
19 release.

20 3. Adopt rules establishing a program to administer the  
21 land recycling fund established in section 455H.401.

22 4. Adopt rules requiring all participants to submit a site  
23 cleanup assessment to the department prior to the enrollment  
24 of any property. The site cleanup assessment shall be paid  
25 for by the participant and completed by a groundwater  
26 professional certified pursuant to section 455G.18.

27 Sec. 6. NEW SECTION. 455H.106 AUTHORITY OF THE  
28 DEPARTMENT.

29 The department shall do all of the following:

30 1. Enter into agreements or issue orders in connection  
31 with the enrollment of property into a program established  
32 pursuant to this chapter.

33 2. Issue no further action letters upon the demonstration  
34 of compliance with applicable standards for an affected area  
35 by a participant.

1 3. Enter into agreements or issue orders providing for  
2 institutional and technological controls to assure compliance  
3 with applicable standards pursuant to this chapter.

4 Sec. 7. NEW SECTION. 455H.107 LAND RECYCLING PROGRAM.

5 1. A person may enroll property in the land recycling  
6 program pursuant to this chapter to carry out a response  
7 action by providing written notice to the department.

8 2. The department shall enroll all of the following in the  
9 land recycling program:

10 a. A property for which the department has received  
11 written notice of enrollment from a participant.

12 b. A property for which the department has issued an order  
13 to enroll the property agreed to by the participant provided  
14 that the participant has executed a standard agreement with  
15 the department to carry out the response action. This  
16 agreement shall include unlimited access to the enrolled site.

17 3. All participants shall enter into an agreement with the  
18 department to reimburse the department for actual costs  
19 incurred by the department in reviewing documents submitted as  
20 a part of the enrollment of the site. This fee shall not  
21 exceed seven thousand five hundred dollars per enrolled site.

22 4. All of the following shall not be enrolled in the land  
23 recycling program:

24 a. Property for which corrective action has been taken  
25 under chapter 455G.

26 b. Property for which there has been or will be a removal,  
27 remedial action, or response under the federal Comprehensive  
28 Environmental Response, Compensation, and Liability Act, 42  
29 U.S.C. § 9601 et seq.

30 c. Property which has previously been enrolled in the land  
31 recycling program under this chapter.

32 5. If the site cleanup assessment demonstrates that the  
33 release on the enrolled site has affected additional property,  
34 all property, which is shown to be affected by the release on  
35 the enrolled site, shall be enrolled in addition to the

1 enrolled site.

2 6. Following enrollment of the property in the land  
3 recycling program, the participant shall proceed on a timely  
4 basis to carry out response actions in accordance with the  
5 rules implementing this chapter.

6 7. Once the participant has demonstrated the affected area  
7 is in compliance with the standards described in subchapter 2,  
8 the department shall proceed on a timely basis and issue a no  
9 further action letter pursuant to section 455H.302.

10 8. The participant may withdraw the enrolled site from  
11 further participation in the land recycling program at any  
12 time upon written notice to the department. Any participant  
13 who withdraws an enrolled site from further participation in  
14 the program shall not be entitled to any refund or credit for  
15 the enrollment fee paid pursuant to this section.

16 SUBCHAPTER 2

17 RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

18 Sec. 8. NEW SECTION. 455H.201 CLEANUP STANDARDS.

19 1. A participant carrying out a response action shall take  
20 such response actions as necessary to assure that conditions  
21 in the affected area comply with any of the following, as  
22 applicable:

23 a. Background standards established pursuant to section  
24 455H.202.

25 b. Statewide standards established pursuant to section  
26 455H.203.

27 c. Site-specific cleanup standards established pursuant to  
28 section 455H.204.

29 2. A participant may use a combination of these standards  
30 to implement a site remediation plan and may propose to use  
31 the site-specific cleanup standards whether or not efforts  
32 have been made to comply with the background or statewide  
33 standards.

34 3. For the purposes of determining compliance with any one  
35 or a combination of the standards, the concentration of a

1 hazardous substance at the affected area shall not be required  
2 to be less than the practical quantitation limit for the  
3 hazardous substance.

4 4. Until rules setting out requirements for background  
5 standards, statewide standards, or site-specific cleanup  
6 standards are finally adopted by the commission and effective,  
7 participants may utilize site-specific cleanup standards for  
8 any hazardous substance utilizing the procedures set out in  
9 the department's rules implementing risk-based corrective  
10 action for underground storage tanks and, where relevant, the  
11 United States environmental protection agency's guidance  
12 regarding risk assessment for superfund sites.

13 5. The standards may be complied with through a  
14 combination of response actions that may include, but are not  
15 limited to, treatment, removal, technological or institutional  
16 controls, and natural attenuation and other natural  
17 mechanisms, and can include the use of innovative or other  
18 demonstrated measures.

19 Sec. 9. NEW SECTION. 455H.202 BACKGROUND STANDARDS.

20 1. Methods to identify background levels shall be jointly  
21 developed by the department and the technical advisory  
22 committee. The background standard for the affected area  
23 shall be the background levels for the affected area.

24 2. The demonstration that the affected area meets the  
25 background standard shall be documented by the participant in  
26 the following manner:

27 a. Compliance with the background standard shall be  
28 demonstrated by collection and analysis of representative  
29 samples from environmental media of concern.

30 b. A final report that documents compliance with the  
31 background standard shall be submitted to the department and  
32 shall include, as appropriate, all of the following:

33 (1) A description of procedures and conclusions of the  
34 site investigation to characterize the nature, extent,  
35 direction, volume, and composition of hazardous substances.

1 (2) The basis for selecting environmental media of  
2 concern, descriptions of removal or decontamination procedures  
3 performed in remediation, and summaries of sampling  
4 methodology and analytical results which demonstrate that the  
5 background standard has been complied with.

6 (3) The basis for determining the background levels.

7 Sec. 10. NEW SECTION. 455H.203 STATEWIDE STANDARDS.

8 1. Statewide standards shall be jointly developed by the  
9 department and the technical advisory committee.

10 2. In establishing these standards, all of the following  
11 shall be considered:

12 a. Separate standards shall be established for hazardous  
13 substances in soil, in groundwater which is a protected  
14 groundwater source, and in groundwater which is not a  
15 protected groundwater source.

16 b. In groundwater which is a protected groundwater source,  
17 the standards shall be no more protective than the least  
18 restrictive of the maximum contaminant levels established  
19 pursuant to the department's drinking water standards, a  
20 standard reflecting an increased cancer risk of one in one  
21 million, or a standard reflecting a noncancer health risk of  
22 one. An affected area shall not be required to be cleaned up  
23 to concentration levels below or more restrictive than  
24 background levels.

25 c. In groundwater which is not a protected groundwater  
26 source, the standards shall be no more protective than the  
27 least restrictive of a standard reflecting an increased cancer  
28 risk of one in ten thousand or a standard reflecting a  
29 noncancer health risk of one. An affected area shall not be  
30 required to be cleaned up to levels below or more restrictive  
31 than background levels.

32 d. In soil, the standards shall be no more protective than  
33 the least restrictive of a standard reflecting an increased  
34 cancer risk of one in one million or a standard reflecting a  
35 noncancer health risk of one. An affected area shall not be

1 required to be cleaned up to concentration levels below or  
2 more restrictive than background levels.

3 3. The demonstration that the affected area meets the  
4 statewide standard shall be documented by the participant, as  
5 appropriate, in the following manner:

6 a. Compliance with cleanup levels shall be demonstrated by  
7 collection and analysis of representative samples from the  
8 environmental medium of concern.

9 b. A final report that documents compliance with the  
10 statewide standard shall be submitted to the department which  
11 includes, as appropriate, the descriptions of procedures and  
12 conclusions of the site investigation to characterize the  
13 nature, extent, direction, rate of movement at the site and  
14 cumulative effects, if any, volume, composition, and  
15 concentration of hazardous substances in environmental media,  
16 the basis for selecting environmental media of concern,  
17 documentation supporting the selection of residential or  
18 nonresidential exposure factors, descriptions of removal or  
19 treatment procedures performed in remediation, and summaries  
20 of sampling methodology and analytical results which  
21 demonstrate that hazardous substances have been removed or  
22 treated to applicable levels.

23 Sec. 11. NEW SECTION. 455H.204 SITE-SPECIFIC CLEANUP  
24 STANDARDS.

25 1. Procedures to establish site-specific cleanup standards  
26 shall be jointly developed by the department and the technical  
27 advisory committee.

28 2. Site-specific cleanup standards and appropriate  
29 response actions shall take into account all of the following  
30 provided, however, that an affected area shall not be required  
31 to be cleaned up to levels below or more restrictive than  
32 background levels, and in groundwater which is not a protected  
33 groundwater source, to a concentration level which presents an  
34 increased cancer risk of less than one in ten thousand:

35 a. The most appropriate exposure scenarios based on

1 current or probable future residential, commercial,  
2 industrial, or other industry accepted scenarios.

