

they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall further state that the director of revenue or any person interested in the estate or property appraised may, within sixty days after filing of the appraisal with the clerk of court, file objections to the appraisal. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, or in such other manner as the court in its discretion, may prescribe upon application of any appraiser or any interested party.

Sec. 2. Section four hundred fifty point twenty-nine (450.29), Code 1979, is amended to read as follows:

450.29 ~~RETURNS--REQUIRED~~ NOTICE OF FILING. Upon service of such notice and the making of such appraisal, the ~~said~~ notice, return thereon and appraisal shall be filed with the clerk, and a copy of ~~such~~ the appraisal shall at once be filed by the clerk with the director of revenue. The clerk shall send a notice, by ordinary mail, to the attorney of record of the estate, if any, to the personal representative of the estate, and to each person known to be interested in the estate or property appraised. The notice shall state the date the appraisal was filed with the clerk of court and shall include a copy of the appraisal.

Sec. 3. Section four hundred fifty point thirty-one (450.31), Code 1979, is amended to read as follows:

450.31 OBJECTIONS. The director of revenue or any person interested in the estate or property appraised may, within ~~forty-five~~ sixty days ~~thereafter~~ after filing of the appraisal with the clerk, file objections to said appraisal and give notice thereof as in beginning civil actions, to the director of revenue or the representative of the estate or trust, if any, otherwise to the person interested as heir, legatee, or transferee, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved.

Sec. 4. This Act is effective January first following its enactment.

Approved June 5, 1979

CHAPTER 111
HAZARDOUS WASTE MANAGEMENT

H. F. 719

AN ACT relating to hazardous waste management and providing penalties and injunctive relief.

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

Section 1. Chapter four hundred fifty-five B (455B), Code 1979, is amended by adding sections two (2) through twelve (12) of this Act as a new part of Division four (IV).

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

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

2. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of a hazardous waste into or on land or water so that the hazardous waste or a constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

3. a. "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:

(1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Poses a substantial danger to human health or the environment. "Hazardous waste" may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

b. "Hazardous waste" does not include:

(1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(2) Sewage sludge from publicly-owned treatment works.

(3) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

4. "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

5. "Storage" means the containment of a hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

6. "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous waste so as to neutralize the waste or to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or to reduce the waste in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render the waste nonhazardous.

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

1. Develop comprehensive plans and programs for the state for the management of hazardous waste. In the development of plans and programs, the commission shall recognize the need for assuring that suitable facilities and sites for treatment and disposal are available for hazardous wastes generated in Iowa. As part of the hazardous waste management plan, the commission shall conduct a study of hazardous waste management in Iowa and shall report its findings to the general assembly not later than eighteen months after the effective date of this Act. The study shall include the following:

- a. A description of current sources of hazardous waste within the state, including the types and quantities of hazardous wastes.
- b. A description of current hazardous waste transportation, storage, treatment and disposal practices and costs within the state.
- c. A description of practices and methods that would reduce at the source the amount of hazardous waste generated and an estimate of the cost of these practices.
- d. Identification and evaluation of alternatives to land disposal of hazardous wastes.
- e. Identification of the general geologic and other criteria for a site for land disposal of hazardous wastes and the areas in Iowa that might meet the general criteria if alternatives to land disposal are not feasible.
- f. The proper role and activities of the state in addition to those established in this Act and the federal Solid Waste Disposal Act in facilitating safe and efficient disposal of hazardous waste, including but not limited to a determination of the most appropriate procedures for receiving public comments and approving permits for siting hazardous waste disposal facilities.
- g. The estimated private and public capital and annual operating costs of implementing the hazardous waste management plan recommended by the commission.

2. Adopt rules establishing criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes that are subject to this Act. The commission shall consider toxicity, persistence and degradability in nature, potential for accumulation in tissue, and related factors including flammability, corrosiveness, and other hazardous characteristics.

3. Adopt rules, applicable to generators or transporters of or owners or operators of facilities for the treatment, storage, or disposal of hazardous waste listed by the commission under subsection two (2) of this section, as necessary to protect human health and the environment. The rules shall include establishment of a manifest system.

