

applications for conditional permits shall be subject to such notice and opportunity for public participation as may be required by the commission and as may be consistent with chapter four hundred seventy-six A (476A) of the Code and any agreement pursuant thereto under chapter twenty-eight E (28E) of the Code. The applicant or an intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter four hundred seventy-six A (476A) of the Code, the issuance or denial of a conditional permit by the executive director or the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawing and an application for a construction permit for a disposal system that will meet the effluent limitations in the conditional permit.

Approved July 7, 1977

CHAPTER 125
HAZARDOUS SUBSTANCES

H. F. 490

AN ACT relating to the control, abatement and prevention of hazardous conditions by the department of environmental quality, and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "Hazardous substance" may include any hazardous waste identified or listed by the administrator of the United States environmental protection agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section three hundred seven (307) of the federal Water Pollution Control Act as amended to January 1, 1977 or any

hazardous substance designated under section three hundred eleven (311) of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act.

2. "Hazardous condition" means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which creates an immediate or potential danger to the public health or safety.

3. "Toxic" means causing or producing a dangerous physiological, anatomic, or biochemical change in a biological system.

4. "Corrosive" means causing or producing visible destruction or irreversible alterations in human skin tissue at the site of contact, or in the case of leakage of a hazardous substance from its packaging, causing or producing a severe destruction or erosion of other materials through chemical processes.

5. "Irritant" means a substance causing or producing dangerous or intensely irritating fumes upon contact with fire or when exposed to air.

6. "Department" means the department of environmental quality.

7. "Commission" means the solid waste disposal commission of the department.

8. "Executive director" means the executive director of the department of environmental quality or a designee.

Sec. 2. NEW SECTION. ADMINISTRATIVE AGENCY. The department shall be the agency of the state to prevent, abate, and control the exposure of the citizens of the state to hazardous conditions as defined in this Act.

Sec. 3. NEW SECTION. POWERS AND DUTIES OF COMMISSION. The commission shall:

1. Establish such rules pursuant to the provisions of chapter seventeen A (17A) of the Code as are necessary to protect the public from unnecessary exposure to hazardous substances.

2. Develop a comprehensive plan for the prevention, abatement and control of hazardous conditions within the state.

Sec. 4. NEW SECTION. POWERS AND DUTIES OF THE EXECUTIVE DIRECTOR. The executive director shall:

1. Provide technical advice and assistance to other state agencies, to political subdivisions of the state and to other persons upon request for the control, abatement, and prevention of hazardous conditions.

2. Collect and disseminate such information, publish such guidelines or reports, and conduct such educational programs deemed necessary to implement the provisions of this Act. Educational programs may be conducted in cooperation with other public or private agencies through agreements concluded pursuant to chapter twenty-eight E (28E) of the Code.

3. Exercise such other powers consistent with the Code and the provisions of this Act as the commission may direct.

Sec. 5. NEW SECTION. STATE HAZARDOUS CONDITION CONTINGENCY PLAN. All public agencies, as defined in chapter twenty-eight E (28E) of the Code, shall cooperate in the development and implementation of a state hazardous condition contingency plan. The plan shall detail the manner in which public agencies shall participate in the response to a hazardous condition. The department may enter into agreements, subject to section four hundred fifty-five B point seven (455B.7) of the Code, with any state agency or unit of local government or with the federal government, as necessary to develop and implement the plan. The plan shall be coordinated with the office of disaster services and any joint county-municipal disaster services and emergency planning administrations established pursuant to chapter twenty-nine C (29C) of the Code.

Sec. 6. NEW SECTION. NOTIFICATION OF SPILLS. Any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department, the local police department, or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. A sheriff or police chief who has been notified of a hazardous condition shall immediately notify the department. Persons violating this section shall be subject to a civil penalty of not more than five hundred dollars.

Sec. 7. NEW SECTION. REMOVAL OF HAZARDOUS SUBSTANCES.

1. When any hazardous condition exists, the executive director may remove or provide for the removal and disposal of the hazardous substance at any time, unless the executive director determines such removal will be properly and promptly

accomplished by the owner or operator of the vessel, vehicle, container, pipeline or other facility.