3 b. Exposure pathway characterizations including  
4 contaminant sources, transport mechanisms, and exposure  
5 pathways.

6 c. Affected human or environmental receptors and exposure  
7 scenarios based on current or probable projected use  
8 scenarios.

9 d. Risk-based corrective action assessment principles  
10 which identify risk presented to the public health and safety  
11 or the environment by each released hazardous substance in a  
12 manner that will protect the public health and safety or the  
13 environment using a tiered procedure consistent with American  
14 society for testing of materials' standards applied to  
15 nonpetroleum and petroleum hazardous substances.

16 e. Other relevant site-specific risk-related factors such  
17 as the feasibility of available technologies, existing  
18 background levels, current and planned future uses,  
19 ecological, aesthetic, and other relevant criteria, and the  
20 applicability and availability of technological and  
21 institutional controls.

22 f. Cleanup shall not be required in an affected area that  
23 does not present any of the following:

24 (1) An increased cancer risk at the point of exposure of  
25 one in one million for residential areas or one in ten  
26 thousand for nonresidential areas.

27 (2) An increased noncancer health risk at the point of  
28 exposure of greater than one.

29 3. The concentration of a hazardous substance in an  
30 environmental medium of concern at an affected area where the  
31 site-specific standard has been selected shall not be required  
32 to meet the site-specific standard if the site-specific  
33 standard is numerically less than the background level. In  
34 such cases, the background level shall apply.

35 4. Any participant electing to comply with site-specific

1 standards established by this section shall submit, as  
2 appropriate, all of the following reports and evaluations for  
3 review and approval by the department:

4 a. A site-specific risk assessment report and a cleanup  
5 plan. The site-specific risk assessment report must include,  
6 as appropriate, all of the following:

7 (1) Documentation and descriptions of procedures and  
8 conclusions from the site investigation to characterize the  
9 nature, extent, direction, rate of movement, volume, and  
10 composition of hazardous substances.

11 (2) The concentration of hazardous substances in  
12 environmental media of concern, including summaries of  
13 sampling methodology and analytical results.

14 (3) A fate and transport analysis to demonstrate that no  
15 exposure pathways exist.

16 If no exposure pathways exist, a risk assessment report and  
17 a cleanup plan are not required and no remedy is required to  
18 be proposed or completed.

19 b. A final report demonstrating compliance with site-  
20 specific cleanup standards has been completed in accordance  
21 with the cleanup plan.

22 c. This section does not preclude a participant from  
23 submitting a site-specific risk assessment report and cleanup  
24 plan at one time to the department for review.

25 5. Upon submission of either a site-specific risk  
26 assessment report or a cleanup plan to the department, the  
27 department shall notify the participant of any deficiencies in  
28 the report or plan in a timely manner.

29 6. Owners and operators of underground storage tanks,  
30 aboveground storage tanks, and pipelines which contain or have  
31 contained petroleum or hazardous substances may, at their  
32 election, utilize compliance with the corrective action rules  
33 issued pursuant to chapter 455B, division IV, part 8, to  
34 satisfy the requirements of this section.

35 Sec. 12. NEW SECTION. 455H.205 VARIANCES.

1 1. A participant may apply to the department for a  
2 variance from any applicable provision of this chapter.

3 2. The department shall issue a variance from applicable  
4 standards only if the participant demonstrates all of the  
5 following:

6 a. The participant demonstrates either of the following:

7 (1) It is technically infeasible to comply with the  
8 applicable standards.

9 (2) The cost of complying with the applicable standards  
10 exceeds the benefits.

11 b. The proposed alternative standard or set of standards  
12 in the terms and conditions set forth in the application will  
13 result in an improvement of environmental conditions in the  
14 affected area and ensure that the public health and safety  
15 will be protected.

16 c. The establishment of and compliance with the  
17 alternative standard or set of standards in the terms and  
18 conditions is necessary to promote, protect, preserve, or  
19 enhance employment opportunities or the reuse of the enrolled  
20 site.

21 3. If requested by a participant, the department shall  
22 issue a variance from any other provision of this chapter if  
23 the department determines that the variance would be  
24 consistent with the declaration of policy of this chapter and  
25 is reasonable under the circumstances.

26 Sec. 13. NEW SECTION. 455H.206 INSTITUTIONAL AND  
27 TECHNOLOGICAL CONTROLS.

28 1. In achieving compliance with the cleanup standards  
29 under this chapter, a participant may use an institutional or  
30 technological control.

31 2. An institutional or technological control includes any  
32 of the following:

33 a. A state or federal law or regulation.

34 b. An ordinance of any political subdivision of the state.

35 c. A contractual obligation recorded and executed in a

1 manner satisfying chapter 558.

2 d. A control which the participant can demonstrate reduces  
3 or manages the risk from a release through the period  
4 necessary to comply with the applicable standards.

5 3. Participants shall obtain an environmental protection  
6 easement which must provide all of the following:

7 a. The easement names this state, acting through the  
8 department of natural resources, as a grantee.

9 b. The easement runs with the land, binding the owner of  
10 the land and the owner's successors and assigns, and shall be  
11 enforceable notwithstanding the lack of privity of estate or  
12 contract or benefit to particular land.

13 c. The easement is recorded in the office of the county  
14 recorder and in any central registry which may be created by  
15 the director.

16 d. The easement limits the use of the property to  
17 industrial or commercial use.

18 4. If the use of an institutional or technological control  
19 is confirmed in a no further action letter issued pursuant to  
20 section 455H.302, the institutional or technological control  
21 may be enforced in district court by the department, a  
22 political subdivision of this state, the participant, or any  
23 successor in interest to the participant.

24 5. An institutional or technological control, except for  
25 an environmental protection easement, may be removed,  
26 discontinued, or terminated by the participant or a successor  
27 in interest to the participant upon a demonstration that the  
28 control no longer is required to assure compliance with the  
29 applicable standard. Upon such a demonstration, the  
30 department shall amend its no further action letter to  
31 eliminate the reference to the no-longer used institutional or  
32 technological control.

33 6. The department may approve the removal, discontinuance,  
34 or termination of an environmental protection easement upon  
35 sufficient demonstration by the owner or the owner's

1 successors and assigns that a voluntary response action has  
2 been taken which resulted in the applicable standards being  
3 significantly exceeded. Upon such a demonstration, the  
4 department shall amend its no further action letter to  
5 eliminate the reference to the environmental protection  
6 easement.

7 Sec. 14. NEW SECTION. 455H.207 RESPONSE ACTION  
8 PERMITTING REQUIREMENTS.

9 1. A participant who would be otherwise required to obtain  
10 a permit, license, plan approval, or other approval from the  
11 department under any provision of the Code may obtain a  
12 consolidated standards permit for the activities in connection  
13 with the response action for which the permit, license, plan  
14 approval, or other approval is required. The consolidated  
15 standards permit shall encompass all the substantive  
16 requirements applicable to those activities under any  
17 applicable federal or state statute, rule, or regulation and  
18 any agreements the director had entered into with the United  
19 States environmental protection agency under those statutes,  
20 rules, or regulations.

21 2. In addition to any other notice requirements of  
22 relevant chapters, at least ten days prior to issuing a permit  
23 under this section, the director shall publish a notice of the  
24 proposed permit which contains a general description of the  
25 activities to be conducted in the affected area under the  
26 permit. The notice shall be published in the official  
27 newspaper, as designated by the county board of supervisors  
28 pursuant to section 349.1, of the county in which the site is  
29 located. A person may submit written or oral comments on or  
30 objections to the permit. After considering the comments and  
31 objections, the director shall approve or deny the application  
32 for the consolidated standards permit.

33 3. A participant issued a consolidated standards permit  
34 under this section in connection with a particular activity is  
35 not required to obtain a permit, license, plan approval, or

1 other approval in connection with any activity under the  
2 applicable provisions of the Code or rules. A participant who  
3 obtains a consolidated standards permit for a particular  
4 activity is deemed to be in compliance with the requirement to  
5 obtain a permit, license, plan approval, or other approval in  
6 connection with the activity under the applicable provisions  
7 of the Code or rules.

8

## SUBCHAPTER 3

9

## EFFECTS OF PARTICIPATION

10 Sec. 15. NEW SECTION. 455H.301 EFFECTS OF PARTICIPATION  
11 -- GENERALLY.

12 A participant who undertakes a response action pursuant to  
13 this chapter and demonstrates that the affected area complies  
14 with applicable standards is entitled to all of the following:

15 1. A no further action letter issued by the department  
16 pursuant to section 455H.302.