4. Adopt rules establishing standards and procedures for the certification of supervisory personnel and operators at hazardous waste treatment, storage or disposal facilities required to have a permit under section six (6) of this Act.

Sec. 4. NEW SECTION. EXECUTIVE DIRECTOR'S DUTIES. The executive director shall:

1. Issue, revoke, suspend, modify or deny permits for persons owning or operating a facility for the treatment, storage or disposal of a hazardous waste listed by the commission under section three (3), subsection two (2) of this Act. Permits shall be issued for such period as the commission may by rule prescribe.

2. Administer examinations to determine the competence of operators and supervisory personnel at facilities for the treatment, storage or disposal of hazardous waste that are required to have a permit under section six (6) of this Act. The executive director shall issue, revoke, suspend, or deny certificates of competency for persons as supervisory or operating personnel at facilities for the treatment, storage or disposal of hazardous waste.

3. Inspect and investigate hazardous waste generators and transporters and treatment, storage and disposal facilities as may be necessary to determine compliance with this Act and rules adopted and permits and orders issued pursuant to sections two (2) through twelve (12) of this Act. The executive director shall periodically survey or inspect the construction, operation and monitoring, reporting and record-keeping systems of hazardous waste generators and transporters and treatment, storage and disposal facilities.

Sec. 5. NEW SECTION. HAZARDOUS WASTE NOTIFICATION.

1. A person who on the effective date of a rule adopted under section three (3), subsection two (2) of this Act listing a hazardous waste as subject to this Act is generating or transporting the listed hazardous waste or owns or is operating a treatment, storage or disposal facility handling the listed hazardous waste shall file with the executive director a notification stating the waste handled by the person and the location and a general description of the activity involving the waste. The notice shall be given within ninety days after the effective date of the rule listing the waste.

2. Except as provided in subsection one (1) of this section, a person shall not commence to transport or generate a hazardous waste listed by rule under section three (3), subsection two (2) of this Act without first notifying the executive director of the proposed activity. The notice shall state the waste to be handled, and the location and a general description of the activity involving the listed waste.

3. After two years from the effective date of this Act, a person who produces or disposes of not more than two hundred twenty pounds of hazardous waste in any one month period or any retailer other than a retailer of waste oil shall be exempt from the notification requirements of this Act.

Sec. 6. NEW SECTION. PERMIT REQUIRED.

1. Except as provided in subsections two (2) and four (4) of this section, a person shall not operate a facility for the treatment, storage or disposal of a hazardous waste listed under section three (3), subsection two (2) of the Act unless the owner or operator has obtained a permit for the facility from the executive director.

2. The owner or operator of a facility for the treatment, storage or disposal of a hazardous waste listed under section three (3), subsection two (2) of the Act existing on the effective date of the rule listing the waste shall obtain a permit for the facility within six months of the effective date of the rule. A person owning or operating a facility for the treatment, storage or disposal of a hazardous waste that existed on the effective date of the rule listing the waste and that is required to have a permit under this Act is considered to have a permit until such time as final administrative determination is made if the person meets the following conditions:

a. The person has given notice as required by section five (5) of this Act.

b. The person has applied for a permit.

c. The executive director has determined that the failure to issue the permit is not the result of the failure of the applicant to furnish information reasonably required or requested to process the application.

3. The commission may by rule specify the information required to be submitted with the application for a permit and the conditions under which the executive director shall issue, deny, revoke, suspend or modify permits. However, a permit shall not be issued for a treatment, storage or disposal facility unless the applicant presents evidence of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of the hazardous waste as determined by the commission.

4. A permit is not required for the storage of a hazardous waste listed under section three (3), subsection two (2) of this Act when the only purpose of the storage is to accumulate for a period of up to ninety days sufficient quantities of the waste for transportation, treatment or disposal unless a permit for the storage is required under federal law.

5. A permit issued pursuant to this section shall be in addition to other licenses, permits or variances authorized or required by law, including, but not limited to, the requirements of chapter three hundred fifty-eight A (358A) of the Code.