2. The executive director may use any resources available under the hazardous condition contingency plan to provide for the removal of hazardous substances. If the executive director finds that public agencies cannot provide the necessary labor or equipment or if the executive director determines that emergency conditions exist, the executive director may contract with any private person or agency for removal of the hazardous substance. In those cases where equipment or services are obtained from any public or private person or agency under emergency conditions, section four hundred fifty-five B point seven (455B.7), subsection five (5) of the Code shall not apply.

Sec. 8. NEW SECTION. INJUNCTIONS AND EMERGENCY ORDERS.

1. If it is determined by the executive director that an emergency exists respecting any matter affecting or likely to affect the public health, the executive director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a contested case hearing before the commission or by a court.

2. The executive director or the commission may request that the attorney general institute legal proceedings for a temporary or permanent injunction pursuant to section eleven (11) of this Act for purposes of enforcing an emergency order.

Sec. 9. NEW SECTION. JUDICIAL REVIEW. Judicial review of any order or other action of the commission or of the executive director may be sought in accordance with the terms of chapter seventeen A (17A) of the Code. Notwithstanding the provisions of chapter seventeen A (17A) of the Code, petitions for judicial review may be filed in the district court of the county in which the alleged hazardous condition occurred.

Sec. 10. NEW SECTION. JURISDICTION LIMITED. Nothing contained in this Act shall be deemed to grant to the department any authority or jurisdiction under this Act with respect to the following:

1. Hazardous conditions existing solely within and which will probably continue to exist solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters eighty-eight (88) and ninety-one (91) of the Code.

2. Relations between employers and employees with respect to hazardous conditions except that where such hazardous conditions extend to or affect areas within the scope of the authority granted by this Act, the department may take any action consistent with this Act to abate such hazardous condition.

3. The storage, transportation, handling, or use of inflammable liquids, combustibles and explosives control over which is exercised by the state fire marshal under chapter one hundred (100) of the Code.

4. The storage, transportation, handling or use of pesticides over which control is exercised by the state secretary of agriculture under chapter two hundred six (206) of the Code, except when spillage of pesticides creates a hazardous condition.

5. The storage, transportation, handling or use of fertilizers over which control is exercised by the state secretary of agriculture under chapter two hundred (200) of the Code, except when spillage of fertilizers creates a hazardous condition.

6. Hazardous air contaminants under the jurisdiction of the air quality commission under division two (II) of chapter four hundred fifty-five B (455B) of the Code and toxic pollutants and hazardous substances under the jurisdiction of the water quality commission under division three (III) of chapter four hundred fifty-five B (455B) of the Code.

Sec. 11. NEW SECTION. DUTIES OF ATTORNEY GENERAL.

1. The attorney general shall, at the request of the department, institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to obtain compliance with the provisions of this Act. In any legal proceedings any previous findings of fact of the executive director or the commission after due notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

2. The attorney general shall, at the request of the executive director, take appropriate action against the owner or operator of any vehicle, storage or manufacturing facility, vessel, or other source of a hazardous substance to recover funds expended by the department for the elimination of a hazardous condition. All such moneys collected shall be credited to the general fund of the state.

Sec. 12. The Code editor shall codify this Act as a new part in division four (IV) of chapter four hundred fifty-five B (455B) of the Code.

Approved June 7, 1977

CHAPTER 126
BUSINESS CORPORATIONS

S. F. 238

AN ACT relating to business corporations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section four hundred ninety-six A point two (496A.2), subsection fourteen (14), Code 1977, is amended to read as follows:

14. "Nonadmitted organization" means any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association or insurance company which is organized under ~~the laws of another~~ laws other than the laws of this state and which is not entitled under this chapter to procure a certificate of authority to transact business in this state.

Sec. 2. Section four hundred ninety-six A point thirty-two (496A.32), unnumbered paragraph three (3), Code 1977, is amended to read as follows:

~~Neither treasury shares nor, unless the articles of incorporation otherwise provide,~~ shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

Sec. 3. Section four hundred ninety-six A point thirty-two (496A.32), Code 1977, is amended by striking unnumbered paragraph eleven (11).

Sec. 4. Section four hundred ninety-six A point thirty-seven (496A.37), Code 1977, is amended to read as follows:

496A.37 VACANCIES. ~~Unless otherwise provided in the articles of incorporation or the bylaws, any~~ Any vacancy occurring* in the board of directors ~~and any directorship to be filled by reason of an increase in the number of directors~~

* According to enrolled Act