17 2. The benefits of a covenant not to sue arising as  
18 provided in section 455H.303.

19 3. The benefits of the cessation of statutory liability as  
20 provided in section 455H.304.

21 4. The other protections and benefits of this chapter.

22 Sec. 16. NEW SECTION. 455H.302 NO FURTHER ACTION  
23 LETTERS.

24 1. Once a participant demonstrates that an affected area  
25 meets applicable standards, the department shall promptly  
26 issue a no further action letter to the participant.

27 2. The no further action letter must provide that the  
28 participant and the protected parties are not required to  
29 perform any further response action under the chapter or  
30 similar action under any other statute on account of the  
31 conditions addressed by the response action. The no further  
32 action letter shall be invalidated if the department  
33 demonstrates by clear, satisfactory, and convincing evidence  
34 that fraud was committed in demonstrating compliance with a  
35 standard at the affected area that resulted in avoiding the

1 need for further cleanup of the affected area.

2 3. The department shall provide, upon request, a no  
3 further action letter as to the affected area to each  
4 protected party.

5 4. The department shall condition the no further action  
6 letter upon compliance with any institutional or technological  
7 controls relied upon by the participant to demonstrate  
8 compliance with the applicable standards.

9 5. A no further action letter shall be in a form  
10 recordable in county real estate records as provided in  
11 chapter 558.

12 Sec. 17. NEW SECTION. 455H.303 COVENANTS NOT TO SUE.

13 Upon issuance of a no further action letter pursuant to  
14 section 455H.302, a covenant not to sue arises by operation of  
15 law. The covenant releases the participant and each protected  
16 party from all civil liability to the state to perform  
17 additional assessment, remedial activity, response action, or  
18 other activities at the affected area.

19 Sec. 18. NEW SECTION. 455H.304 CESSATION OF STATUTORY  
20 LIABILITY.

21 Upon issuance of the no further action letter pursuant to  
22 section 455H.302, the participant and each protected party  
23 shall no longer have liability to the state or any other  
24 person under chapters 455A, 455B, 455D, 455E, and 455G as to  
25 any condition at the affected area associated with the release  
26 of a hazardous substance which has been the subject of the  
27 response action.

28 Sec. 19. NEW SECTION. 455H.305 LIMITATION OF LIABILITY.

29 1. As used in this section, unless the context requires  
30 otherwise:

31 a. "Environmental harm" means injury, death, loss, or  
32 threatened loss to a person or property caused by exposure to  
33 or the release of a hazardous substance.

34 b. "Environmental claim" means a civil action for damages  
35 for environmental harm and includes a civil action under this

1 chapter for recovery of the costs of conducting a response  
2 action, but does not include a civil action for damages for a  
3 breach of contract or another agreement between persons or for  
4 a breach of a warranty that exists pursuant to the Code or  
5 common law of this state.

6 2. Except as may be required in accordance with  
7 obligations incurred pursuant to participation in the land  
8 recycling program established in this chapter, all of the  
9 following, or any officer or employee thereof, are relieved of  
10 any further liability for any environmental claim resulting  
11 from the presence of hazardous substances at, or the release  
12 of hazardous substances from, an enrolled site where a  
13 response action is being or has been conducted under this  
14 chapter, unless an action or omission of the person, state  
15 agency, political subdivision, or public utility, or an  
16 officer or employee thereof, constitutes willful or wanton  
17 misconduct or intentionally tortious conduct:

18 a. A contractor working for another person in conducting  
19 any response action under this chapter.

20 b. A state agency or political subdivision that is  
21 conducting a voluntary response action or a maintenance  
22 activity on lands, easements, or rights-of-way owned, leased,  
23 or otherwise held by the state agency or political  
24 subdivision.

25 c. A state agency when an officer or employee of the state  
26 agency provides technical assistance to a participant  
27 undertaking a response action under this chapter or rules  
28 adopted pursuant to this chapter, or to a contractor, officer,  
29 or employee of the agency, in connection with the response  
30 action.

31 d. A public utility, as defined in section 476.1, which is  
32 performing work in any of the following:

33 (1) An easement or right-of-way of a public utility across  
34 an affected area where a response action is being or has been  
35 conducted and where the public utility is constructing or has

1 main or distribution lines above or below the surface of the  
2 ground for purposes of maintaining the easement or right-of-  
3 way for construction, repair, or replacement of any of the  
4 following:

5 (a) Main or distribution lines above or below the surface  
6 of the ground.

7 (b) Poles, towers, foundations, or other structures  
8 supporting or sustaining any such lines.

9 (c) Appurtenances to poles, towers, foundations, or other  
10 structures supporting or sustaining any such lines.

11 (2) An affected area where a response action is being  
12 conducted that is necessary to establish or maintain utility  
13 service to the property, including, without limitation, the  
14 construction, repair, or replacement of any of the following:

15 (a) Main or distribution lines above or below the surface  
16 of the ground.

17 (b) Poles, towers, foundations, or other structures  
18 supporting or sustaining any such lines.

19 (c) Appurtenances to poles, towers, foundations, or other  
20 structures supporting or sustaining any such lines.

21 3. This section does not create, and shall not be  
22 construed to create, a new cause of action against or  
23 substantive legal right against a person, state agency,  
24 political subdivision, or public utility, or an officer or  
25 employee thereof.

26 4. This section does not affect, and shall not be  
27 construed as affecting, any immunities from civil liability or  
28 defenses established by another section of the Code or  
29 available at common law, to which a person, state agency,  
30 political subdivision, or public utility, or officer or  
31 employee thereof, may be entitled under circumstances not  
32 covered by this section.

33 Sec. 20. NEW SECTION. 455H.306 PARTICIPATION NOT DEEMED  
34 AN ADMISSION OF LIABILITY.

35 1. Enrolling a site pursuant to this chapter or

1 participating in a response action does not constitute an  
2 admission of liability under the statutes of this state, the  
3 rules adopted pursuant to the statutes, or the ordinances and  
4 resolutions of a political subdivision, or an admission of  
5 civil liability under the Code or common law of this state.

6 2. The fact that a person has become a participant in a  
7 response action under this chapter is not admissible in any  
8 civil, criminal, or administrative proceeding initiated or  
9 brought under any law of this state other than to enforce this  
10 chapter.

11 3. All information, documents, reports, data produced, and  
12 any sample collected as a result of enrolling any property  
13 under this chapter are not admissible against the person  
14 undertaking the response action, and are not discoverable in  
15 any civil or administrative proceeding against the participant  
16 undertaking the response action except in a judicial or  
17 administrative proceeding initiated to enforce this chapter in  
18 connection with an alleged violation thereof. This  
19 prohibition against admissibility does not apply to any person  
20 whose covenant not to sue has been revoked under this chapter.

21 4. Enrolling a site pursuant to this chapter or  
22 participating in a response action shall not be construed to  
23 be an acknowledgment that the conditions at the affected area  
24 identified and addressed by the response action constitute a  
25 threat or danger to public health or safety or the  
26 environment.

27 Sec. 21. NEW SECTION. 455H.307 LIABILITY PROTECTIONS.

28 The protections from liability afforded under this chapter  
29 shall be in addition to the exclusions to any liability  
30 protections afforded participants under any other provision of  
31 the Code.

32 Sec. 22. NEW SECTION. 455H.308 LIABILITY FOR NEW  
33 RELEASE.

34 Protections afforded in this chapter shall not relieve a  
35 person from liability for a release of a hazardous substance

1 occurring at the enrolled site after the issuance of a no  
2 further action letter.

3 SUBCHAPTER 4

4 LAND RECYCLING FUND

5 Sec. 23. NEW SECTION. 455H.401 LAND RECYCLING FUND.

6 1. A land recycling fund is created within the state  
7 treasury under the control of the commission. Moneys received  
8 from fees, general revenue, federal funds, gifts, bequests,  
9 donations, or other moneys so designated shall be deposited in  
10 the fund. Any unexpended balance in the land recycling fund  
11 at the end of each fiscal year shall be retained in the fund,  
12 notwithstanding section 8.33.

13 2. The commission may use the land recycling fund to  
14 provide for all of the following:

15 a. Financial assistance to political subdivisions of the  
16 state for activities related to an enrolled site.

17 b. Financial assistance and incentives for qualifying  
18 enrolled sites.

19 c. Funding for any other purpose consistent with this  
20 chapter and deemed appropriate by the commission.

21 SUBCHAPTER 5

22 MISCELLANEOUS PROVISIONS

23 Sec. 24. NEW SECTION. 455H.501 RULEMAKING.

24 In developing rules to implement this chapter, the  
25 commission shall do all of the following:

26 1. Direct the department to work jointly with the  
27 technical advisory committee.

28 2. Require that by July 1, 1998, the department and the  
29 technical advisory committee submit rules to implement this  
30 chapter and a report describing those rules to the commission.