6. If the executive director denies a permit, the executive director shall inform the applicant in writing of the reasons for the denial. The applicant may appeal to the commission from the denial of a permit or from a condition of a permit if the applicant files a notice of appeal with the executive director within thirty days of receipt of the denial or issuance of the permit.

Sec. 7. NEW SECTION. INSPECTIONS.

1. For purposes of developing a rule, or conducting a study of hazardous waste management, or enforcing this Act, a person who generates, stores, treats, transports, disposes of or otherwise handles hazardous waste shall, upon request of the executive director, furnish or permit the executive director at reasonable times to have access to and copy records relating to the waste. For the purpose of developing a rule or enforcing this Act, the executive director may:

a. Enter at reasonable times an establishment or other place maintained by a person where hazardous waste is generated, stored, treated or disposed of, or a vehicle transporting hazardous waste.

b. Inspect and obtain samples from a person of a hazardous waste and of containers or labeling associated with the waste.

c. Install, service and take samples from monitoring equipment on the property.

The inspection shall be completed within a reasonable period of time.

2. If the officer or employee obtains a sample, prior to leaving the premises, the officer or employee shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

3. Documents or information obtained from a person under this section shall be available to the public except as provided in this subsection. Upon a showing satisfactory to the executive director by a person that documents or information, or a particular part of the documents or information to which the executive director has access under this section if made public would divulge commercial or financial information obtained from a person and privileged or confidential or a trade secret, the executive director shall consider the documents or information or the particular portion of the documents or information confidential. However the document or information may be disclosed to officers, employees or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this Act.

Sec. 8. NEW SECTION. PROHIBITED ACTS--PENALTIES.

1. A person shall not knowingly do any of the following acts:

a. Transport a hazardous waste listed under the commission's rules to a hazardous waste storage, treatment or disposal facility that is located in Iowa that does not have a permit under section six (6), subsection one (1) of this Act.

b. Dispose of a hazardous waste listed under this Act without having obtained a permit for the disposal under section six (6), subsection one (1) of this Act.

c. Make a false statement or representation in an application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with the provisions of this Act.

2. A person who violates the provisions of subsection one (1) of this section is subject upon conviction to a fine of not more than twenty-five thousand dollars or to imprisonment for not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than fifty thousand dollars or by imprisonment for not more than two years, or both.

3. A person who fails to take corrective action within the time specified in an order issued pursuant to section nine (9), subsection one (1), paragraph a or b of this Act is subject to a civil penalty commensurate with the severity of the violation but of not more than twenty-five thousand dollars for each day of continued noncompliance.

4. A person shall not transport, treat, store or dispose of a hazardous waste listed by the commission under section three (3), subsection two (2) of this Act unless notification has been given in accordance with rules adopted under section three (3), subsection three (3) of this Act. A person who violates this subsection is subject to a civil penalty not to exceed five hundred dollars for each day of violation.

Sec. 9. NEW SECTION. ENFORCEMENT.

1. If the executive director has conclusive evidence that a person has violated or is violating a provision of this Act, or of a rule or standard established or permit issued pursuant to this Act and if subsection four (4) of this section does not apply:

a. The executive director may issue an order directing the person to desist in the practice that constitutes the violation or to take corrective action as necessary to ensure that the violation will cease. Before issuing the order the executive director shall notify the person of the violation and that if compliance is not achieved within thirty days following the receipt of the notice the order may be issued. The person to whom the order is issued may commence a contested case within the meaning of chapter seventeen A (17A) of the Code by filing with the executive director within thirty days of receipt of the order a notice of appeal to the commission. On appeal, the commission may affirm, modify or vacate the order of the executive director.

b. If it is determined by the executive director that an emergency exists, the executive director may issue without notice or hearing an order necessary to terminate the emergency. The order shall be binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a court. "Emergency" as used in this subsection means a situation where the handling, storage, treatment, transportation or disposal of a hazardous waste is presenting an imminent and substantial threat to human health or the environment.

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

d. The executive director with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to subsection two (2) of this section.

