

Sec. 53. Section 910A.5, subsection 3, Code 1997, is amended to read as follows:

3. If a complaint is filed under section 232.28, alleging a child has committed a delinquent act, the alleged victim may file a signed victim impact statement with the juvenile court as provided by section 232.28. The victim impact statement shall be considered by the court and the juvenile court officer handling the complaint in any proceeding or informal adjustment associated with the complaint. Unless the matter is disposed of at the preliminary inquiry conducted by the intake officer under section 232.28, the victim may also be allowed to orally present the victim impact statement.

Sec. 54. Section 123.47A, Code 1997, is repealed.

Sec. 55. JUVENILE JUSTICE INTERIM STUDY. The legislative council is requested to establish an interim study committee consisting of members of both political parties from both houses of the general assembly to review and consider the need for improvements in the laws and programs established to reform juvenile delinquents and reduce juvenile crime. The study may include but is not limited to the review of the need for improvements in the current juvenile justice system, the youthful offender program, the programs established to combat substance abuse by juveniles, and the coordination of programs and information between the juvenile and adult criminal justice systems. The committee shall submit its findings, together with any recommendations, in a report to the general assembly which convenes in January 1998.

Approved May 7, 1997

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## CHAPTER 127

### LAND RECYCLING AND ENVIRONMENTAL REMEDIATION STANDARDS

S.F. 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 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.
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.502.

#### Sec. 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. 455H.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 455H.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. 455H.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. 455H.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 455H.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. 455H.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 455H.202.
- b. Statewide standards established pursuant to section 455H.203.
- c. Site-specific cleanup standards established pursuant to section 455H.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 tech-

nologies, 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. 455H.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. 455H.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 455H.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. 455H.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 7E.6, subsection 2, for performing the official duties of the advisory committee.

**Sec. 27. NEW SECTION. 455H.503 RECORDKEEPING REQUIREMENTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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, primacy, 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.

Approved May 7, 1997