31 3. Adopt rules to implement and administer this chapter by  
32 October 1, 1998.

33 Sec. 25. NEW SECTION. 455H.502 TECHNICAL ADVISORY  
34 COMMITTEE.

35 1. The technical advisory committee shall consist of a

1 representative of each of the following organizations:

- 2 a. The Iowa environmental council.
- 3 b. The consulting engineers council.
- 4 c. The Iowa association of business and industry.
- 5 d. The agribusiness association of Iowa.
- 6 e. The Iowa league of cities.
- 7 f. The department of economic development.
- 8 g. The center for health effects of environmental
- 9 contamination.
- 10 h. The Iowa state university of science and technology
- 11 college of engineering.

12 i. The groundwater professional association.

13 2. The technical advisory committee shall do all of the

14 following:

15 a. Work jointly with the department to develop rules to

16 implement this chapter. The rules shall include, but not be

17 limited to, rules relating to the prioritization of enrolled

18 sites.

19 b. Prepare with the department a joint report by January

20 1, 1998, for the general assembly regarding the status of the

21 rule drafting.

22 c. Prepare a joint report with the department regarding

23 the proposed rules to be submitted to the commission.

24 d. Select a chairperson and vice chairperson from among

25 its members to preside at its meetings.

26 e. Cease functioning once rules fully implementing this

27 chapter are in effect.

28 3. The members of the technical advisory committee shall

29 be reimbursed for their actual expenses in accordance with

30 section 7E.6, subsection 2, for performing the official duties

31 of the advisory committee.

32 Sec. 26. NEW SECTION. 455H.503 RECORDKEEPING

33 REQUIREMENTS.

34 The director shall maintain a record of the affected areas

35 or portion of affected areas for which no further action

1 letters were issued under section 455H.303 and which involve  
2 institutional or technological controls that restrict the use  
3 of any of the enrolled sites to comply with applicable  
4 standards. The records pertaining to those sites shall  
5 indicate the applicable use restrictions.

6 Sec. 27. NEW SECTION. 455H.504 TRANSFERABILITY OF  
7 PARTICIPATION BENEFITS.

8 A no further action letter, a covenant not to sue, and any  
9 agreement authorized to be entered into and entered into under  
10 this chapter and the rules adopted pursuant to this chapter  
11 may be transferred by the participant or a later recipient to  
12 any other person by assignment or in conjunction with the  
13 acquisition of title to the enrolled site to which the  
14 document applies.

15 Sec. 28. NEW SECTION. 455H.505 EMERGENCY RESPONSE.

16 The provisions of this chapter shall not prevent or impede  
17 the immediate response of the department or a participant to  
18 an emergency which involves an imminent or actual release of a  
19 hazardous substance which threatens public health and safety  
20 or the environment. The emergency response action taken by  
21 the participant shall comply with the provisions of this  
22 chapter and the participant shall not be prejudiced by the  
23 mitigation measures undertaken to that point.

24 Sec. 29. NEW SECTION. 455H.506 INTERIM RESPONSE.

25 The provisions of this chapter shall not prevent or impede  
26 a participant from undertaking mitigation measures to prevent  
27 significant impacts on human health or the environment. A  
28 response action for the site shall not be prejudiced by the  
29 mitigation measures undertaken prior to enrolling a property  
30 in the land recycling program. The effects of any interim  
31 mitigation measure shall be taken into account in the  
32 department's evaluation of the participant's compliance with  
33 applicable standards.

34 Sec. 30. NEW SECTION. 455H.507 TRANSITION FROM EXISTING  
35 PROGRAMS.

1 Except for any enrolled site which is the subject of an  
2 enforcement action by an agency of the state or the federal  
3 government prior to the effective date of this Act, for any  
4 property where actions similar to a response action have  
5 commenced pursuant to any provision of chapter 455B prior to  
6 the effective date of this Act, the person carrying out the  
7 action shall elect within ninety days following the final  
8 adoption of rules implementing this chapter to either continue  
9 to proceed in accordance with the laws and rules in effect  
10 prior to the effective date of this Act or to proceed pursuant  
11 to this chapter.

12 Sec. 31. NEW SECTION. 455H.508 PARTICIPANT SHIELD.

13 A participant shall not be subject to either a civil  
14 enforcement action by an agency of this state or a political  
15 subdivision of this state, or an action filed pursuant to  
16 section 455B.112 regarding any release, response action, or  
17 condition which is the subject of the response action. This  
18 protection is contingent on the participant proceeding on a  
19 due and timely basis to carry out the response action.

20 Sec. 32. NEW SECTION. 455H.509 REMOVAL OF A SITE FROM  
21 THE REGISTRY LISTING.

22 An enrolled site listed on the registry of confirmed  
23 hazardous waste or hazardous substance disposal sites,  
24 established pursuant to section 455B.426, which has completed  
25 a response action as to the conditions which led to its  
26 original listing on the registry, shall be removed from the  
27 registry listing, once a letter of no further action has been  
28 issued pursuant to section 455H.302.

29 Sec. 33. NEW SECTION. 455H.510 RELATIONSHIP TO FEDERAL  
30 PROGRAMS.

31 The provisions of this chapter shall not prevent the  
32 department from enforcing both specific numerical cleanup  
33 standards and monitoring of compliance requirements  
34 specifically required to be enforced by the federal government  
35 as a condition of the receipt of program authorization,

1 delegation, primacy, or federal funds.

2 Sec. 34. NEW SECTION. 455H.511 FEDERAL STRINGENCY.

3 Any rules or standards established pursuant to this chapter  
4 shall be no more stringent than those required under any  
5 comparable federal law or regulation.

6 EXPLANATION

7 This bill creates a new chapter 455H in the Code to be  
8 known as the "Iowa Land Recycling and Environmental  
9 Remediation Standards Act". The chapter is divided into five  
10 subchapters.

11 In subchapter one, the bill states, as a declaration of  
12 policy, all of the following:

13 1. There is real property in Iowa which is contaminated  
14 and which could be cleaned up and reused.

15 2. There should be incentives to encourage the voluntary  
16 cleanup of such property.

17 3. After the remediation of such property, safe reuse of  
18 the property should be encouraged.

19 4. The general assembly needs to address these goals  
20 through legislation.

21 5. Cleanup plans should be based on the actual risk that  
22 contamination on the site may pose to the public health and  
23 safety or the environment, not on cleanup policies which  
24 require every site in Iowa to be returned to a pristine  
25 condition.

26 Under the bill, the environmental protection commission is  
27 required to adopt rules to administer the chapter. The  
28 department of natural resources is required to do all of the  
29 following:

30 1. Enter into agreements or issue orders in connection  
31 with the enrollment of property into a program.

32 2. Issue no further action letters upon the demonstration  
33 of compliance with applicable standards.

34 3. Enter into agreements or issue orders providing  
35 institutional and technological controls to assure compliance

1 with applicable standards.

2 The bill also establishes the land recycling program. Any  
3 person may enroll property in the program to carry out a  
4 response action. The department shall enroll property for  
5 which it has received notification of enrollment. The  
6 department shall also enroll property for which there has been  
7 an agreed-upon order issued, provided that the participant has  
8 executed a standard agreement with the department to carry out  
9 the response action. All participants shall enter into an  
10 agreement with the department to reimburse the department for  
11 actual costs incurred by the department in reviewing documents  
12 submitted as a part of the enrollment of the site, not to  
13 exceed \$7,500 per site. The bill also enumerates certain  
14 properties that shall not be enrolled in the program, and  
15 stipulates when other affected property must be enrolled. The  
16 department shall issue a no further action letter when  
17 compliance is completed. Upon notification by the  
18 participant, an enrolled site may be withdrawn from the  
19 program at any time.

20 In subchapter 2, the bill provides that a participant must  
21 carry out response actions which assure that conditions in the  
22 affected area comply with any of the following standards:  
23 background standards, statewide standards, or site-specific  
24 cleanup standards. All standards are to be jointly developed  
25 by the department and the technical advisory committee. A  
26 participant may use any combination of the standards and may  
27 propose to use the site-specific cleanup standards only.  
28 Until the standards are adopted by the commission, the bill  
29 provides that a participant may use the procedures set out in  
30 the department's rules implementing risk-based corrective  
31 action for underground storage tanks and, where relevant, the  
32 United States environmental protection agency's guidance  
33 regarding risk assessment for superfund sites. The bill  
34 provides for how compliance with these standards will be  
35 documented.