2. The attorney general shall, at the request of the executive director pursuant to paragraph d of subsection one (1) of this section, institute legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this Act or to obtain compliance with this Act or a rule promulgated or a condition of a permit or order issued under this Act.

3. In a case arising from the violation of an order issued under subsection one (1), paragraph a of this section, the burden of proof shall be on the state to show that the time specified in the order within which the individual must take corrective action is reasonable.

4. Notwithstanding any other provisions of this Act, when hazardous waste was placed in a disposal site in whole or in large measure in accordance with the law existing at the time of placement, and the presence of such waste in the site is subsequently found to be in conflict with laws or rules adopted at a later date and to constitute a serious and imminent threat to human health which must be reduced or eliminated, the executive director shall request the attorney general to institute legal proceedings to determine how the threat may best be reduced or eliminated and how the cost of reducing or eliminating the threat shall be allocated to or among the past and present

owners and operators of the site, and other parties including the state and its political subdivisions deemed by the court to bear some responsibility for the threat or to benefit from the removal or elimination of the threat. Upon a finding by a court that a serious and imminent threat to human health exists the court may act and may stay that part of the reduction or elimination of the threat allocated to the state or governmental subdivision until such time as public funds have been appropriated to cover those allocated costs.

The court shall base an allocation of costs upon the following criteria:

- a. The extent to which parties complied with the law and attempted to comply with the law.
- b. The extent to which parties profited by acting contrary to the law.
- c. The extent to which parties exercised good judgment and discharged their responsibilities to society in accordance with the perceptions of the time.
- d. The ability of parties to pay for corrective measures.
- e. The extent to which parties would benefit from the elimination of the threat to human health.
- f. The broad implications for society of an allocation of costs.
- g. The damages to other persons associated with the hazard created by the disposal site.
- h. Other criteria as the court deems pertinent.

Sec. 10. NEW SECTION. AGRICULTURAL CHEMICALS. A person using or disposing of federally approved agricultural chemicals or the empty containers thereof shall not be in violation of this Act by reason of such use or disposal provided that the person:

1. Applies or disposes of the chemicals in accordance with the manufacturer's instructions, and
2. Triple rinses each chemical container after it has been emptied and uses the rinsate* as makeup water in a tank-mix and applies the mix to cropland at an application rate that does not exceed the manufacturer's instructions.

Sec. 11. NEW SECTION. RULES. Rules adopted by the commission under this Act shall be consistent with and shall not exceed the requirements of 42 U.S.C. 6921-6931 (1979) as amended to March 15, 1979 and rules and regulations promulgated pursuant to those sections.

Sec. 12. NEW SECTION. JUDICIAL REVIEW. Judicial review of actions of the commission or the executive director may be sought in accordance with the provision 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 where the acts in issue occurred. In addition to other rights of judicial review authorized by this section, a person who has complied with an order issued by the executive director or commission may within six months of compliance with the order seek relief in the district court on the grounds that the requirements imposed by the order are excessive, that the benefits to society are not commensurate with the costs of complying with the order and that society can be protected in a less costly manner. Upon a finding that the requirements imposed by the order are excessive, the court may modify or vacate the order.

*According to enrolled Act

Sec. 13. Section three hundred seven point ten (307.10), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. The commission may adopt, after consultation with the department of environmental quality and the department of public safety, rules to enforce the rules regarding transportation of hazardous wastes promulgated by the solid waste disposal commission of the department of environmental quality under section three (3), subsection three (3) of this Act. The department and the division of the highway safety patrol of the department of public safety shall carry out the rules through the use of the director's powers and duties of enforcement and inspection.

Approved June 10, 1979

CHAPTER 112

ANAEROBIC LAGOONS

S. F. 277

AN ACT relating to separation distances of anaerobic lagoons used in animal feeding operations.

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

Section 1. Section four hundred fifty-five B point thirteen (455B.13), subsection three (3), Code 1979, is amended by adding the following new paragraph:

NEW PARAGRAPH.

(1) Notwithstanding any other provision of division two (II) of this chapter, anaerobic lagoons, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or less live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or less live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation. These separation distances shall apply to the construction of new facilities and the expansion of existing facilities.