1 The bill provides for factors to be considered in the  
2 development of site-specific cleanup standards, including  
3 exposure scenarios, exposure pathway characterizations, risk-  
4 based corrective action assessment principles, and other  
5 relevant site-specific factors. A variance from an applicable  
6 standard may be granted by the department if the participant  
7 meets certain specified requirements. Institutional and  
8 technological controls may be used by a participant to comply  
9 with cleanup standards. The bill provides that all  
10 participants shall obtain an environmental protection easement  
11 which shall run with the land, be recorded, and limit use of  
12 the property to industrial or commercial use. The bill also  
13 provides that a participant who is otherwise required to  
14 obtain a permit, license, plan approval, or other approval  
15 under the Code may obtain a consolidated standards permit for  
16 which those permits, licenses, plan approvals, or other  
17 approvals are required.

18 In subchapter 3, the bill provides that when a participant  
19 demonstrates that the affected area meets applicable  
20 standards, the department is required to issue a no further  
21 action letter. This letter shall include a statement that no  
22 further response action is necessary. The letter shall be  
23 invalidated if the department demonstrates by clear,  
24 satisfactory, and convincing evidence that fraud was committed  
25 in demonstrating compliance with a standard. Institutional or  
26 technological controls relied upon by the participant shall be  
27 identified in the letter. The letter shall be recorded in the  
28 county real estate records. The participant is entitled to a  
29 covenant not to sue by operation of law upon the issuance of a  
30 no further action letter. A no further action letter also  
31 entitles the participant to a cessation of statutory liability  
32 as to any condition at the affected area associated with the  
33 release of a hazardous substance which has been the subject of  
34 the response action.

35 The bill defines certain liability protections and defines

1 the circumstances under which those protections are not  
2 available. The bill also limits both the admissibility of  
3 participation in a response action and the ability to discover  
4 any information produced during participation in any civil,  
5 criminal, or administrative proceeding.

6 In subchapter 4, the bill establishes a land recycling fund  
7 within the state treasury. The fund shall consist of moneys  
8 received from fees, general revenue, federal funds, gifts,  
9 bequests, donations, or other moneys so designated.  
10 Unexpended balances in the fund at the end of a fiscal year  
11 are retained in the fund. The bill provides that the fund may  
12 be used to provide for all of the following:

13 1. Financial assistance to political subdivisions of the  
14 state for activities related to an enrolled site.

15 2. Financial assistance and incentives for qualifying  
16 enrolled sites.

17 3. Funding for any other purpose consistent with the  
18 chapter.

19 In subchapter 5, the bill establishes the technical  
20 advisory committee and provides that it is to work jointly  
21 with the department to prepare rules to implement the chapter.  
22 Submission to the commission of the rules and a joint report  
23 describing the rules is required by July 1, 1998.

24 The bill includes provisions regarding recordkeeping and  
25 the ability of a recipient to transfer a no further action  
26 letter, a covenant not to sue, and any other agreement entered  
27 into under this chapter. The bill also provides miscellaneous  
28 provisions relating to emergency response, interim response,  
29 transition from existing programs, protection of a participant  
30 from enforcement actions by the state, removal of a site from  
31 the registry of confirmed hazardous waste or hazardous  
32 substance disposal sites listing, the relationship of the  
33 chapter to federal programs and funding, and federal  
34 stringency.

35

SENATE FILE 528

AN ACT

RELATING TO THE CLEANUP AND REUSE OF CONTAMINATED PROPERTY,  
ENVIRONMENTAL REMEDIATION STANDARDS AND REVIEW PROCEDURES,  
PARTICIPATION IN THE REMEDIATION OF CONTAMINATED PROPERTY,  
LIABILITY FOR THE VOLUNTARY CLEANUP OF CONTAMINATED  
PROPERTY, LIABILITY PROTECTIONS, AND ESTABLISHING A LAND  
RECYCLING FUND.

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

SUBCHAPTER 1

GENERAL PROVISIONS

Section 1. NEW SECTION. 455H.101 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa  
Land Recycling and Environmental Remediation Standards Act".

Sec. 2. NEW SECTION. 455H.102 SCOPE.

The environmental remediation standards established under  
this chapter shall be used for any response action or other  
site assessment or remediation that is conducted at a site  
enrolled pursuant to this chapter notwithstanding provisions  
regarding water quality in chapter 455H, division III;  
hazardous conditions in chapter 455B, division IV, part 4;  
hazardous waste and substance management in chapter 455B,  
division IV, part 5; underground storage tanks, other than  
petroleum underground storage tanks, in chapter 455B, division  
IV, part 8; contaminated sites in chapter 455B, division VIII;  
and groundwater protection in chapter 455E.

Sec. 3. NEW SECTION. 455H.103 DEFINITIONS.

As used in this chapter, unless the context requires  
otherwise:

1. "Affected area" means any real property affected,  
suspected of being affected, or modeled to be likely affected  
by a release occurring at an enrolled site.

2. "Affiliate" means a corporate parent, subsidiary, or  
predecessor of a participant, a co-owner or co-operator of a  
participant, a spouse, parent, or child of a participant, an  
affiliated corporation or enterprise of a participant, or any  
other person substantially involved in the legal affairs or  
management of a participant, as defined by the department.

3. "Background levels" means concentrations of hazardous  
substances naturally occurring and generally present in the  
environment in the vicinity of an enrolled site or an affected  
area and not the result of releases.

4. "Commission" means the environmental protection  
commission created under section 455A.6.

5. "Department" means the department of natural resources  
created under section 455A.2.

6. "Director" means the director of the department of  
natural resources appointed under section 455A.3.

7. "Enrolled site" means any property which has been or is  
suspected to be the site of or affected by a release and which  
has been enrolled pursuant to this chapter by a participant.

8. "Hazardous substance" has the same meaning as defined  
in section 455B.381.

9. "Noncancer health risk" means the potential for adverse  
systemic or toxic effects caused by exposure to  
noncarcinogenic hazardous substances expressed as the hazard  
quotient for a hazardous substance. A hazard quotient is the  
ratio of the level of exposure of a hazardous substance over a  
specified time period to a reference dose for a similar  
exposure period.

10. "Participant" means any person who enrolls property  
pursuant to this chapter. A participant is a participant only  
to the extent the participant complies with the requirements  
of this chapter.

11. "Protected groundwater source" means a saturated bed,  
formation, or group of formations which has a hydraulic  
conductivity of at least forty-four-hundredths meters per day

and a total dissolved solids concentration of less than two thousand five hundred milligrams per liter.

12. "Protected party" means any of the following:

- a. A participant, including, but not limited to, a development authority or fiduciary.
- b. A person who develops or otherwise occupies an enrolled site after the issuance of a no further action letter.
- c. A successor or assignee of a protected party, as to an enrolled site of a protected party.
- d. A lender which practices commercial lending including, but not limited to, providing financial services, holding of security interests, workout practices, and foreclosure or the recovery of funds from the sale of an enrolled site.
- e. A parent corporation or subsidiary of a participant.
- f. A co-owner or co-operator, either by joint tenancy or a tenancy in common, or any other party sharing a legal relationship with the participant.
- g. A holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable, as to any interests in an enrolled site.
- h. A mortgagee or trustee of a deed of trust existing as to an enrolled site as of the date of issuance of a no further action letter.
- i. A transferee of the participant whether the transfer is by purchase, eminent domain, assignment, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest, in conjunction with the acquisition of title to the enrolled site.
- j. An heir or devisee of a participant.
- k. A government agency or political subdivision which acquires an enrolled site through voluntary or involuntary means, including, but not limited to, abandonment, tax foreclosure, eminent domain, or escheat.

13. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a hazardous substance, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excludes all of the following:

- a. Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.
- b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.
- c. The release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 U.S.C. § 2210 or, for the purposes of 42 U.S.C. § 9604 or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under 42 U.S.C. § 7912(a)(1) or 7942(a).
- d. The use of pesticides in accordance with the product label.

14. "Response action" means an action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release to protect the public health and safety or the environment. "Response action" includes, but is not limited to, investigation, excavation, removal, disposal, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, technological controls, or site management practices.

15. "Technical advisory committee" means the technical advisory committee created under section 455H.302.

SEN. 4. NEW SECTION. 455H.104 DECLARATION OF POLICY.

The general assembly finds and declares all of the following:

1. Some real property in Iowa is not put to its highest productive use because it is contaminated or it is perceived to be contaminated as a result of past activity on the property. The reuse of these sites is an important component of a sound land-use policy that will prevent the needless development of prime farmland and open-space and natural areas, and reduce public expenditures for installing new infrastructure.

2. Incentives should be put in place to encourage capable persons to voluntarily develop and implement cleanup plans.

3. The safe reuse of property should be encouraged through the adoption of environmental remediation standards developed through an open process which take into account the risks associated with any release at the site. Any remediation standards adopted by this state must provide for the protection of the public health and safety and the environment.

Sec. 5. NEW SECTION. 455B.105 DUTIES OF THE COMMISSION.

The commission shall do all of the following:

1. Adopt rules pertaining to the assessment, evaluation, and cleanup of the presence of hazardous substances which allow participants to carry out response actions using background standards, statewide standards, or site-specific cleanup standards pursuant to this chapter.

2. Adopt rules establishing statewide standards and criteria for determination of background standards and site specific cleanup standards.

3. Adopt rules establishing a program intended to encourage and enhance assessment, evaluation, and cleanup of sites which may have been the site of or affected by a release.

4. Adopt rules establishing a program to administer the land recycling fund established in section 455B.401.

5. Adopt rules establishing requirements for the submission, performance, and verification of site assessments, cleanup plans, and certifications of completion. The rules shall provide that all site assessments, cleanup plans, and certifications of completion submitted by a participant shall be prepared by or under the supervision of an appropriately trained professional, including a groundwater professional certified pursuant to section 455G.18.

6. Adopt rules for public notice of the proposed verification of a certificate of completion by the department where the certificate of completion is conditioned on the use of an institutional or technological control.

Sec. 6. NEW SECTION. 455B.106 AUTHORITY OF THE DEPARTMENT.

The department shall do all of the following:

1. Enter into agreements or issue orders in connection with the enrollment of property into a program established pursuant to this chapter.

2. Issue no further action letters upon the demonstration of compliance with applicable standards for an affected area by a participant.

3. Enter into agreements or issue orders providing for institutional and technological controls to assure compliance with applicable standards pursuant to this chapter.

4. Take actions necessary, including the revocation, suspension, or modification of permits or agreements, the issuance of orders, and the initiation of administrative or judicial proceedings, to enforce the provisions of this chapter and any agreements, covenants, easements, or orders issued pursuant to this chapter.

Sec. 7. NEW SECTION. 455B.107 LAND RECYCLING PROGRAM.

1. A person may enroll property in the land recycling program pursuant to this chapter to carry out a response action in accordance with rules adopted by the commission which outline the eligibility for enrollment. The eligibility

rules shall reasonably encourage the enrollment of all sites potentially eligible to participate under this chapter and shall not take into account any amounts the department may be reimbursed under this chapter.

2. All participants shall enter into an agreement with the department to reimburse the department for actual costs incurred by the department in reviewing documents submitted as a part of the enrollment of the site. This fee shall not exceed seven thousand five hundred dollars per enrolled site. An agreement entered into under this subsection must allow the department access to the enrolled site and must require a demonstration of the participant's ability to carry out a response action reasonably associated with the enrolled site.

3. All of the following shall not be enrolled in the land recycling program:

a. Property for which corrective action is needed or has been taken for petroleum underground storage tanks under chapter 455B, division IV, part 8. However, such property may be enrolled to address hazardous substances other than petroleum from underground storage tanks.

b. Property which has been placed or is proposed to be included on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

c. An animal feeding operation structure as defined in section 455B.161.

4. If the site cleanup assessment demonstrates that the release on the enrolled site has affected additional property, all property, which is shown to be affected by the release on the enrolled site, shall be enrolled in addition to the enrolled site.

5. Following enrollment of the property in the land recycling program, the participant shall proceed on a timely basis to carry out response actions in accordance with the rules implementing this chapter.

6. Once the participant has demonstrated the affected area is in compliance with the standards described in subchapter 2, the department shall proceed on a timely basis and issue a no further action letter pursuant to section 455B.301.

7. The participant may withdraw the enrolled site from further participation in the land recycling program at any time upon written notice to the department. Any participant who withdraws an enrolled site from further participation in the program shall not be entitled to any refund or credit for the enrollment fee paid pursuant to this section and shall, subject to the limitation on fees in subsection 2, be liable for any costs actually incurred by the department. The department or court may determine that a participant who withdraws prior to completion of all response actions identified for the enrolled site forfeits all benefits and immunities provided by this chapter as to the enrolled site. If it is deemed necessary and appropriate by the department, a participant who withdraws shall stabilize the enrolled site in accordance with a plan approved by the department.

#### SUBCHAPTER 2

#### RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

#### Sec. 8. NEW SECTION. 455B.201 CLEANUP STANDARDS.

1. A participant carrying out a response action shall take such response actions as necessary to assure that conditions in the affected area comply with any of the following, as applicable:

a. Background standards established pursuant to section 455B.202.

b. Statewide standards established pursuant to section 455B.203.

c. Site-specific cleanup standards established pursuant to section 455B.204.

Any remediation standard which is applied must provide for the protection of the public health and safety and the environment.

2. A participant may use a combination of these standards to implement a site remediation plan and may propose to use the site-specific cleanup standards whether or not efforts have been made to comply with the background or statewide standards.

3. Until rules setting out requirements for background standards, statewide standards, or site-specific cleanup standards are finally adopted by the commission and effective, participants may utilize site-specific cleanup standards for any hazardous substance utilizing the procedures set out in the department's rules implementing risk-based corrective action for underground storage tanks and, where relevant, the United States environmental protection agency's guidance regarding risk assessment for superfund sites.

4. The standards may be complied with through a combination of response actions that may include, but are not limited to, treatment, removal, technological or institutional controls, and natural attenuation and other natural mechanisms, and can include the use of innovative or other demonstrated measures.

Sec. 9. NEW SECTION. 455H.202 BACKGROUND STANDARDS.

1. Methods to identify background standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee.

2. The demonstration that the affected area meets the background standard shall be documented by the participant in the following manner:

a. Compliance with the background standard shall be demonstrated by collection and analysis of representative samples from environmental media of concern.

b. A final report that documents compliance with the background standard shall be submitted to the department and shall include, as appropriate, all of the following:

(1) A description of procedures and conclusions of the site investigation to characterize the nature, extent, direction, volume, and composition of hazardous substances.

(2) The basis for selecting environmental media of concern, descriptions of removal or decontamination procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that the background standard has been complied with.

(3) The basis for determining the background levels.

Sec. 10. NEW SECTION. 455H.203 STATEWIDE STANDARDS.

1. Statewide standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. The standards must provide for the protection of the public health and safety and the environment.

2. In establishing these standards, all of the following shall be considered:

a. Separate standards shall be established for hazardous substances in soil, in groundwater which is a protected groundwater source, and in groundwater which is not a protected groundwater source.

b. In groundwater which is a protected groundwater source, the standards shall be no more protective than the least restrictive of the maximum contaminant levels established pursuant to the department's drinking water standards, a standard reflecting an increased cancer risk of one in one million, or a standard reflecting a noncancer health risk of one. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

c. In groundwater which is not a protected groundwater source, the standards shall be no more protective than the least restrictive of a standard reflecting an increased cancer risk of one in ten thousand or a standard reflecting a noncancer health risk of one. An affected area shall not be

required to be cleaned up to levels below or more restrictive than background levels.

d. In soil, the standards shall be no more protective than the least restrictive of a standard reflecting an increased cancer risk of one in one million or a standard reflecting a noncancer health risk of one. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

3. The demonstration that the affected area meets the statewide standard shall be documented by the participant, as appropriate, in the following manner:

a. Compliance with cleanup levels shall be demonstrated by collection and analysis of representative samples from the environmental medium of concern.

b. A final report that documents compliance with the statewide standard shall be submitted to the department which includes, as appropriate, the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement at the site and cumulative effects, if any, volume, composition, and concentration of hazardous substances in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, descriptions of removal or treatment procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that hazardous substances have been removed or treated to applicable levels.

Sec. 11. NEW SECTION. 455H.204 SITE-SPECIFIC CLEANUP STANDARDS.

1. Procedures to establish site-specific cleanup standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. Site-specific cleanup standards must provide for the protection of the public health and safety and the environment.

2. Site-specific cleanup standards and appropriate response actions shall take into account all of the following provided, however, that an affected area shall not be required to be cleaned up to levels below or more restrictive than background levels, and in groundwater which is not a protected groundwater source, to a concentration level which presents an increased cancer risk of less than one in ten thousand:

a. The most appropriate exposure scenarios based on current or probable future residential, commercial, industrial, or other industry accepted scenarios.

b. Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

c. Affected human or environmental receptors and exposure scenarios based on current or probable projected use scenarios.

d. Risk based corrective action assessment principles which identify risks presented to the public health and safety or the environment by each released hazardous substance in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the American society for testing of materials' standards applied to nonpetroleum and petroleum hazardous substances.

e. Other relevant site-specific risk-related factors such as the feasibility of available technologies, existing background levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of technological and institutional controls.

f. Cleanup shall not be required in an affected area that does not present any of the following:

(1) An increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(2) An increased noncancer health risk at the point of exposure of greater than one.

3. The concentration of a hazardous substance in an environmental medium of concern at an affected area where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background level. In such cases, the background level shall apply.

4. Any participant electing to comply with site-specific standards established by this section shall submit, as appropriate, all of the following reports and evaluations for review and approval by the department:

a. A site-specific risk assessment report and a cleanup plan. The site-specific risk assessment report must include, as appropriate, all of the following:

(1) Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent, direction, rate of movement, volume, and composition of hazardous substances.

(2) The concentration of hazardous substances in environmental media of concern, including summaries of sampling methodology and analytical results.

(3) A fate and transport analysis to demonstrate that no exposure pathways exist.

If no exposure pathways exist, a risk assessment report and a cleanup plan are not required and no remedy is required to be proposed or completed.

b. A final report demonstrating compliance with site-specific cleanup standards has been completed in accordance with the cleanup plan.

c. This section does not preclude a participant from submitting a site-specific risk assessment report and cleanup plan at one time to the department for review.

5. Upon submission of either a site-specific risk assessment report or a cleanup plan to the department, the

department shall notify the participant of any deficiencies in the report or plan in a timely manner.

6. Owners and operators of underground storage tanks other than petroleum underground storage tanks, aboveground storage tanks, and pipelines which contain or have contained petroleum shall comply with the corrective action rules issued pursuant to chapter 455B, division IV, part 8, to satisfy the requirements of this section.

#### Sec. 12. NEW SECTION. 455B.205 VARIANCES.

1. A participant may apply to the department for a variance from any applicable provision of this chapter.

2. The department may issue a variance from applicable standards only if the participant demonstrates all of the following:

a. The participant demonstrates either of the following:

(1) It is technically infeasible to comply with the applicable standards.

(2) The cost of complying with the applicable standards exceeds the benefits.

b. The proposed alternative standard or set of standards in the terms and conditions set forth in the application will result in an improvement of environmental conditions in the affected area and ensure that the public health and safety will be protected.

c. The establishment of and compliance with the alternative standard or set of standards in the terms and conditions is necessary to promote, protect, preserve, or enhance employment opportunities or the reuse of the enrolled site.

3. If requested by a participant, the department may issue a variance from any other provision of this chapter if the department determines that the variance would be consistent with the declaration of policy of this chapter and is reasonable under the circumstances.

Sec. 13. NEW SECTION. 455B.206 INSTITUTIONAL AND TECHNOLOGICAL CONTROLS.

1. In achieving compliance with the cleanup standards under this chapter, a participant may use an institutional or technological control. The director may require reasonable proof of financial assurance where necessary to assure a technological control remains effective.

2. An institutional or technological control includes any of the following:

- a. A state or federal law or regulation.
- b. An ordinance of any political subdivision of the state.
- c. A contractual obligation recorded and executed in a manner satisfying chapter 558.
- d. A control which the participant can demonstrate reduces or manages the risk from a release through the period necessary to comply with the applicable standards.
- e. An environmental protection easement.

3. If the department's determination of compliance with applicable standards pursuant to subchapter 3 is conditioned on a restriction in the use of any real estate in the affected area, the participant must utilize an institutional control. If the restriction in use is to limit the use to nonresidential use, the participant must use an environmental protection easement as the institutional control.

Environmental protection easements may also be used to implement other institutional or technological controls. An environmental protection easement must be granted by the fee title owners of the relevant real estate. The participant shall furnish to the department abstracts of title and other documents sufficient to enable the department to determine that the easements will be enforceable. An environmental protection easement shall be in a form provided by rule of the department. An environmental protection easement must provide all of the following:

a. The easement names the state, acting through the department, as grantee.

b. The easement identifies the activity either being restricted or required through the institutional or technological control.

c. The easement runs with the land, binding the owner of the land and the owner's successors and assigns.

d. The easement shall include an acknowledgment by the director of acceptance of the easement by the department.

e. The easement is filed in the office of the recorder of the county in which the real estate is located and in any central registry which may be created by the director.

4. If the use of an institutional or technological control is confirmed in a no further action letter issued pursuant to section 455B.301, the institutional or technological control may be enforced in district court by the department, a political subdivision of this state, the participant, or any successor in interest to the participant. An environmental protection easement granted pursuant to subsection 3 shall be enforceable in perpetuity notwithstanding sections 614.24 through 614.38. After the recording of the easement, each instrument transferring an interest in the area affected by the easement shall include a specific reference to the recorded easement. If a transfer instrument fails to include a specific reference to the recorded easement, the transferor may lose any of the benefits provided by this chapter.

5. An institutional or technological control, except for an environmental protection easement, may be removed, discontinued, modified, or terminated by the participant or a successor in interest to the participant upon a demonstration that the control no longer is required to assure compliance with the applicable standard. Upon review and approval by the department, the department shall issue an amendment to its no further action letter approving the removal, discontinuance, modification, or termination of an institutional or technological control which is no longer needed.

6. An environmental protection easement granted pursuant to subsection 3 may be released or amended only by a release or amendment of the easement executed by the director and filed with the county recorder. The department may determine that any person who intentionally violates an environmental protection easement or other technological or institutional control contained in a no further action letter loses any of the benefits provided by this chapter as to the affected area. In the event the technological or institutional controls fail to achieve compliance with the applicable standards, the participant shall undertake an additional response action sufficient to demonstrate to the department compliance with applicable standards. Failure to proceed in a timely manner in performing the additional response action may result in termination of the participant's enrollment in the land recycling program.

Sec. 14. NEW SECTION. 455H.207 RESPONSE ACTION PERMITTING REQUIREMENTS.

1. A participant who would be otherwise required to obtain a permit, license, plan approval, or other approval from the department under any provision of the Code may obtain a consolidated standards permit for the activities in connection with the response action for which the permit, license, plan approval, or other approval is required. The consolidated standards permit shall encompass all the substantive requirements applicable to those activities under any applicable federal or state statute, rule, or regulation and any agreements the director had entered into with the United States environmental protection agency under those statutes, rules, or regulations.

2. In addition to any other notice or hearing requirements of relevant chapters, at least ten days prior to issuing a permit under this section, the director shall publish a notice of the proposed permit which contains a general description of the activities to be conducted in the affected area under the

permit. The notice shall be published in the official newspaper, as designated by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. A person may submit written or oral comments on or objections to the permit. After considering the comments and objections, the director shall approve or deny the application for the consolidated standards permit.

3. A participant issued a consolidated standards permit under this section in connection with a particular activity is not required to obtain a permit, license, plan approval, or other approval from the department in connection with any activity under the applicable provisions of the Code or rules. A participant who obtains a consolidated standards permit for a particular activity is deemed to be in compliance with the requirement to obtain from the department a permit, license, plan approval, or other approval in connection with the activity under the applicable provisions of the Code or rules. A violation of the conditions of the consolidated standards permit shall be deemed to be a violation of the applicable statute, rule, or regulation under which approval of activities in connection with a response action would have been required and is subject to enforcement in the same manner and to the same extent as a violation of the applicable statute, rule, or regulation would have been.

SUBCHAPTER 3

EFFECTS OF PARTICIPATION

Sec. 15. NEW SECTION. 455H.301 NO FURTHER ACTION LETTERS.

1. Once a participant demonstrates that an affected area meets applicable standards and the department has certified that the participant has met all requirements for completion, the department shall promptly issue a no further action letter to the participant.

2. A no further action letter shall state that the participant and any protected party are not required to take

any further action at the site related to any hazardous substance for which compliance with applicable standards is demonstrated by the participant in accordance with applicable standards, except for continuing requirements specified in the no further action letter. If the participant was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, a no further action letter may provide that a further response action may be required, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare. A protected party who was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, may be required by the department to conduct a further response action, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare.

If a person transfers property to an affiliate in order for that person or the affiliate to obtain a benefit to which the transferor would not otherwise be eligible under this chapter or to avoid an obligation under this chapter, the affiliate shall be subject to the same obligations and obtain the same level of benefits as those available to the transferor under this chapter.

A no further action letter shall be void if the department demonstrates by clear, satisfactory, and convincing evidence that any approval under this chapter was obtained by fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department.

3. The department shall provide, upon request, a no further action letter as to the affected area to each protected party.

4. The department shall condition the no further action letter upon compliance with any institutional or technological controls relied upon by the participant to demonstrate compliance with the applicable standards.

5. A no further action letter shall be in a form recordable in county real estate records as provided in chapter 558.

Sec. 16. NEW SECTION. 455H.302 COVENANTS NOT TO SUE.

Upon issuance of a no further action letter pursuant to section 455H.301, a covenant not to sue arises by operation of law. The covenant releases the participant and each protected party from liability to the state, in the state's capacity as a regulator administering environmental programs, to perform additional environmental assessment, remedial activity, or response action with regard to the release of a hazardous substance for which the participant and each protected party has complied with the requirements of this chapter.

Sec. 17. NEW SECTION. 455H.303 CESSATION OF STATUTORY LIABILITY.

Upon issuance of a no further action letter pursuant to section 455H.301, except as provided in that section, the participant and each protected party shall no longer have liability under chapter 455A, under chapter 455B other than liability for petroleum underground storage tanks, or under chapters 455D and 455E to the state or to any other person as to any condition at the affected area with regard to hazardous substances for which compliance with applicable standards was demonstrated by the participant in accordance with this chapter and for which the department has provided a certificate of completion.

Sec. 18. NEW SECTION. 455H.304 LIMITATION OF LIABILITY.

1. As used in this section, unless the context requires otherwise:

a. "Environmental harm" means injury, death, loss, or threatened loss to a person or property caused by exposure to or the release of a hazardous substance.

b. "Environmental claim" means a civil action for damages for environmental harm and includes a civil action under this chapter for recovery of the costs of conducting a response

action, but does not include a civil action for damages for a breach of contract or another agreement between persons or for a breach of a warranty that exists pursuant to the Code or common law of this state.

2. Except as may be required in accordance with obligations incurred pursuant to participation in the land recycling program established in this chapter, all of the following, or any officer or employee thereof, are relieved of any further liability for any environmental claim resulting from the presence of hazardous substances at, or the release of hazardous substances from, an enrolled site where a response action is being or has been conducted under this chapter, unless an action or omission of the person, state agency, political subdivision, or public utility, or an officer or employee thereof, constitutes willful or wanton misconduct or intentionally tortious conduct:

a. A contractor working for another person in conducting any response action under this chapter.

b. A state agency or political subdivision that is conducting a voluntary response action or a maintenance activity on lands, easements, or rights-of-way owned, leased, or otherwise held by the state agency or political subdivision.

c. A state agency when an officer or employee of the state agency provides technical assistance to a participant undertaking a response action under this chapter or rules adopted pursuant to this chapter, or to a contractor, officer, or employee of the agency, in connection with the response action.

d. A public utility, as defined in section 476.1, which is performing work in any of the following:

(1) An easement or right-of-way of a public utility across an affected area where a response action is being or has been conducted and where the public utility is constructing or has main or distribution lines above or below the surface of the

ground for purposes of maintaining the easement or right-of-way for construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

(2) An affected area where a response action is being conducted that is necessary to establish or maintain utility service to the property, including, without limitation, the construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

3. This section does not create, and shall not be construed to create, a new cause of action against or substantive legal right against a person, state agency, political subdivision, or public utility, or an officer or employee thereof.

4. This section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by another section of the Code or available at common law, to which a person, state agency, political subdivision, or public utility, or officer or employee thereof, may be entitled under circumstances not covered by this section.

Sec. 19. NEW SECTION. 456H.305 PARTICIPATION NOT DEEMED AN ADMISSION OF LIABILITY.

1. Enrolling a site pursuant to this chapter or participating in a response action does not constitute an

admission of liability under the statutes of this state, the rules adopted pursuant to the statutes, or the ordinances and resolutions of a political subdivision, or an admission of civil liability under the Code or common law of this state.

2. The fact that a person has become a participant in a response action under this chapter is not admissible in any civil, criminal, or administrative proceeding initiated or brought under any law of this state other than to enforce this chapter.

3. All information, documents, reports, data produced, and any sample collected as a result of enrolling any property under this chapter are not admissible against the person undertaking the response action, and are not discoverable in any civil or administrative proceeding against the participant undertaking the response action except in a judicial or administrative proceeding initiated to enforce this chapter in connection with an alleged violation thereof. This prohibition against admissibility does not apply to any person whose covenant not to sue has been revoked under this chapter.

4. Enrolling a site pursuant to this chapter or participating in a response action shall not be construed to be an acknowledgment that the conditions at the affected area identified and addressed by the response action constitute a threat or danger to public health or safety or the environment.

Sec. 20. NEW SECTION. 455H.306 LIABILITY PROTECTIONS.

The protections from liability afforded under this chapter shall be in addition to the exclusions to any liability protections afforded participants under any other provision of the Code.

Sec. 21. NEW SECTION. 455H.307 LIABILITY FOR NEW RELEASE OR BEYOND AFFECTED AREA.

Protections afforded in this chapter shall not relieve a person from liability for a release of a hazardous substance occurring at the enrolled site after the issuance of a no

further action letter or from liability for any condition outside the affected area addressed in the cleanup plan and no further action letter.

Sec. 22. NEW SECTION. 455H.308 RELATIONSHIP TO FEDERAL LAW.

The liability protection and immunities afforded under this chapter extend only to liability or potential liability arising under state law. It is not intended to provide any relief as to liability or potential liability arising under federal law. This section shall not be construed as precluding any agreement with a federal agency by which it agrees to provide liability protection based on participation and completion of a cleanup plan under this chapter.

Sec. 23. NEW SECTION. 455H.309 INCREMENTAL PROPERTY TAXES.

1. To encourage economic development and the recycling of contaminated land to promote the purposes of this chapter, cities and counties may provide by ordinance that the costs of carrying out response actions under this chapter are to be reimbursed, in whole or in part, by incremental property taxes over a six-year period. A city or county which implements the option provided for under this section shall provide that taxes levied on property enrolled in the land recycling program under this chapter each year by or for the benefit of the state, city, county, school district, or other taxing district shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the enrolled property was taxable property in an urban renewal project. Incremental property taxes collected under this section shall be placed in a special fund of the city or county. A participant shall be reimbursed with moneys from the special fund for costs associated with carrying out a response action in accordance with rules adopted by the commission. Beginning in the fourth of the six years of collecting incremental property taxes, the city or county shall begin decreasing by

twenty five percent each year the amount of incremental property taxes computed under this section.

#### SUBCHAPTER 4

##### LAND RECYCLING FUND

#### Sec. 24. NEW SECTION. 455H.401 LAND RECYCLING FUND.

1. A land recycling fund is created within the state treasury under the control of the commission. Moneys received from fees, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the fund. Any unexpended balance in the land recycling fund at the end of each fiscal year shall be retained in the fund, notwithstanding section 8.33.

2. The commission may use the land recycling fund to provide for all of the following:

- a. Financial assistance to political subdivisions of the state for activities related to an enrolled site.
- b. Financial assistance and incentives for qualifying enrolled sites.
- c. Funding for any other purpose consistent with this chapter and deemed appropriate by the commission.

#### SUBCHAPTER 5

##### MISCELLANEOUS PROVISIONS

#### Sec. 25. NEW SECTION. 455H.501 RULEMAKING.

In developing rules to implement this chapter, the commission shall do all of the following:

1. Direct the department to work jointly with the technical advisory committee.
2. Require that by July 1, 1998, the department and the technical advisory committee submit rules to implement this chapter and a report describing those rules to the commission.
3. Adopt rules to implement and administer this chapter by October 1, 1998.

#### Sec. 26. NEW SECTION. 455H.502 TECHNICAL ADVISORY COMMITTEE.

1. The technical advisory committee shall consist of a representative of each of the following organizations:

- a. The Iowa environmental council.
- b. The consulting engineers council.
- c. The Iowa association of business and industry.
- d. The agribusiness association of Iowa.
- e. An engineer employed by a city or county which is appointed jointly by the Iowa league of cities and Iowa state association of counties.
- f. The department of economic development.
- g. The center for health effects of environmental contamination.
- h. The Iowa state university of science and technology college of engineering.
- i. The groundwater professional association.

2. The technical advisory committee shall do all of the following:

- a. Work jointly with the department to develop rules to implement this chapter. The rules shall include, but not be limited to, rules relating to the prioritization of enrolled sites.
- b. Prepare with the department a joint report by January 1, 1998, for the general assembly regarding the status of the rule drafting.
- c. Prepare a joint report with the department regarding the proposed rules to be submitted to the commission.
- d. Select a chairperson and vice chairperson from among its members to preside at its meetings.
- e. Cease functioning once rules fully implementing this chapter are in effect.

3. The members of the technical advisory committee shall be reimbursed for their actual expenses in accordance with section 7B.6, subsection 2, for performing the official duties of the advisory committee.

The provisions of this chapter shall not prevent the department from enforcing both specific numerical cleanup standards and monitoring of compliance requirements specifically required to be enforced by the federal government as a condition of the receipt of program authorization, delegation, prmary, or federal funds.

Sec. 35. NEW SECTION. 455H.511 FEDERAL STRINGENCY.

Any rules or standards established pursuant to this chapter shall be no more stringent than those required under any comparable federal law or regulation.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 528, Seventy-seventh General Assembly.

Approved May 7, 1997

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MARY PAT GUNDERSON  
Secretary of the Senate

**SF 528**

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TERRY E. BRANSTAD  
Governor